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STATUTORY INSTRUMENTS

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**1981 No. 231**

**Weights and Measures (Northern Ireland) Order 1981**

**PART VII**

**MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS**

**Function of Department**

**39.** It shall be the duty of the Department to enforce the provisions of this Order.

**Inspectors of weights and measures**

**40.**—(1) The Department, with the approval of the Department of the Civil Service as to numbers and salaries, shall appoint from among persons holding certificates of qualification under paragraph (2) a chief inspector of weights and measures and such number of other inspectors of weights and measures as may be necessary for the efficient discharge of the functions conferred or imposed on inspectors under this Order or any enactment falling to be repealed by it, and may assign to them their duties, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the functions of inspectors under this Order or any such enactment.

(2) The Department may make such arrangements as it thinks fit for the purpose of ascertaining whether persons possess sufficient skill and knowledge for the proper performance of the functions of an inspector, and for the grant of certificates of qualification to persons who satisfy the Department that they are suitable for appointment as inspectors.

(3) The Department shall not grant a certificate of qualification to any person while he is under twenty-one years of age.

**General powers of inspection and entry**

**41.**—(1) Subject to the production, if so requested, of his credentials, an inspector may at all reasonable times—

- (a) inspect and test any weighing or measuring equipment which is, or which he has reasonable cause to believe to be, used for trade or in the possession of any person or upon any premises for such use;<sup>F1</sup> or which has been, or which he has reasonable cause to believe to have been, passed by an approved verifier, or by a person purporting to act as such a verifier, as fit for such use.]
- (b) inspect any goods to which any of the provisions of this Order or any instrument made under it for the time being applies or which he has reasonable cause to believe to be such goods;
- (c) enter any premises at which he has reasonable cause to believe there to be any such equipment or goods as aforesaid, not being premises used only as a private dwelling-house.

(2) Subject to the production, if so requested, of his credentials, an inspector may seize and detain—

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- (a) any article which he has reasonable cause to believe is liable to be forfeited under this Order, and
  - (b) any document or goods which the inspector has reason to believe may be required as evidence in proceedings for an offence under this Order.
- (3) Where a justice of the peace is satisfied by complaint in writing and on oath—
- (a) that there is reasonable ground to believe that any such equipment, goods, articles or documents as are mentioned in paragraph (1) or (2) are on any premises, or that any offence under this Order or any instrument made under it has been, is being or is about to be committed on any premises; and
  - (b) either—
    - (i) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
    - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or that the occupier is temporarily absent,
 he may issue a warrant under his hand, which shall continue in force for a period of seven days commencing with the date of issue of the warrant, authorising an inspector to enter the premises, if need be by force.
- (4) An inspector entering any premises by virtue of this Article may take with him such other persons and such equipment as he considers necessary.
- (5) An inspector who leaves premises which he has entered by virtue of paragraph (3) and which are unoccupied or from which the occupier is temporarily absent shall leave the premises as effectively secured against trespassers as he found them.
- (6) If any inspector or other person who enters any premises by virtue of this Article discloses to any person any information with regard to any secret manufacturing process or trade secret obtained by him in the premises, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.

**F1** 2000 c. 5(NI)

### **Obstruction of inspectors**

**42.**—(1) Any person who—

- (a) wilfully obstructs an inspector acting in the execution of this Order or any instrument made under it; or
- (b) wilfully fails to comply with any requirement properly made of him by an inspector under Article 26 or 27; or
- (c) without reasonable cause fails to give to any inspector acting as aforesaid any assistance or information which the inspector may reasonably require of him for the purposes of the performance by the inspector of his functions under this Order or any instrument made under it,

shall be guilty of an offence.

(2) If any person, in giving to an inspector any such information as is mentioned in paragraph (1), gives any information which he knows to be false, he shall be guilty of an offence.

(3) Nothing in this Article shall be construed as requiring a person to answer any question or give any information (other than his name and address) if to do so might incriminate him.

### Power of Department to provide adjustment service

43. The Department may make arrangements for the provision of a service for the adjustment of weights and measures, but not of other weighing or measuring equipment, subject to the payment, by persons requiring the said service, of the prescribed fee.

### Employment of inspectors for provision of certain other services

44. Without prejudice to the functions exercisable by inspectors under any other provision of this Order, the Department may make arrangements whereby an inspector may, at the request of any person and subject to the payment by that person of such fee as the Department may determine, carry out and submit to that person a report on—

- (a) a weighing or other measurement of any goods submitted for the purpose by that person at such place as the Department may direct or approve;
- (b) a test of the accuracy of any weighing or measuring equipment so submitted.

### Offences in connection with office of inspector

45.—(1) Any inspector who—

- (a) stamps any weighing or measuring equipment in contravention of any provision of this Order or of any instrument made under it, or without duly testing it; or
- (b) derives any profit from, or is employed (otherwise than in pursuance of arrangements made under Article 43) in, the making, adjusting or selling of weighing or measuring equipment; or
- (c) knowingly commits any breach of any duty imposed on him by or under this Order or any enactment falling to be repealed by it or otherwise misconducts himself in the execution of his office,

shall be guilty of an offence.

[<sup>F2</sup>(1A) Any approved verifier who—

- (a) stamps any weighing or measuring equipment in contravention of any provision of this Order or of any instrument made under it, or without duly testing it; or
- (b) commits any breach of any duty imposed on him by or under this Order,

shall be guilty of an offence.

(2) If any person who is not an inspector, or is not an approved verifier, acts or purports to act as such, he shall be guilty of an offence.

(3) Articles 24(1) and 25(1) shall apply in relation to proceedings for an offence under paragraph (1A)(b) as they apply in relation to proceedings for an offence under Part V.]

F2 2000 c. 5(NI)

### Prosecution of offences

46.—(1) Subject to paragraph (2), no proceedings for an offence under any of the provisions of this Order or any instrument made under it other than an offence under Articles 32, 34, 35(3) and 36 may be instituted except by the Department or the Attorney General.

(2) No proceedings for an offence under Article 32, 34 or 35(3) or paragraph 6 of Schedule 9 shall be instituted except by or on behalf of the Department or the Director of Public Prosecutions for Northern Ireland.

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(3) Proceedings for an offence under any provision contained in, or having effect by virtue of, Part V, other than proceedings for an offence under Article 23(6) or proceedings by virtue of Article 25(2), shall not be instituted—

- (a) unless there has been served on the person charged notice in writing of the date and nature of the offence alleged and, where the proceedings are in respect of one or more of a number of articles of the same kind tested on the same occasion, of the results of the tests of all those articles;
- (b) except where the person charged is a street trader, unless the said notice was served before the expiration of the period of thirty days beginning with the date when evidence which the person proposing to institute the proceedings considers is sufficient to justify a prosecution for the offence came to his knowledge;
- (c) after the expiration of the period of—
  - (i) twelve months beginning with the date mentioned in sub-paragraph ( a ), or
  - (ii) three months beginning with the date mentioned in sub-paragraph ( b ),
 whichever first occurs.

(4) For the purposes of paragraph (3)—

- (a) a certificate of a person who institutes proceedings for an offence mentioned in that paragraph which states that evidence came to his knowledge on a particular date shall be conclusive evidence of that fact; and
- (b) a document purporting to be a certificate of such a person and to be signed by him or on his behalf shall be presumed to be such a certificate unless the contrary is proved.

(5) Paragraphs (3) and (4) shall apply to an offence under Article 32 or 34 or paragraph 6 of Schedule 9 as they apply to an offence under Article 22 with the modification that in paragraph (3) ( a ) the words from “and, where” to “those articles” shall be omitted.

## Penalties

**47.**—(1) A person guilty of an offence under Article 6(3), 7(4), 8(2), 9(2), 9(11), 10(3), 10(4), 11(4), 12(3), 12(4), 13(1), 13(4),<sup>F3</sup> 13A(3), 16(3), 18(2), 18(4) or 18(5), paragraphs 4 and 5 of Schedule 4 or paragraph 5 of Schedule 5, shall be liable on summary conviction to a fine not exceeding £200.

(2) A person guilty of an offence under Article 15(3) or 18(3)(b) or paragraph 6 of Part I of Schedule 5 shall be liable on summary conviction to a fine not exceeding<sup>F4</sup> level 5 on the standard scale] or to imprisonment for a term not exceeding six months or to both.

(3) A person guilty of an offence under Article 32(4) shall be liable on summary conviction to a fine not exceeding<sup>F4</sup> level 5 on the standard scale] and to imprisonment for a term not exceeding six months.

(4) A person guilty of an offence under Article 41(6) shall be liable—

- (a) on summary conviction to a fine not exceeding<sup>F4</sup> level 5 on the standard scale];
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(5) A person guilty of an offence under any provision of this Order other than those mentioned in paragraphs (1) to (4) or Article 36 shall be liable on summary conviction to a fine not exceeding<sup>F4</sup> level 5 on the standard scale].

**F3** 2000 c. 5(NI)

**F4** 1984 NI 3

### **Regulations and orders**

**48.**—(1) Any regulations made under this Order shall be subject to negative resolution.

(2) Before making any order under Articles 6, 19(2), 19(7), 21(6), 29(3) and 53(1) and paragraph (7) of Schedule 5, the Department shall consult with, and consider any representations with respect to the subject-matter of the order made to the Department by, such organisations as appear to the Department to be representative of interests substantially affected by the order.

(3) In the case of an order under Article 6(4) which relates to imperial units, measures or weights the Department in acting under paragraph (2) shall have particular regard to the need to consult, and to consider representations from, organisations representative of the interests of consumers.

(4) Before making any regulations under Part VI the Department shall consult with such organisations as appear to the Department to be representative of interests substantially affected by the regulations.

### **Department to report to Assembly**

**49.** The Department shall not less than once in every three years lay before the Assembly a report of its proceedings under this Order and generally about the operation of this Order.

### **Application to Crown**

**50.**—(1) The Secretary of State may by order provide for the application to the Crown of such of the provisions of this Order or of any instrument made under it as may be specified in the order, with such exceptions, adaptations and modifications as may be so specified.

(2) Without prejudice to the generality of paragraph (1), an order under this Article may make special provision for the enforcement of any provisions applied by the order, and, in particular, as to the person liable to be proceeded against for any offence under any such provision.

(3) An order made under this Article shall be subject to negative resolution.

(4) In this Article, references to the Crown shall include references to the Crown in right of Her Majesty's Government in the United Kingdom.

### **Supplemental provisions with respect to fees**

**51.**—(1) Where a person gives assistance in connection with the inspection, testing or stamping of weighing or measuring equipment by an inspector, the Department may reduce, by a sum which the Department considers reasonable by reference to the assistance, the amount of any payment falling to be made by that person to the inspector in respect of the inspection, testing or stamping.

(2) The Public Offices Fees Act 1879 shall not apply to any fee such as is referred to in paragraph (1).

*Art. 52 rep. by 1996 NI 2*

### **Other savings**

**53.**—(1) Except as the Department may by order otherwise provide, and except in the case of a retail transaction or a transaction with respect to which provision to the contrary effect is for the time being made by or under Part V or any enactment included in the third column of Part III of Schedule 7 to the Weights and Measures Act (Northern Ireland) 1967, nothing in this Order shall

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make unlawful the use in any transaction, by agreement between the parties to that agreement, of any unit of measurement which—

- (a) was customarily used for trade in the like transactions immediately before 25th October 1967, and
- (b) is not inconsistent with anything for the time being contained in Schedule 1 to the<sup>F5</sup> Act of 1985],

notwithstanding that the unit in question is not for the time being included in the said Schedule 1.

(2) No contract for the sale or carriage for reward of any goods shall be void by reason only of a contravention of any provision of, or any instrument made under, this Order with respect to any document which is, or is required by that provision to be, associated with the goods.

(3) Nothing in this Order or in any instrument made under it, prevents the use of “gram” as an alternative way of spelling “gramme”, and the same applies for other units in the metric system which are compounds of “gramme”.

**F5** 1985 c. 72

### **Consequential amendments and repeals**

*Para.(1), with Schedule 10, effects amendments; para.(2), with Schedule 11, effects repeals*

(3) Where an enactment contained in any local Act passed before 25th October 1967 appears to the Department to have been superseded by, or to be inconsistent with, any provision of this Order or of any instrument made under it, the Department may by order, a draft of which shall be laid before the Assembly, specify that enactment for the purposes of this paragraph and, without prejudice to the operation in the meantime of any rule of law relating to the effect on any such enactment of any such provision, any enactment specified in any such order shall be repealed as from the date of the making of the order.

(4) No power conferred by any Act on any person other than the Department to make provision by instrument with respect to the marking of any food shall extend to the marking of such food with a statement of its quantity by weight or other measurement or by number, if the exercise of such a power would have the effect of making a provision which would be inconsistent with any provision of this Order or any instrument made under it.

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