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## STATUTORY INSTRUMENTS

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# 1987 No. 2049

## The Consumer Protection (Northern Ireland) Order 1987

### PART IV

#### ENFORCEMENT OF PART III

##### **Enforcement**

**20.** It shall be the duty of the Department to enforce the provisions of Part III.

##### **Test purchases**

**21.—(1)** Where—

- (a) any goods purchased by or on behalf of the Department, for the purpose of ascertaining whether any provision made by or under Part III has been contravened, are submitted to a test; and
  - (b) the test leads to the bringing of proceedings for an offence in respect of a contravention in relation to the goods of any provision made by or under Part III; and
  - (c) the Department is requested to do so and it is practicable for it to comply with the request,
- the Department shall allow the person from whom the goods were purchased or any person who is a party to the proceedings to have the goods tested.

(2) The Department may by regulations provide that any test of goods purchased under this Article by or on its behalf shall—

- (a) be carried out at the expense of the Department in a manner and by a person prescribed by or determined under the regulations; or
  - (b) be carried out either as mentioned in sub#paragraph ( a) or by the Department in a manner prescribed by the regulations.
- (3) Regulations under paragraph (2)—
- (a) may make such supplemental, consequential and transitional provision as the Department considers appropriate; and
  - (b) shall be subject to negative resolution.

##### **Powers of search etc.**

**22.—(1)** Subject to Articles 23 to 26, a duly authorised officer of the Department may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by paragraphs (2) to (5).

(2) The officer may, for the purpose of ascertaining whether there has been any contravention of any provision made by or under Part III, inspect any goods and enter any premises other than premises occupied only as a person's residence.

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(3) If the officer has reasonable grounds for suspecting that there has been a contravention in relation to any goods of any provision made by or under Part III, he may—

- (a) for the purpose of ascertaining whether there has been any such contravention, require any person carrying on a business, or employed in connection with a business, to produce any records relating to the business;
- (b) for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain the goods;
- (c) take copies of, or of any entry in, any records produced by virtue of sub#paragraph ( a).

(4) The officer may seize and detain any goods or records which he has reasonable grounds for believing may be required as evidence in proceedings for an offence in respect of a contravention of any provision made by or under Part III.

(5) If and to the extent that it is reasonably necessary to do so to prevent a contravention of any provision made by or under Part III, the officer may, for the purpose of exercising his power under paragraph (3) or (4) to seize any goods or records—

- (a) require any person having authority to do so to open any container or to open any vending machine; and
- (b) himself open or break open any such container or machine where a requirement made under sub#paragraph ( a) in relation to the container or machine has not been complied with.

### **Provisions supplemental to Article 22**

**23.**—(1) An officer seizing any goods or records under Article 22 shall inform the following persons that the goods or records have been so seized, that is to say—

- (a) the person from whom they are seized; and
- (b) in the case of imported goods seized on any premises under the control of the Commissioners of Customs and Excise, the importer of those goods (within the meaning of the Customs and Excise Management Act 1979<sup>F1</sup>).

(2) If a justice of the peace—

- (a) is satisfied by any written complaint on oath that there are reasonable grounds for believing either—
  - (i) that any goods or records which any officer has power to inspect under Article 22 are on any premises and that their inspection is likely to disclose evidence that there has been a contravention of any provision made by or under Part III; or
  - (ii) that such a contravention has taken place, is taking place or is about to take place on any premise; and
- (b) is also satisfied by any such complaint either—
  - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this paragraph 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 premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise any officer of the Department to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of Article 22 or a warrant under paragraph (2) may take with him such other persons and such equipment as may appear to him necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under paragraph (2), that person shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(5) If any person who is not an officer of the Department purports to act as such under Article 22 or this Article he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Where any goods seized by an officer under Article 22 are submitted to a test, the officer shall inform the persons mentioned in paragraph (1) of the result of the test and, if—

- (a) proceedings are brought for an offence in respect of a contravention in relation to the goods of any provision made by or under Part III; and
- (b) the officer is requested to do so and it is practicable to comply with the request,

the officer shall allow any person who is a party to the proceedings or, to have the goods tested.

(7) The Department may by regulations provide that any test of goods seized under Article 22 by an officer of the Department shall—

- (a) be carried out at the expense of the Department in a manner and by a person prescribed by or determined under the regulations; or
- (b) be carried out either as mentioned in sub#paragraph ( a) or by the Department in a manner prescribed by the regulations.

(8) Regulations under paragraph (7)—

- (a) may make such supplemental, consequential and transitional provisions as the Department considers appropriate; and
- (b) shall be subject to negative resolution.

F1 1979 c. 2

### **Obstruction of authorised officer**

24.—(1) Any person who—

- (a) intentionally obstructs any officer of the Department who is acting in pursuance of any provision of this Part; or
- (b) intentionally fails to comply with any requirement made of him by any officer of the Department under any provision of this Part; or
- (c) without reasonable cause fails to give any officer of the Department who is so acting any other assistance or information which the officer may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of this Part,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person shall be guilty of an offence if, in giving information which is required of him by virtue of paragraph (1)( c)—

- (a) he makes any statement which he knows is false in a material particular; or
- (b) he recklessly makes a statement which is false in a material particular.

(3) A person guilty of an offence under paragraph (2) shall be liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

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### Appeals against detention of goods

**25.**—(1) Any person having an interest in any goods which are for the time being detained under any provision of this Part by the Department or by an officer of the Department may apply for an order requiring the goods to be released to him or to another person.

(2) An application under this Article may be made—

- (a) to any court of summary jurisdiction in which proceedings have been brought for an offence in respect of a contravention in relation to the goods of any provision made by or under Part III;
- (b) where no such proceedings have been so brought, by way of complaint to a court of summary jurisdiction.

(3) On an application under this Article to a court of summary jurisdiction, an order requiring goods to be released shall be made only if the court is satisfied—

- (a) that proceedings for an offence in respect of a contravention in relation to the goods of any provision made by or under Part III have not been brought or, having been brought, have been concluded; and
- (b) where no such proceedings have been brought, that more than six months have elapsed since the goods were seized.

(4) Any person aggrieved by an order made under this Article by a court of summary jurisdiction, or by a decision of such a court not to make such an order, may appeal against that order or decision to the county court; and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F2</sup> (statement of case)).

<b>F2</b> 1981 NI 26
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### Compensation for seizure and detention

**26.**—(1) Where an officer of the Department exercises any power under Article 22 to seize and detain goods, the Department shall be liable to pay compensation to any person having an interest in the goods in respect of any loss or damage caused by reason of the exercise of the power if—

- (a) there has been no contravention in relation to the goods of any provision made by or under Part III; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to or the amount of any compensation payable under this Article shall be determined by arbitration.

### Recovery of expenses of enforcement

**27.**—(1) This Article shall apply where a court convicts a person of an offence in respect of a contravention in relation to any goods of any provision made by or under Part III.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the goods to reimburse the Department for any expenditure which has been or may be incurred by the Department in connection with any seizure or detention of the goods by or on behalf of the Department.

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