Weights and Measures Act 1985

1985 CHAPTER 72

PART IV

REGULATION OF TRANSACTIONS IN GOODS

Transactions in particular goods

21 Transactions in goods mentioned in Schedules 4 to 7.

Schedules 4, 5, 6 and 7 to this Act (which relate to transactions in the goods mentioned in those Schedules) shall have effect.

Modifications etc. (not altering text)

C1 Ss. 21, 22, 23: power to modify or exclude conferred by Weights and Measures &c. Act 1976 (c. 77, SIF 131), s. 12(1)(2)

22 Orders relating to transactions in particular goods.

(1) The Secretary of State may by order make provision with respect to any goods specified in the order for all or any of the following purposes, that is to say, to ensure that, except in such cases or in such circumstances as may be so specified, the goods in question—

(a) are sold only by quantity expressed in such manner as may be so specified,

(b) are pre-packed, or are otherwise made up in or on a container for sale or for delivery after sale, only if the container is marked with such information as to the quantity of the goods as may be so specified,

(c) are pre-packed, or are otherwise made up for sale or for delivery after sale, only in or on a container of a size or capacity so specified,

(d) are sold, or are pre-packed, or are otherwise made up in or on a container for sale or for delivery after sale, or are made for sale, only in such quantities as may be so specified,

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(e) are not sold without the quantity sold expressed in such manner as may be so specified being made known to the buyer at or before such time as may be so specified,

(f) are sold by means of, or are offered or exposed for sale in, a vending machine only if there is displayed on or in the machine—

(i) such information as to the quantity of the goods in question comprised in each item for sale by means of that machine as may be so specified, and

(ii) a statement of the name and address of the seller,

(g) are carried for reward only in pursuance of an agreement made by reference to the quantity of the goods in question expressed in such manner as may be so specified,

(h) in such circumstances as may be so specified, have associated with them in such manner as may be so specified a document containing a statement of the quantity of the goods in question expressed in such manner, and a statement of such other particulars, if any, as may be so specified, or

(i) when carried on a road vehicle along a highway are accompanied by a document containing such particulars determined in such manner as may be so specified as to the weight of the vehicle and its load apart from the goods in question.

(2) An order under subsection (1) above may be made with respect to any goods, including goods to which any of the provisions of Schedule 4, 5, 6, or 7 to this Act applies, and may—

(a) make provision for any of the purposes mentioned in subsection (1) above in such manner, whether by means of amending, or of applying with or without modifications, or of excluding the application in whole or in part of, any of the provisions of this Act (except Part V) or of any previous order under subsection (1) or otherwise,

(b) make such, if any, different provision for retail and other sales respectively, and

(c) contain such consequential, incidental or supplementary provision, whether by such means as mentioned in paragraph (a) above or otherwise,

as may appear to the Secretary of State to be expedient, and may in particular make provision in respect of contraventions of the order for which no penalty is provided by this Act for the imposition of penalties not exceeding those provided by section 84(6) below for an offence under this Act.

(3) Without prejudice to the generality of the powers conferred by paragraph (c) of subsection (1) above, an order made by virtue of that paragraph—

(a) may require a container to be marked with such information concerning it or its contents as is specified in the order, and

(b) in order to prevent size or capacity from giving a false impression of the quantity of the goods in a container, may prescribe a minimum quantity for the goods in a container of a given capacity.

(4) The minimum quantity referred to in subsection (3)(b) above may be expressed in the order by weight or volume, by percentage of the capacity of the container or in any other manner.

Modifications etc. (not altering text)

C2 Ss. 21, 22, 23: power to modify or exclude conferred by Weights and Measures &c. Act 1976 (c. 77, SIF 131), s. 12(1)(2)

23 Regulations as to information.

(1) The Secretary of State may make regulations—

(a) as to the manner in which any container required by any of the provisions of Schedules 4, 5, 6 or 7 to this Act or of any order under section 22(1) above to be marked with information (including in particular information as to quantity or capacity) is to be so marked,

(b) as to the manner in which any information required by any such provision to be displayed on or in a vending machine is to be so displayed,

(c) as to the conditions which must be satisfied in marking with information as to the quantity of goods made up in it the container in or on which any goods are made up for sale (whether by way of pre-packing or otherwise) where those goods are goods on a sale of which (whether any sale or a sale of any particular description) the quantity of the goods sold is required by any such provision to be made known to the buyer at or before a particular time,

(d) as to the units of measurement to be used in marking any such container or machine with any information,

(e) for securing, in the case of pre-packed goods, that the container is so marked as to enable the packer to be identified,

(f) as to the method by which and conditions under which quantity is to be determined in connection with any information relating to quantity required by or under section 21 or 22 above, and

(g) permitting, in the case of such goods and in such circumstances as may be specified in the regulations, the weight of such articles used in making up the goods for sale as may be so specified to be included in the net weight of the goods for the purposes of this Part of this Act.

(2) Any person who contravenes any regulation made under subsection (1) above otherwise than by virtue of paragraph (f) or (g) of that subsection shall be guilty of an offence.

Modifications etc. (not altering text)

C3 Ss. 21, 22, 23: power to modify or exclude conferred by Weights and Measures &c. Act 1976 (c. 77, SIF 131), s. 12(1)(2)

24 Exemption from requirements imposed under sections 21 to 23.

(1) The Secretary of State may by order grant, with respect to goods or sales of such descriptions as may be specified in the order, exemption, either generally or in such circumstances as may be so specified, from all or any of the requirements imposed by or under sections 21 to 23 above.

(2) Until otherwise provided by an order under subsection (1) above, the following shall be exempted from all requirements imposed by or under sections 21 to 23 above, that is to say—

(a) goods made up in or on a container for sale only for use by Her Majesty's forces or by a visiting force within the meaning of any of the provisions of Part I of the [M1]Visiting Forces Act 1952 and not sold or offered, exposed or in any person's possession for sale for any other use,

(b) any sale of goods in the case of which the buyer gives notice in writing to the seller before the sale is completed that the goods are being bought—

(i) for despatch to a destination outside Great Britain and any designated country, or

(ii) for use as stores within the meaning of the [M2]Customs and Excise Management Act 1979 in a ship or aircraft on a voyage or flight to an eventual destination outside the United Kingdom and the Isle of Man,

(c) any goods sold for, or offered, exposed or in any person's possession for sale only for, use or consumption at the premises of the seller, not being intoxicating liquor, and

(d) any assortment of articles of food pre-packed together for consumption together as a meal and ready for such consumption without being cooked, heated or otherwise prepared.

Marginal Citations

M1 1952 c. 67.

M2 1979 c. 2.

25 Offences relating to transactions in particular goods.

(1) Subject to section 44 below, where any goods are required, when not pre-packed, to be sold only by quantity expressed in a particular manner or only in a particular quantity, any person shall be guilty of an offence who—

(a) whether on his own behalf or on behalf of another person, offers or exposes for sale, sells or agrees to sell, or

(b) causes or suffers any other person to offer or expose for sale, sell or agree to sell on his behalf,

those goods otherwise than by quantity expressed in that manner or, as the case may be, otherwise than in that quantity.

(2) Any person shall be guilty of an offence who—

(a) whether on his own behalf or on behalf of another person, has in his possession for sale, sells or agrees to sell,

(b) except in the course of carriage of the goods for reward, has in his possession for delivery after sale, or

(c) causes or suffers any other person to have in his possession for sale or for delivery after sale, sell or agree to sell on behalf of the first-mentioned person,

any goods to which subsection (3) below applies, whether the sale is or is to be, by retail or otherwise.

(3) This subsection applies to any goods—

(a) which are required to be pre-packed only in particular quantities but are not so pre-packed,

(b) which are required to be otherwise made up in or on a container for sale or for delivery after sale only in particular quantities but are not so made up,

(c) which are required to be made for sale only in particular quantities but are not so made,

(d) which are required to be pre-packed only if the container is marked with particular information but are pre-packed otherwise than in or on a container so marked,

(e) which are required to be otherwise made up in or on a container for sale or for delivery after sale only if the container is marked with particular information but are so made up otherwise than in or on a container so marked,

(f) which are required to be pre-packed only in or on a container of a particular description but are not pre-packed in or on a container of that description, or

(g) which are required to be otherwise made up in or on a container for sale or for delivery after sale only in or on a container of a particular description but are not so made up in or on a container of that description.

(4) In the case of any sale where the quantity of the goods sold expressed in a particular manner is required to be made known to the buyer at or before a particular time and that quantity is not so made known, the person by whom, and any other person on whose behalf, the goods were sold shall be guilty of an offence.

(5) Where any goods required to be sold by means of, or to be offered or exposed for sale in, a vending machine only if certain requirements are complied with are so sold, offered or exposed without those requirements being complied with, the seller or person causing the goods to be offered or exposed shall be guilty of an offence.

(6) The preceding provisions of this section have effect subject to sections 33 to 37 below.

(7) For the purposes of this section the quantity of the goods in a regulated package (as defined by section 68(1) below) shall be deemed to be the nominal quantity (as so defined) on the package.

(8) In this section "required" means required by or under this Part of this Act.

Modifications etc. (not altering text)

C4 S. 25(2) restricted by S.I. 1988/2040, **art. 11(2)**

C5 S. 25(2) excluded (*temp.*) by S.I. 1990/1550, **art. 4**

C6 S. 25(2)(3) applied with modifications by S.I. 1988/2040, **art. 18**

Quantity to be stated in writing

26 Quantity to be stated in writing in certain cases.

(1) Subject to section 27 below, the provisions of this section shall have effect on any sale of goods—

(a) which is required by or under this Part of this Act to be a sale by quantity expressed in a particular manner,

(b) in the case of which the quantity of the goods sold expressed in a particular manner is so required to be made known to the buyer at or before a particular time, or

(c) which, being a sale by retail not falling within paragraph (a) or (b) above, is or purports to be, a sale by quantity expressed in a particular manner other than by number.

(2) Subject to subsections (4) to (6) below, unless the quantity of the goods sold expressed in the manner in question is made known to the buyer at the premises of the seller and the goods are delivered to the buyer at those premises on the same occasion as, and at or after the time when, that quantity is so made known to him, a statement in writing of that quantity shall be delivered to the consignee at or before delivery of the goods to him.

(3) If subsection (2) above is contravened then, subject to sections 33 to 37 below, the person by whom, and any other person on whose behalf, the goods were sold shall be guilty of an offence.

(4) If at the time when the goods are delivered the consignee is absent, it shall be sufficient compliance with subsection (2) above if the statement is left at some suitable place at the premises at which the goods are delivered.

(5) Subsection (2) above shall not apply to any sale otherwise than by retail where, by agreement with the buyer, the quantity of the goods sold is to be determined after their delivery to the consignee.

(6) Where any liquid goods are sold by capacity measurement and the quantity sold is measured at the time of delivery and elsewhere than at the premises of the seller, subsection (2) above shall not apply but, unless the quantity by capacity measurement of the goods sold is measured in the presence of the buyer, the person by whom the goods are delivered shall immediately after the delivery hand to the buyer, or if the buyer is not present leave at some suitable place at the premises at which the goods are delivered, a statement in writing of the quantity by capacity measurement delivered, and if without reasonable cause he fails so to do he shall be guilty of an offence.

27 Exemption from requirements of section 26.

(1) The Secretary of State may by order grant, with respect to goods or sales of such descriptions as may be specified in the order, exemption, either generally or in such circumstances as may be so specified, from all or any of the requirements of section 26 above.

(2) Until otherwise provided by an order under subsection (1) above, nothing in section 26 above shall apply to—

(a) a sale by retail from a vehicle of—

(i) any of the following in a quantity not exceeding 224 pounds, that is to say, any solid fuel within the meaning of Schedule 5 to this Act, and wood fuel, or

(ii) any of the following in a quantity not exceeding five gallons, that is to say, liquid fuel, lubricating oil, and any mixture of such fuel and oil,

(b) a sale by retail of bread within the meaning of the [M3]Weights and Measures Act 1963 (Miscellaneous Foods) Order 1984,

(c) goods made up for sale (whether by way of pre-packing or otherwise) in or on a container marked with a statement in writing with respect to the quantity of the goods expressed in the manner in question, being a container which is delivered with the goods,

(d) a sale of goods in the case of which a document stating the quantity of the goods expressed in the manner in question is required to be delivered to the buyer or consignee of the goods by or under any other provision of this Part of this Act,

(e) any such goods or sales as are mentioned in section 24(2)(a) to (d) above,

(f) a sale of intoxicating liquor for consumption at the premises of the seller,

(g) a sale by means of a vending machine, or

(h) goods delivered at premises of the buyer by means of an installation providing a connection of a permanent nature between those premises and premises of the seller.

Marginal Citations

M3 S.I. 1984/1316.

General offences

28 Short weight, etc.

(1) Subject to sections 33 to 37 below, any person who, in selling or purporting to sell any goods by weight or other measurement or by number, delivers or causes to be delivered to the buyer—

(a) a lesser quantity than that purported to be sold, or

(b) a lesser quantity than corresponds with the price charged,

shall be guilty of an offence.

(2) For the purposes of this section—

(a) the quantity of the goods in a regulated package (as defined by section 68(1) below) shall be deemed to be the nominal quantity (as so defined) on the package, and

(b) any statement, whether oral or in writing, as to the weight of any goods shall be taken, unless otherwise expressed, to be a statement as to the net weight of the goods.

(3) Nothing in this section shall apply in relation to any such goods or sales as are mentioned in section 24(2)(a) or (b) above.

29 Misrepresentation.

(1) Subject to sections 33 to 37 below, any person who—

(a) on or in connection with the sale or purchase of any goods,

(b) in exposing or offering any goods for sale,

(c) in purporting to make known to the buyer the quantity of any goods sold, or

(d) in offering to purchase any goods,

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makes any misrepresentation whether oral or otherwise as to the quantity of the goods, or does any other act calculated to mislead a person buying or selling the goods as to the quantity of the goods, shall be guilty of an offence.

(2) Subsection (2) of section 28 above shall have effect fot the purposes of this section as it has effect for the purposes of that section.

(3) Nothing in this section shall apply in relation to any such goods or sales as are mentioned in section 24(2)(a) or (b) above.

30 Quantity less than stated.

(1) If, in the case of any goods pre-packed in or on a container marked with a statement in writing with respect to the quantity of the goods, the quantity of the goods is at any time found to be less than that stated, then, subject to sections 33 to 37 below—

(a) any person who has those goods in his possession for sale shall be guilty of an offence, and

(b) if it is shown that the deficiency cannot be accounted for by anything occurring after the goods had been sold by retail and delivered to, or to a person nominated in that behalf by, the buyer, any person by whom or on whose behalf those goods have been sold or agreed to be sold at any time while they were pre-packed in or on the container in question, shall be guilty of an offence.

(2) If—

(a) in the case of a sale of or agreement to sell any goods which, not being pre-packed, are made up for sale or for delivery after sale in or on a container marked with a statement in writing with respect to the quantity of the goods, or

(b) in the case of any goods which, in connection with their sale or an agreement for their sale, have associated with them a document containing such a statement,

the quantity of the goods is at any time found to be less than that stated, then, if it is shown that the deficiency cannot be accounted for by anything occurring after the goods had been delivered to, or to a person nominated in that behalf by, the buyer, and subject to sections 33 to 37 below and paragraph 10 of Schedule 4 to this Act, the person by whom, and any other person on whose behalf, the goods were sold or agreed to be sold shall be guilty of an offence.

(3) Subsections (1) and (2) above shall have effect notwithstanding that the quantity stated is expressed to be the quantity of the goods at a specified time falling before the time in question, or is expressed with some other qualification of what ever description, except where—

(a) that quantity is so expressed in pursuance of an express requirement of this Part of this Act or any instrument made under this Part, or

(b) the goods, although falling within subsection (1) or subsection (2)(a) above—

(i) are not required by or under this Part of this Act to be pre-packed as mentioned in subsection (1) or, as the case may be, to be made up for sale or for delivery after sale in or on a container only if the container is marked as mentioned in subsection (2)(a), and

(ii) are not goods on a sale of which (whether any sale or a sale of any particular description) the quantity sold is required by or under any

provision of this Part of this Act other than section 26, to be made known to the buyer at or before a particular time, or

(c) the goods, although falling within subsection (2)(b) above, are not required by or under this Part of this Act to have associated with them such a document as is mentioned in that provision.

(4) In any case to which, by virtue of paragraph (a), (b) or (c) of subsection (3) above, the provisions of subsection (1) or (2) above do not apply, if it is found at any time that the quantity of the goods in question is less than that stated and it is shown that the deficiency is greater than can be reasonably justified on the ground justifying the qualification in question, then, subject to sections 33 to 37 below—

(a) in the case of goods such as are mentioned in subsection (1) above, if it is further shown as mentioned in that subsection, then—

(i) where the container in question was marked in Great Britain, the person by whom, and any other person on whose behalf, the container was marked, or

(ii) where the container in question was marked outside Great Britain, the person by whom, and any other person on whose behalf, the goods were first sold in Great Britain,

shall be guilty of an offence;

(b) in the case of goods such as are mentioned in subsection (2) above, the person by whom, and any other person on whose behalf, the goods were sold or agreed to be sold shall be guilty of an offence if, but only if, he would, but for paragraph (a), (b) or (c) of subsection (3) above have been guilty of an offence under subsection (2).

(5) Subsection (2) of section 28 above shall have effect for the purposes of this section as it has effect for the purposes of that section.

(6) Nothing in this section shall apply in relation to any such goods or sales as are mentioned in section 24(2)(a) or (b) above.

31 Incorrect statements.

(1) Without prejudice to section 30(2) to (4) above, if in the case of any goods required by or under this Part of this Act to have associated with them a document containing particular statements, that document is found to contain any such statement which is materially incorrect, any person who, knowing or having reasonable cause to suspect that statement to be materially incorrect, inserted it or caused it to be inserted in the document, or used the document for the purposes of this Part of this Act while that statement was contained in the document, shall be guilty of an offence.

(2) Subsection (2) of section 28 above shall have effect for the purposes of this section as it has effect for the purposes of that section.

(3) Nothing in this section shall apply in relation to any such goods or sales as are mentioned in section 24(2)(a) or (b) above.

32 Offences due to default of third person.

Where the commission by any person of an offence under this Part of this Act or an instrument made under this Part is due to the act or default of some other person, the

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other person shall be guilty of an offence and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person.

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 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

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(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 pre-packed, 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.

Powers of inspectors

38 Special powers of inspectors with respect to certain goods.

(1) Subsection (2) below applies where any person—

(a) makes in any manner any representation as to the quantity of any goods offered or exposed for sale by him, or

(b) has in his possession or charge awaiting or in the course of delivery to the buyer any goods which have been sold or agreed to be sold, and the sale is, or purports to be, or is required by or under this Part of this Act to be, by quantity expressed in a particular manner, or is such that the quantity of the goods sold is required by or under any provision of this Part other than section 26 to be made known to the buyer at or before a particular time, or

(c) has in his possession or charge for sale, or awaiting or in the course of delivery to a buyer after they have been sold or agreed to be sold—

(i) any goods pre-packed or otherwise made up in or on a container for sale or for delivery after sale which are required by or under this Part of this Act to be pre-packed, or to be otherwise so made up, as the case may be, only in particular quantities or only if the container is marked with particular information, or

(ii) any goods pre-packed in or on a container marked with an indication of quantity, or

(iii) any goods required by or under this Part of this Act to be made for sale only in particular quantities, or

(d) has in his possession or charge for sale, or awaiting or in the course of delivery to a buyer after they have been sold or agreed to be sold, any goods subject to a requirement imposed by virtue of section 22(1)(c) above.

(2) Where this subsection applies, the powers of an inspector under secion 79 below shall, subject to subsection (4) below, include power to require the person referred to in subsection (1) above either to do in the presence of the inspector, or to permit the inspector to do, all or any of the following things, that is to say—

(a) weigh or otherwise measure or count the goods,

(b) weigh or otherwise measure any container in or on which the goods are made up,

(c) in the case of goods within subsection (1)(d) above, do anything else as respects the goods or container which is reasonably necessary to ascertain whether the requirement there mentioned is complied with, and which does not damage or depreciate the goods or container,

(d) if necessary for any of the purposes of paragraphs (a) to (c) above, break open any container of goods, or open any vending machine in which goods are offered or exposed for sale,

and, in the case of any of the goods which are not already sold, power to require that person to sell any of them to the inspector.

(3) Where any container of goods is broken open under subsection (2) above and all requirements of, and of any instrument made under, this Part of this Act which are applicable to those goods are found to have been complied with, then—

(a) if the container can be resealed without injury to the contents, the inspector may reseal it with a label certifying that all such requirements have been complied with, and

(b) if he does not so reseal it or it cannot be so resealed without injury to the contents, the inspector shall at the request of the person referred to in subsection (1) above buy the goods on behalf of the local weights and measures authority.

(4) . . . . . [F1]

Textual Amendments

F1 S. 38(4) repealed by Food Safety Act 1990 (c. 16, SIF 53:1, 2), s. 59(1)(4), Sch. 3 para. 32, **Sch. 5**

39 Powers of inspectors with respect to certain documents.

(1) An inspector, subject to the production if so requested of his credentials, may require the person in charge of any document required by or under this Part of this Act to be associated with any goods to produce that document for inspection.

(2) If the inspector has reasonable cause to believe that any document produced to him under subsection (1) above contains any inaccurate statement, he may either—

(a) seize and detain the document, giving in exchange a copy with an endorsement signed by him certifying that the original has been seized and giving particulars of any inaccuracy alleged, or

(b) without prejudice to any proceedings which may be taken by reason of any inaccuracy alleged, make on the document an endorsement signed by him giving particulars of any such inaccuracy;

and, except where the context otherwise requires, any reference in this Part of this Act to any such document includes a reference to a copy given in pursuance of paragraph (a) above.

40 Powers of inspectors with respect to goods carried on road vehicles.

(1) Subsection (2) below applies where, in the case of any goods being carried on a road vehicle,—

(a) the whole of the vehicle's load is being carried for sale to, or for delivery after sale to, the same person, and

(b) any document produced in pursuance of section 39(1) above by the person in charge of the vehicle purports, or is required by or under this Part of this Act, to state the quantity of the goods.

(2) Where this subsection applies, the inspector may, for the purpose of the exercise of his powers under section 38(2) above do all or any of the following things that is to say—

(a) require the goods to which the document relates to be unloaded from the vehicle;

(b) require the vehicle to be taken to the nearest suitable and available weighing or measuring equipment;

(c) require the person in charge of the vehicle to have it check-weighed.

(3) The powers conferred by subsection (2) above shall be exercised only to such extent as may appear to the inspector reasonably necessary in order to secure that the provisions of this Act (apart from Part V) and of any instrument made under those provisions are duly observed.

Miscellaneous and supplementary

41 Check-weighing of certain road vehicles.

Where any road vehicle is loaded with goods for sale by weight to a single buyer of the whole of the vehicle's load, or for delivery to the buyer after they have been so sold, the buyer or seller of the goods, or any inspector who shows that he is authorised so to do by the buyer or seller of the goods, may require the person in charge of the vehicle to have it check-weighed, and if that person fails without reasonable cause to comply with any such requirement he shall be guilty of an offence.

42 Power to make test purchases.

A local weights and measures authority shall have power to make, or to authorise an inspector to make on their behalf, such purchases of goods as may appear expedient for the purpose of determining whether or not the provisions of this Part of this Act and any instrument made under this Part, and the provisions of Parts II and III of this Act and any instrument made under either of those Parts, are being complied with.

43 Beer and cider.

(1) In ascertaining the quantity of any beer or cider for any of the purposes of section 25 or sections 28 to 31 above, or of the [M4]Weights and Measures Act 1963 (Intoxicating Liquor) Order 1984, the gas comprised in any foam on the beer or cider shall be disregarded and, for the purposes of this subsection, "beer" and "cider" have the meanings given by section 1 of the [M5]Alcoholic Liquor Duties Act 1979.

(2) This section shall come into force on such date as the Secretary of State may by order appoint, and different dates may be appointed for different purposes.

Subordinate Legislation Made

P1 S. 43(2) power not yet effectively exercised (power exercised prospectively by S.I. 1992/770 which was revoked 28.10.1993 by S.I.1993/2698, **art. 2**)

Marginal Citations

M4 S.I. 1984/1314.

M5 1979 c. 4.

44 Selling by quantity.

Where any goods are required by or under this Part of this Act to be sold only by quantity expressed in a particular manner—

(a) it shall be a sufficient compliance with that requirement in the case of any sale of, or agreement to sell, any such goods if the quantity of the goods expressed in the manner in question is made known to the buyer before the purchase price is agreed; and

(b) no person shall be guilty of an offence under section 25(1) above by reason of the exposing or offering for sale of such goods at any time if both the quantity of the goods expressed in the manner in question and the price at which they are exposed or offered for sale are made known at that time to any prospective buyer.

45 Making quantity known to a person.

(1) For the purposes of this Part of this Act, without prejudice to any other method of making known to a person the quantity of any goods expressed in a particular manner, that quantity shall be taken to be made known to that person—

(a) if the goods are weighed or otherwise measured or counted, as the case may require, in the presence of that person,

(b) if the goods are made up in or on a container marked with a statement in writing of the quantity of the goods expressed in the manner in question and the container is readily available for inspection by that person, or

(c) upon such a statement in writing being delivered to that person.

(2) The Secretary of State may by order provide that subsection (3) below shall apply, in the case of such goods in such circumstances as are specified in the order, to any requirement so specified of, or of any instrument made under, this Part of this Act with respect to the making known to the buyer of the quantity by weight of such goods sold by retail.

(3) In any case to which this subsection applies, the requirement specified in the order shall be taken to be satisfied if the goods are bought at premises at which weighing equipment of such description as may be prescribed—

(a) is kept available by the occupier of those premises for use without charge by any prospective buyer of such goods for the purpose of weighing for himself any such goods offered or exposed for sale by retail on those premises, and

(b) is so kept available in a position on those premises which is suitable and convenient for such use of the equipment, and

(c) is reserved for use for that purpose at all times while those premises are open for retail transactions,

and a notice of the availability of the equipment for such use is displayed in a position on the premises where it may be readily seen by any such prospective buyer.

46 Weighing in presence of a person.

For the purposes of this Part of this Act, a person shall not be taken to weigh or otherwise measure or count any goods in the presence of any other person unless he causes any equipment used for the purpose to be so placed, and so conducts the operation of weighing or otherwise measuring or counting the goods, as to permit that other person a clear and unobstructed view of the equipment, if any, and of the operation, and of any indication of quantity given by any such equipment as the result of that operation.

Status:
Point in time view as at 01/02/1991.

Changes to legislation:
There are currently no known outstanding effects for the Weights and Measures Act 1985, Part IV.