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STATUTORY INSTRUMENTS

1987 No. 2049 (N.I. 20)

The Consumer Protection (Northern Ireland) Order 1987

- - - - - - 26th November 1987

PART I

INTRODUCTORY

Title, commencement and transitional provision

1.—(1) This Order may be cited as the Consumer Protection (Northern Ireland) Order 1987.

(2) The following provisions, namely—

(a) Part I;

(b) Part II and Schedule 1;

(c) Article 28 and Schedule 2;

(d) paragraphs 3 and 7 of Schedule 3, and Article 35(1) in so far as it relates to those paragraphs of that Schedule; and

(e) Article 35(2) and Schedule 4;

shall come into operation on 1st March 1988.

(3) The remaining provisions of this Order shall come into operation on such day or days as the Head of the Department may by order appoint[F1].

(4) An order under paragraph (3) may contain such transitional provisions as the Head of the Department considers appropriate.

(5) Nothing in this Order shall make any person liable by virtue of Part II for any damage caused wholly or partly by a defect in a product which was supplied to any person by its producer before the coming into operation of Part II.

(6) Expressions used in paragraph (5) and in Part II have the same meanings in that paragraph as in that Part.

F1 fully exercised by SR 1989/30

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954[F2] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"aircraft" includes gliders, balloons and hovercraft;

"business" includes a trade or profession and the activities of a professional or trade association or of a district council or other public authority;

"conditional sale agreement", "credit sale agreement" and "hire#purchase agreement" have the same meanings as in the Consumer Credit Act 1974[F3] but as if in the definitions in that Act "goods" had the same meaning as in this Order;

"the Department" means the Department of Economic Development;

"gas" means—

(a) any substance in a gaseous state which consists wholly or mainly of—

(i) methane, ethane, propane, butane, hydrogen or carbon monoxide;

(ii) a mixture of two or more of those gases; or

(iii) a combustible mixture of one or more of those gases and air; and

(b) any other substance in a gaseous state which is gaseous at a temperature of 15°C and a pressure of 1013.25 millibars and is specified in an order made by the Department subject to negative resolution;

"goods" includes substances, growing crops and things comprised in land by virtue of being attached to it and any ship, aircraft or vehicle;

"information" includes accounts, estimates and returns;

Definition rep. by 1994 c. 26

"modifications" includes additions, alterations and omissions;

"motor vehicle" has the same meaning as in the Road Traffic (Northern Ireland) Order 1981[F4];

"notice" means a notice in writing;

"officer", in relation to the Department, means a person authorised in writing to assist the Department in carrying out its functions under or for the purposes of the enforcement of any of the provisions made by or under Part III;

"personal injury" includes any disease and any other impairment of a person's physical or mental condition;

"premises" includes any place and any ship, aircraft or vehicle;

"records" includes any books or documents and any records in non#documentary form;

"ship" includes any boat and any other description of vessel used in navigation;

"subordinate legislation" means a statutory instrument as defined in section 1(*d*) of the Interpretation Act (Northern Ireland) 1954[F5];

"substance" means any natural or artificial substance, whether in solid, liquid or gaseous form or in the form of a vapour, and includes substances that are comprised in or mixed with other goods;

"supply" shall be construed in accordance with Article 3.

Para. (3) rep. by 1994 c. 26

F2 1954 c. 33 (N.I.)
F3 1974 c. 39
F4 1981 NI 1
F5 1954 c. 33 (N.I.)

Meaning of "supply"

3.—(1) Subject to the following provisions of this Article, references in this Order to supplying goods shall be construed as references to doing any of the following, whether as principal or agent, that is to say—

(a) selling, hiring out or lending the goods;

(b) entering into a hire#purchase agreement to furnish the goods;

(c) the performance of any contract for work and materials to furnish the goods;

(d) providing the goods in exchange for any consideration (including trading stamps) other than money;

(e) providing the goods in or in connection with the performance of any statutory function; or

(f) giving the goods as a prize or otherwise making a gift of the goods;

and, in relation to gas or water, those references shall be construed as including references to providing the service by which the gas or water is made available for use.

(2) For the purposes of any reference in this Order to supplying goods, where a person ("the ostensible supplier") supplies goods to another person ("the customer") under a hire#purchase agreement, conditional sale agreement or credit#sale agreement or under an agreement for the hiring of goods (other than a hire#purchase agreement) and the ostensible supplier—

(a) carries on the business of financing the provision of goods for others by means of such agreements; and

(b) in the course of that business acquired his interest in the goods supplied to the customer as a means of financing the provision of them for the customer by a further person ("the effective supplier"),

the effective supplier and not the ostensible supplier shall be treated as supplying the goods to the customer.

(3) Subject to paragraph (4), the performance of any contract by the erection of any building or structure on any land or by the carrying out of any other building works shall be treated for the purposes of this Order as a supply of goods in so far as, but only in so far as, it involves the provision of any goods to any person by means of their incorporation into the building, structure or works.

(4) Except for the purposes of, and in relation to, any provision made by or under Part III, references in this Order to supplying goods shall not include references to supplying goods comprised in land where the supply is effected by the creation or disposal of an interest in the land.

(5) Except in Part II, references in this Order to a person's supplying goods shall be confined to references to that person's supplying goods in the course of a business of his, but for the purposes of this paragraph it shall be immaterial whether the business is a business of dealing in the goods.

(6) For the purposes of paragraph (5) goods shall not be treated as supplied in the course of a business if they are supplied, in pursuance of an obligation arising under or in connection with the insurance of the goods, to the person with whom they were insured.

(7) References in Parts III and IV to supplying goods shall not include—

(a) references to supplying goods where the person supplied carries on a business of buying goods of the same description as those goods and repairing or reconditioning them;

(b) references to supplying goods by a sale of articles as scrap (that is to say, for the value of materials included in the articles rather than for the value of the articles themselves).

(8) Where any goods have at any time been supplied by being hired out or lent to any person, neither a continuation or renewal of the hire or loan (whether on the same or different terms) nor any transaction for the transfer after that time of any interest in the goods to the person to whom

they were hired or lent shall be treated for the purposes of this Order as a further supply of the goods to that person.

(9) A ship, aircraft or motor vehicle shall not be treated for the purposes of this Order as supplied to any person by reason only that services consisting in the carriage of goods or passengers in that ship, aircraft or vehicle, or in its use for any other purpose, are provided to that person in pursuance of an agreement relating to the use of the ship, aircraft or vehicle for a particular period or for particular voyages, flights or journeys.

PART II

PRODUCT LIABILITY

Purpose and construction of Part II

4.—(1) This Part shall have effect for the purpose of making such provision as is necessary in order to comply with the product liability Directive and shall be construed accordingly.

(2) In this Part—

Definition rep. by 2001 c. 13 (NI)

"dependant" and "relative" have the same meaning as they have in the Fatal Accidents (Northern Ireland) Order 1977[F6];

"producer", in relation to a product, means—

(a) the person who manufactured it;

(b) in the case of a substance which has not been manufactured but has been won or abstracted, the person who won or abstracted it;

(c) in the case of a product which has not been manufactured, won or abstracted but essential characteristics of which are attributable to an industrial or other process having been carried out (for example, in relation to agricultural produce), the person who carried out that process;

"product" means any goods or electricity and (subject to paragraph (3)) includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise; and

"the product liability Directive" means the Directive of the Council of the European Communities, dated 25th July 1985 (No.85/374/EEC) on the approximation of the laws, regulations and administrative provisions of the member States concerning liability for defective products.

(3) For the purposes of this Part a person who supplies any product in which products are comprised, whether by virtue of being component parts or raw materials or otherwise, shall not be treated by reason only of his supply of that product as supplying any of the products so comprised.

F6 1977 NI 18

Liability for defective products

5.—(1) Subject to this Part, where any damage is caused wholly or partly by a defect in a product, every person to whom paragraph (2) applies shall be liable for the damage.

(2) This paragraph applies to—

(a) the producer of the product;

F7(b) any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product;

(c) any person who has imported the product into a member State from a place outside the member States in order, in the course of any business of his, to supply it to another.

(3) Subject to this Part, where any damage is caused wholly or partly by a defect in a product, any person who supplied the product (whether to the person who suffered the damage, to the producer of any product in which the product in question is comprised or to any other person) shall be liable for the damage if—

(a) the person who suffered the damage requests the supplier to identify one or more of the persons (whether still in existence or not) to whom paragraph (2) applies in relation to the product;

(b) that request is made within a reasonable period after the damage occurs and at a time when it is not reasonably practicable for the person making the request to identify all those persons; and

(c) the supplier fails, within a reasonable period after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

Para. (4) rep. by 2001 c. 13 (NI)

(5) Where two or more persons are liable by virtue of this Part for the same damage, their liability shall be joint and several.

(6) This Article shall be without prejudice to any liability arising otherwise than by virtue of this Part.

F7 mod. by 1994 c. 26

Meaning of "defect"

6.—(1) Subject to the following provisions of this Article, there is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes "safety", in relation to a product, shall include safety with respect to products comprised in that product and safety in the context of risks of damage to property, as well as in the context of risks of death or personal injury.

(2) In determining for the purposes of paragraph (1) what persons generally are entitled to expect in relation to a product all the circumstances shall be taken into account, including—

(a) the manner in which, and purposes for which, the product has been marketed, its get#up, the use of any mark in relation to the product and any instructions for, or warnings with respect to, doing or refraining from doing anything with or in relation to the product;

(b) what might reasonably be expected to be done with or in relation to the product; and

(c) the time when the product was supplied by its producer to another;

and nothing in this Article shall require a defect to be inferred from the fact alone that the safety of a product which is supplied after that time is greater than the safety of the product in question.

Defences

7.—(1) In any civil proceedings by virtue of this Part against any person ("the person proceeded against") in respect of a defect in a product it shall be a defence for him to show—

(a) that the defect is attributable to compliance with any requirement imposed by or under any enactment or with any Community obligation; or