



# Fair Trading Act 1973

## 1973 CHAPTER 41

### PART II

#### REFERENCES TO CONSUMER PROTECTION ADVISORY COMMITTEE

##### *General provisions*

#### **13 Meaning of "consumer trade practice"**

In this Act "consumer trade practice" means any practice which is for the time being carried on in connection with the supply of goods (whether by way of sale or otherwise) to consumers or in connection with the supply of services for consumers and which relates—

- (a) to the terms or conditions (whether as to price or otherwise) on or subject to which goods or services are or are sought to be supplied, or
- (b) to the manner in which those terms or conditions are communicated to persons to whom goods are or are sought to be supplied or for whom services are or are sought to be supplied, or
- (c) to promotion (by advertising, labelling or marking of goods, canvassing or otherwise) of the supply of goods or of the supply of services, or
- (d) to methods of salesmanship employed in dealing with consumers, or
- (e) to the way in which goods are packed or otherwise got up for the purpose of being supplied, or
- (f) to methods of demanding or securing payment for goods or services supplied.

#### **14 General provisions as to references to Advisory Committee**

- (1) Subject to sections 15 and 16 of this Act, the Secretary of State or any other Minister or the Director may refer to the Advisory Committee the question whether a consumer trade practice specified in the reference adversely affects the economic interests of consumers in the United Kingdom.

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- (2) The Secretary of State or any other Minister by whom a reference is made under this section shall transmit a copy of the reference to the Director.
- (3) On any reference made to the Advisory Committee under this section the Advisory Committee shall consider the question so referred to them and shall prepare a report on that question and (except as otherwise provided by section 21(3) of this Act) submit that report to the person by whom the reference was made.
- (4) Subject to the provisions of section 133 of this Act, it shall be the duty of the Director, where he is requested by the Advisory Committee to do so for the purpose of assisting the Committee in carrying out an investigation on a reference made to them under this section, to give to the Committee—
  - (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and
  - (b) any other assistance which the Committee may require, and which it is within his power to give, in relation to any such matters.
- (5) The Advisory Committee shall transmit to the Secretary of State a copy of every report which is made by them under this section to a person other than the Secretary of State, and shall transmit to the Director a copy of every report which is made by them under this section to a person other than the Director.

## **15 Exclusion from s.14 in respect of certain services**

No reference under section 14 of this Act shall be made to the Advisory Committee by the Secretary of State or by any other Minister or by the Director if it appears to him—

- (a) that the consumer trade practice in question is carried on in connection only with the supply of services of a description specified in Schedule 4 to this Act, and
- (b) that a monopoly situation exists or may exist in relation to the supply of services of that description.

## **16 Restriction on references under s.14 in respect of certain goods and services**

- (1) No reference under section 14 of this Act shall be made to the Advisory Committee by the Director except with the consent of the appropriate Minister, if it appears to the Director that the consumer trade practice in question—
  - (a) is carried on in connection only with the supply, by a body corporate to which this section applies, of goods or services of a description specified in Part I of Schedule 5 to this Act, or
  - (b) is carried on in connection only with the supply by such a body corporate of goods or services of a description specified in the first column of Part II of that Schedule, in so far as that supply falls within the entry relating to it in the second column of that Part of that Schedule.
- (2) This section applies to any body corporate which fulfils the following conditions, that is to say—
  - (a) that the affairs of the body corporate are managed by its members, and
  - (b) that by virtue of an enactment those members are appointed by a Minister;
 and in this section " Minister " includes a Minister of the Government of Northern Ireland, and "the appropriate Minister ", in relation to a body corporate, means the Minister by whom members of that body corporate are appointed.

- (3) The Secretary of State may by order made by statutory instrument vary any of the provisions of Schedule 5 to this Act, either by adding one or more further entries or by altering or deleting any entry for the time being contained in it; and any reference in this Act to that Schedule shall be construed as a reference to that Schedule as for the time being in force.

**17 Reference to Advisory Committee proposing recommendation to Secretary of State to make an order**

- (1) This section applies to any reference made to the Advisory Committee by the Director under section 14 of this Act which includes proposals in accordance with the following provisions of this section.
- (2) Where it appears to the Director that a consumer trade practice has the effect, or is likely to have the effect,—
- (a) of misleading consumers as to, or withholding from them adequate information as to, or an adequate record of, their rights and obligations under relevant consumer transactions, or
  - (b) of otherwise misleading or confusing consumers with respect to any matter in connection with relevant consumer transactions, or
  - (c) of subjecting consumers to undue pressure to enter into relevant consumer transactions, or
  - (d) of causing the terms or conditions, on or subject to which consumers enter into relevant consumer transactions, to be so adverse to them as to be inequitable,
- any reference made by the Director under section 14 of this Act with respect to that consumer trade practice may, if the Director thinks fit, include proposals for recommending to the Secretary of State that he should exercise his powers under the following provisions of this Part of this Act with respect to that consumer trade practice.
- (3) A reference to which this section applies shall state which of the effects specified in subsection (2) of this section it appears to the Director that the consumer trade practice in question has or is likely to have.
- (4) Where the Director makes a reference to which this section applies, he shall arrange for it to be published in full in the London, Edinburgh and Belfast Gazettes.
- (5) In this Part of this Act " relevant consumer transaction in relation to a consumer trade practice, means any transaction to which a person is, or may be invited to become, a party in his capacity as a consumer in relation to that practice.

**18 No such recommendation to be made except in pursuance of reference to which s.17 applies**

The Director shall not make any recommendation to the Secretary of State to exercise his powers under the following provisions of this Part of this Act except by way of making a reference to the Advisory Committee to which section 17 of this Act applies.

## **19 Scope of recommendation proposed in reference to which s.17 applies**

- (1) In formulating any proposals which, in accordance with the provisions of section 17 of this Act, are included in a reference to which that section applies, the Director shall have regard—
  - (a) to the particular respects in which it appears to him that the consumer trade practice specified in the reference may adversely affect the economic interests of consumers in the United Kingdom, and
  - (b) to the class of relevant consumer transactions, or the classes (whether being some or all classes) of such transactions, in relation to which it appears to him that the practice may so affect those consumers;and the proposed recommendation shall be for an order making, in relation to relevant consumer transactions of that class or of those classes, as the case may be, such provision specified in the proposals as the Director may consider requisite for the purpose of preventing the continuance of that practice, or causing it to be modified, in so far as it may so affect those consumers in those respects.
- (2) Without prejudice to the generality of the preceding subsection, for the purpose mentioned in that subsection any such proposals may in particular recommend the imposition by such an order of prohibitions or requirements of any description specified in Schedule 6 to this Act.
- (3) In that Schedule, in its application to any such proposals, " the specified consumer trade practice " means the consumer trade practice specified in the reference in which the proposals are made, " specified consumer transactions " means transactions which are relevant consumer transactions in relation to that consumer trade practice and are of a description specified in the proposals, and " specified " (elsewhere than in those expressions) means specified in the proposals.

## **20 Time-limit and quorum for report on reference to which s.17 applies**

- (1) A report of the Advisory Committee on a reference to which section 17 of this Act applies shall not have effect, and no action shall be taken in relation to it under the following provisions of this Part of this Act, unless the report is made before the end of the period of three months beginning with the date of the reference or of such further period or periods (if any) as may be allowed by the Secretary of State.
- (2) The Secretary of State shall not allow any further period for such a report except after consulting the Advisory Committee and considering any representations made by them with respect to the proposal to allow a further period.
- (3) No such further period shall be longer than three months ; but (subject to subsection (2) of this section) two or more further periods may be allowed in respect of the same reference.
- (4) The quorum necessary for a meeting of the Advisory Committee held for the final settling of a report of the Committee on a reference to which section 17 of this Act applies shall be not less than two-thirds of the members of the Committee.

## **21 Report of Advisory Committee on reference to which s.17 applies**

- (1) A report of the Advisory Committee on a reference to which section 17 of this Act applies shall state the conclusions of the Committee on the questions—

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- (a) whether the consumer trade practice specified in the reference adversely affects the economic interests of consumers in the United Kingdom, and
  - (b) if so, whether it does so by reason, or partly by reason, that it has or is likely to have such one or more of the effects specified in section 17(2) of this Act as are specified in the report.
- (2) If, in their conclusions set out in such a report, the Advisory Committee find that the consumer trade practice specified in the reference does adversely affect the economic interests of consumers in the United Kingdom, and does so wholly or partly for the reason mentioned in subsection (1)(b) of this section, the report shall state whether the Committee—
- (a) agree with the proposals set out in the reference, or
  - (b) would agree with those proposals if they were modified in a manner specified in the report, or
  - (c) disagree with the proposals and do not desire to suggest any such modifications.
- (3) Every report of the Advisory Committee on a reference to which section 17 of this Act applies shall be made to the Secretary of State, and shall set out in full the reference on which it is made.

*Order in pursuance of report of Advisory Committee*

**22 Order of Secretary of State in pursuance of report on reference to which s.17 applies**

- (1) The provisions of this section shall have effect where a report of the Advisory Committee on a reference to which section 17 of this Act applies has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the report states that the Committee—
- (a) agree with the proposals set out in the reference, or
  - (b) would agree with those proposals if they were modified in a manner specified in the report.
- (2) In the circumstances mentioned in the preceding subsection, the Secretary of State may, if he thinks fit, by an order made by statutory instrument make such provision as—
- (a) in a case falling within paragraph (a) of the preceding subsection, is in his opinion appropriate for giving effect to the proposals set out in the reference, or
  - (b) in a case falling within paragraph (b) of that subsection, is in his opinion appropriate for giving effect either to the proposals as set out in the reference or to those proposals as modified in the manner specified in the report, as the Secretary of State may in his discretion determine.
- (3) Any such order may contain such supplementary or incidental provisions as the Secretary of State may consider appropriate in the circumstances; and (without prejudice to the generality of this subsection) any such order may restrict the prosecution of offences under the next following section in respect of contraventions of the order where those contraventions also constitute offences under another enactment

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- (4) No such order, and no order varying or revoking any such order, shall be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

### **23 Penalties for contravention of order under s.22**

Subject to the following provisions of this Part of this Act, any person who contravenes a prohibition imposed by an order under section 22 of this Act, or who does not comply with a requirement imposed by such an order which applies to him, shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £400;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

### **24 Offences due to default of other person**

Where the commission by any person of an offence under section 23 of this Act is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

### **25 Defences in proceedings under s.23**

- (1) In any proceedings for an offence under section 23 of this Act it shall, subject to subsection (2) of this section, be a defence for the person charged to prove—
- (a) that the commission of the offence was due to a mistake, or to reliance on information supplied to him, or to the act or default of another person, an accident or some other cause beyond his control, and
  - (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.
- (2) If in any case the defence provided by the preceding subsection involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing, giving such information identifying or assisting in the identification of that other person as was then in his possession.
- (3) In proceedings for an offence under section 23 of this Act committed by the publication of an advertisement, it shall be a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements, and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under section 23 of this Act.

### **26 Limitation of effect of orders under s.22**

A contract for the supply of goods or services shall not be void or unenforceable by reason only of a contravention of an order made under section 22 of this Act; and, subject to the provisions of section 33 of the Interpretation Act 1889 (which relates

to offences under two or more laws), the provisions of this Part of this Act shall not be construed as—

- (a) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of such an order, or
- (b) affecting any restriction imposed by or under any other enactment, whether public, local or private, or
- (c) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part of this Act.

### *Enforcement of orders*

#### **27 Enforcing authorities**

- (1) It shall be the duty of every local weights and measures authority to enforce within their area the provisions of any order made under section 22 of this Act; and section 37 of the Weights and Measures Act 1963 (power of local authorities to combine) shall apply with respect to the functions of such authorities under this Part of this Act as it applies with respect to their functions under that Act.
- (2) Nothing in subsection (1) shall be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

#### **28 Power to make test purchases**

A local weights and measures authority may make, or may authorise any of their officers to make on their behalf, such purchases of goods, and may authorise any of their officers to obtain such services, as may be expedient for the purpose of determining whether or not the provisions of any order made under section 22 of this Act are being complied with.

#### **29 Power to enter premises and inspect and seize goods and documents**

- (1) A duly authorised officer of a local weights and measures authority, or a person duly authorised in writing by the Secretary of State, may at all reasonable hours, and on production, if required, of his credentials, exercise the following powers, that is to say—
  - (a) he may, for the purpose of ascertaining whether any offence under section 23 of this Act has been committed, inspect any goods and enter any premises other than premises used only as a dwelling;
  - (b) if he has reasonable cause to suspect that an offence under that section has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on a business or employed in connection with a business to produce any books or documents relating to the business and may take copies of, or of any entry in, any such book or document;
  - (c) if he has reasonable cause to believe that such an offence has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
  - (d) he may seize and detain any goods or documents which he has reason to believe may be required as evidence in proceedings for such an offence ;

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- (e) he may, for the purpose of exercising his powers under this subsection to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of an order made under section 22 of this Act are duly observed, require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, he may do so himself.
- (2) A person seizing any goods or documents in the exercise of his powers under this section shall inform the person from whom they are seized and, in the case of goods seized from a vending machine, the person whose name and address are stated on the machine as being the proprietor's or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.
- (3) If a justice of the peace, on sworn information in writing,—
- (a) is satisfied that there is reasonable ground to believe either—
    - (i) that any goods, books or documents which a person has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under section 23 of this Act, or
    - (ii) that any offence under section 23 has been, is being or is about to be committed on any premises, and
  - (b) is also satisfied 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 subsection 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 such officer or other person as is mentioned in subsection (1) of this section to enter the premises, if need be by force.
- In the application of this subsection to Scotland, " justice of the peace" shall be construed as including a sheriff and a magistrate.
- (4) A person entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under subsection (3) of this section he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.
- (5) Nothing in this section shall be taken to compel the production by a barrister, advocate or solicitor of a document containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such document which is in his possession.

### **30 Offences in connection with exercise of powers under s.29**

- (1) Subject to subsection (6) of this section, any person who—
- (a) wilfully obstructs any such officer or person as is mentioned in subsection (1) of section 29 of this Act acting in the exercise of any powers conferred on him by or under that section, or



- (b) wilfully fails to comply with any requirement properly made to him by such an officer or person under that section, or
  - (c) without reasonable cause fails to give to such an officer or person so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Part of this Act, shall be guilty of an offence.
- (2) If any person, in giving any such information as is mentioned in subsection (1)(c) of this section, makes any statement which he knows to be false, he shall be guilty of an offence.
- (3) If any person discloses to any other person—
  - (a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of section 29 of this Act, or
  - (b) any information obtained by him under that section or by virtue of subsection (1) of this section,he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.
- (4) If any person who is neither a duly authorised officer of a weights and measures authority nor a person duly authorised in that behalf by the Secretary of State purports to act as such under section 29 of this Act or under this section, he shall be guilty of an offence.
- (5) Any person guilty of an offence under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding £50; and any person guilty of an offence under subsection (2), subsection (3) or subsection (4) of this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding £400;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (6) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate that person or (where that person is married) the husband or wife of that person.

### **31 Notice of test**

Where any goods seized or purchased by a person in pursuance of this Part of this Act are submitted to a test, then—

- (a) if the goods were seized, he shall inform any such person as is mentioned in section 29(2) of this Act of the result of the test;
- (b) if the goods were purchased and the test leads to the institution of proceedings for an offence under section 23 of this Act, he shall inform the person from whom the goods were purchased, or, in the case of goods sold through a vending machine, the person mentioned in relation to such goods in section 29(2) of this Act, of the result of the test;

and where, as a result of the test, proceedings for an offence under section 23 of this Act are instituted against any person, he shall allow that person to have the goods tested on his behalf if it is reasonably practicable to do so.

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### **32 Compensation for loss in respect of goods seized under s.29**

- (1) Where in the exercise of his powers under section 29 of this Act a person seizes and detains any goods, and their owner suffers loss by reason of their being seized or by reason that the goods, during the detention, are lost or damaged or deteriorate, unless the owner is convicted of an offence under section 23 of this Act committed in relation to the goods, the appropriate authority shall be liable to compensate him for the loss so suffered.
- (2) Any disputed question as to the right to or the amount of any compensation payable under this section shall be determined by arbitration and, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.
- (3) In this section " the appropriate authority "—
  - (a) in relation to goods seized by an officer of a local weights and measures authority, means that authority, and
  - (b) in any other case, means the Secretary of State.

### **33 Application of Part II to Northern Ireland**

- (1) It shall be the duty of the Ministry of Commerce for Northern Ireland to enforce in Northern Ireland the provisions of any order under section 22 of this Act.
- (2) In the application of this Part of this Act to Northern Ireland—
  - (a) section 27 shall not apply;
  - (b) in sections 28 and 29, any reference to a local weights and measures authority shall be construed as a reference to the Ministry of Commerce for Northern Ireland, and the provisions of sections 30 to 32 shall be construed accordingly;
  - (c) in section 29(3), any reference to a justice of the peace shall be construed as a reference to a resident magistrate; and
  - (d) the provisions of the Arbitration Act (Northern Ireland) 1937, except the provisions set out in Schedule 3 thereto, shall apply to an arbitration under section 32 of this Act as if the arbitration were pursuant to an arbitration agreement (as defined in section 30(1) of that Act).