



# Consumer Safety Act 1978

## 1978 CHAPTER 38

An Act to make further provision with respect to the safety of consumers and others. [20th July 1978]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Safety regulations in respect of goods**

- (1) The Secretary of State may make regulations containing such provision authorised by subsections (2) and (3) of this section as the Secretary of State considers appropriate for the purpose of securing that goods are safe or that appropriate information is provided and inappropriate information is not provided in respect of goods; and regulations in pursuance of this subsection are hereafter in this Act referred to as " safety regulations ".
- (2) Safety regulations may contain provision—
  - (a) with respect to the composition or contents, design, construction, finish or packing of goods or with respect to other matters relating to goods ;
  - (b) for requiring goods to conform to a particular standard or to be approved or of a kind approved by a particular person and for requiring information to be given, and determining the manner in which it is to be given, for the purpose of indicating that the goods conform to that standard or are so approved or of such a kind;
  - (c) with respect to standards for goods (which may be standards set out in the regulations or standards or parts of standards of which particulars have been published by any person in the United Kingdom or elsewhere) and with respect to the approval by the Secretary of State from time to time, for any purpose of the regulations, of standards or parts of standards of which particulars have been so published;
  - (d) with respect to the giving, refusal, alteration and cancellation of approvals for goods or kinds of goods, with respect to the conditions and alteration of the

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conditions which may be attached to and the fees which may be charged for such approvals and with respect to appeals against refusals, alterations and cancellations of such approvals and against the conditions and alteration of conditions of such approvals ;

- (e) with respect to the testing or inspection of goods, for determining the manner in which and person by whom any test or inspection required by the regulations is to be carried out and for determining the standards to be applied in carrying out such a test or inspection;
  - (f) with respect to the ways of dealing with goods of which some or all do not satisfy a test prescribed by the regulations or a standard connected with a procedure so prescribed;
  - (g) for requiring a warning or instructions or other information relating to goods to be marked on or to accompany the goods or to be given in some other manner in connection with the goods, and for securing that inappropriate information is not given in respect of goods either by means of misleading marks or otherwise ;
  - (h) for prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods which the Secretary of State considers are not safe and goods in respect of which requirements of the regulations are not satisfied ;
  - (i) for prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods which are designed to be used as component parts of other goods and which would if so used cause the other goods to contravene requirements of the regulations.
- (3) Safety regulations may—
- (a) make different provision for different circumstances or provision relating only to specified circumstances ;
  - (b) provide for exemptions from any provision of the regulations;
  - (c) contain such incidental and supplemental provisions as the Secretary of State considers appropriate.
- (4) Where the Secretary of State proposes to make safety regulations it shall be his duty before he makes them to consult such organisations as appear to him to be representative of interests substantially affected by the proposal and such other persons as he considers appropriate and, in the case of proposed regulations relating to goods suitable for use at work, to consult the Health and Safety Commission.

## **2 Offences against the safety regulations**

- (1) Where safety regulations prohibit a person from supplying or offering or agreeing to supply goods or from exposing or possessing goods for supply, then, subject to the following provisions of this section, the person shall be guilty of an offence if he contravenes the prohibition.
- (2) Where safety regulations require a person who makes or processes goods in the course of carrying on a business—
  - (a) to carry out a particular test or use a particular procedure in connection with the making or processing of the goods with a view to ascertaining whether the goods satisfy other requirements of the regulations; or

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- (b) to deal or not to deal in a particular way with a quantity of the goods of which the whole or part does not satisfy the test or does not satisfy standards connected with the procedure,
- then, subject to the following provisions of this section, the person shall be guilty of an offence if he does not comply with the requirement.
- (3) If a person contravenes a provision of safety regulations which prohibits the provision, by means of a mark or otherwise, of information of a particular kind in connection with goods, then, subject to the following provisions of this section, he shall be guilty of an offence.
- (4) A person who commits an offence in pursuance of the preceding provisions of this section (hereafter in this section referred to as " a relevant offence ") shall be liable on summary conviction to imprisonment for a term not exceeding three months and a fine of an amount not exceeding £1,000.
- (5) Where the commission of a relevant offence by any person is due to the act or default of some other person, the other person shall be guilty of the offence and may be charged with and convicted of it whether or not proceedings are taken against the first-mentioned person.
- (6) It shall be a defence to a charge of committing a relevant offence to prove that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence; but if in any case the defence provided by this subsection involves an allegation that the commission of the offence 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, within a period ending seven clear days before the hearing, he has 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.
- (7) Safety regulations may contain provision—
- (a) for requiring persons on whom a duty is imposed by virtue of section 5 of this Act to have regard, in performing the duty so far as it relates to a provision of safety regulations, to matters specified in a direction issued by the Secretary of State with respect to that provision;
  - (b) for securing that a person shall not be guilty of an offence by virtue of subsection (1) of this section unless it is proved that the goods in question do not conform to a particular standard ;
  - (c) for securing that proceedings for a relevant offence are not begun in England or Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
  - (d) except in relation to Scotland, for enabling a magistrates' court to try an information in respect of a relevant offence if the information was laid within twelve months from the time when the offence was committed and, in relation to Scotland, for enabling summary proceedings for a relevant offence to be begun at any time within twelve months from the time when the offence was committed;
- and it is hereby declared that subsection (3) of the preceding section applies to safety regulations made by virtue of this subsection.
- (8) Safety regulations shall not provide for a contravention of the regulations to be an offence.

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### **3 Orders and notices to prohibit supply of goods or give warning of danger from goods**

- (1) The Secretary of State may—
  - (a) make orders (hereafter in this Act referred to as " prohibition orders") prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply—
    - (i) any goods which the Secretary of State considers are not safe and which are described in the orders, and
    - (ii) any goods which are designed to be used as component parts of other goods and which would if so used cause the other goods to be goods described in the orders in pursuance of sub-paragraph (i) above;
  - (b) serve on any person a notice (hereafter in this Act referred to as a " prohibition notice ") prohibiting the person, except with the consent of the Secretary of State and in accordance with the conditions (if any) on which the consent is given, from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, any goods which the Secretary of State considers are not safe and which are described in the notice ;
  - (c) serve on any person a notice (hereafter in this Act referred to as a " notice to warn ") requiring the person to publish, in a form and manner and on occasions specified in the notice and at his own expense, a warning about any goods so specified which the Secretary of State considers are not safe and which the person supplies or has supplied.
- (2) Part I of Schedule 1 to this Act shall have effect with respect to prohibition orders, Part II of that Schedule shall have effect with respect to prohibition notices and Part III of that Schedule shall have effect with respect to notices to warn; and subsection (3) of section 1 of this Act shall apply to prohibition orders as it applies to safety regulations.
- (3) A person who contravenes a prohibition order, a prohibition notice or a notice to warn shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months and a fine of an amount not exceeding £1,000; but it shall be a defence to a charge of committing an offence under this subsection to prove that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (4) If in any case the defence provided by the preceding subsection involves an 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 the leave of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing, he has 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.
- (5) Where the commission by any person of an offence of contravening a prohibition order is due to the act or default of some other person the other person shall be guilty of the offence and may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

### **4 Power to obtain information**

- (1) If the Secretary of State considers that, for the purpose of deciding whether to make, vary or revoke safety regulations or a prohibition order or to serve, vary or revoke

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a prohibition notice or to serve or revoke a notice to warn, he requires information which another person is likely to be able to furnish, the Secretary of State may serve on the other person a notice requiring the person—

- (a) to furnish to the Secretary of State, within a period specified in the notice, such information as is so specified;
- (b) to produce such documents as are specified in the notice at a time and place so specified and to permit a person appointed by the Secretary of State for the purpose to take copies of the documents at that time and place;

but a barrister, advocate or solicitor shall not be required by such a notice to furnish information contained in a privileged communication made by or to him in that capacity or to produce a document containing such a communication.

(2) A person who—

- (a) fails, without reasonable cause, to comply with a notice served on him in pursuance of the preceding subsection ; or
- (b) in purporting to comply with a requirement which by virtue of paragraph (a) of the preceding subsection is contained in a notice served on him in pursuance of that subsection, furnishes information which he knows is false in a material particular or recklessly furnishes information which is false in a material particular,

shall be guilty of an offence and, in the case of an offence under paragraph (a) of this subsection, liable on summary conviction to a fine not exceeding £1,000 and, in the case of an offence under paragraph (b) of this subsection, liable on conviction on indictment to a fine and on summary conviction to a fine of an amount not exceeding the statutory maximum.

(3) No information obtained by virtue of this section shall be disclosed except—

- (a) for the purpose of any criminal proceedings or any investigation with a view to such proceedings; or
- (b) for the purpose of facilitating the performance by the Director General of Fair Trading of his functions under Part III of the Fair Trading Act 1973 or for the purpose of any proceedings under the said Part III; or
- (c) for the purpose of enabling the Secretary of State to decide whether to make, vary or revoke safety regulations or a prohibition order or whether to serve, vary or revoke a prohibition notice or to serve or revoke a notice to warn ; or
- (d) for the purpose of enabling the Secretary of State or a Northern Ireland Department to fulfil a Community obligation; or
- (e) in a prohibition notice, a notice to warn or a warning published as required by a notice to warn or in a warning about goods which is published by the Secretary of State;

but the prohibition on disclosure imposed by this subsection does not apply to publicised information.

(4) A person who discloses information in contravention of the preceding subsection shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years and a fine and, on summary conviction, to a fine of an amount not exceeding the statutory maximum.

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## 5 Enforcement

- (1) Subject to the following subsection, it shall be the duty of each weights and measures authority to enforce within its area the provisions of safety regulations and section 2 of this Act and the provisions of prohibition orders and prohibition notices and subsections (3) and (5) of section 3 of this Act so far as those subsections relate to such orders and notices.
- (2) The Secretary of State may by regulations transfer the whole or part of the duty imposed on a weights and measures authority by the preceding subsection to another person who has agreed to the transfer; and the regulations may, without prejudice to the generality of the preceding provisions of this subsection—
  - (a) make different provision for different circumstances; and
  - (b) contain such incidental and supplemental provisions (including provision for the Secretary of State to defray expenses of a person on whom a duty is imposed by the regulations) as the Secretary of State considers appropriate.
- (3) The provisions of Schedule 2 to this Act shall have effect for the purpose of facilitating—
  - (a) the enforcement by the Secretary of State of provisions mentioned in subsection (1) of this section ; and
  - (b) the performance of a duty imposed on a person by virtue of this section ;but nothing in the preceding provisions of this subsection prejudices any powers which are exercisable by the Secretary of State apart from this subsection.
- (4) If the Secretary of State directs a person on whom a duty is imposed by virtue of subsection (1) or (2) of this section to make a report to the Secretary of State, in such form and containing such particulars as are specified in the direction, on the exercise of the person's functions under this Act or, while the Consumer Protection Act 1961 remains in force, under this Act and that Act, it shall be the duty of the person to comply with the direction.
- (5) Nothing in the preceding provisions of this section or in regulations made by virtue of subsection (2) of this section authorises a weights and measures authority or a person specified in the regulations to institute proceedings in Scotland for an offence.

## 6 Civil liability

- (1) Any obligation imposed on a person by safety regulations or a prohibition order or a prohibition notice is a duty owed by him to any other person who may be affected by a failure to perform the obligation, and a breach of that duty is actionable (subject to the defences and other incidents applying to actions for breach of statutory duty).
- (2) An agreement shall be void so far as it would, apart from this subsection, have the effect of excluding or restricting an obligation mentioned in the preceding subsection or liability for a breach of such an obligation.
- (3) References in the preceding provisions of this section to an obligation imposed by safety regulations do not include such an obligation as to which the regulations state that those provisions do not apply to it.
- (4) A contravention of any provision of safety regulations, a prohibition order or a prohibition notice and the commission of an offence under section 2 or 3 of this Act

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shall not affect the validity of any contract or rights arising under any contract except so far as the contract provides otherwise.

## 7 Supplemental

- (1) The Secretary of State may make regulations with respect to the manner of giving information in pursuance of Schedule 1 or Schedule 2 to this Act.
- (2) Any document required or authorised by virtue of this Act to be served on a person may be so served—
  - (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
  - (b) if the person is a body corporate, by serving it in accordance with the preceding paragraph on the secretary or clerk of that body ; or
  - (c) if the person is a partnership, by serving it as aforesaid on a partner or on a person having control or management of the partnership business.
- (3) For the purposes of the preceding subsection and section 26 of the Interpretation Act 1889 (which relates to the service of documents by post) in its application to the preceding subsection, the proper address of any person on whom a document is to be served by virtue of this Act shall be his last known address except that—
  - (a) in the case of service on a body corporate or its secretary or clerk it shall be the address of the registered or principal office of the body ;
  - (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business it shall be the principal office of the partnership;and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (4) Where an offence under any provision of this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (5) Where the affairs of a body corporate are managed by its members the preceding subsection shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (6) Any power to make an order or regulations which is conferred on the Secretary of State by this Act shall be exercisable by statutory instrument and any statutory instrument made by virtue of this subsection, except an instrument containing safety regulations or containing only an order made by virtue of section 12(2) of this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) No safety regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (8) In subsection (4) of section 2 of the Trade Descriptions Act 1968 (which provides that a description or mark applied to goods in pursuance of an enactment mentioned in that subsection shall be deemed not to be a trade description) after paragraph (f) there shall be inserted the words " (g) the Consumer Safety Act 1978 ", and in subsection (5)

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(a) of that section (which provides that where, under certain Acts including the Food and Drugs Act (Northern Ireland) 1958, the application of a description to goods is prohibited except in certain cases the description shall be deemed not to be a trade description when applied in those cases) after the figures " 1958 " there shall be inserted the words " or the Consumer Safety Act 1978 ".

## **8 Expenses etc and reports**

- (1) There shall be paid out of money provided by Parliament—
- (a) any expenses incurred by a Minister of the Crown or government department in consequence of the provisions of this Act; and
  - (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment;
- and any sums received by a Minister of the Crown or a government department by virtue of this Act shall be paid into the Consolidated Fund.
- (2) It shall be the duty of the Secretary of State to lay before each House of Parliament from time to time, and in any event not less than once in every five years, a report on the exercise of the functions under this Act and, while the Consumer Protection Act 1961 remains in force, of the functions under that Act, of the Secretary of State and of persons on whom duties are imposed by virtue of section 5 of this Act.

## **9 Interpretation**

- (1) Subject to the following subsection, for the purposes of this Act a person supplies goods only if, in the course of carrying on a business (whether or not a business of dealing in the goods in question) and either as principal or agent—
- (a) he sells (otherwise than under a hire-purchase agreement), hires out or lends the goods to another person ; or
  - (b) he enters into a hire-purchase agreement, or a contract for work and materials, to furnish the goods to another person; or
  - (c) he exchanges the goods for any consideration (which may consist of trading stamps) other than money ; or
  - (d) he gives the goods to another person either as a prize or otherwise;
- and " supply" and related expressions shall be construed accordingly.
- (2) In this Act any reference to supply does not include supply to a person with whom the goods in question were insured against damage and, except in relation to a notice to warn, does not include supply which is incidental to the letting or sale of land and, except in relation to a prohibition notice, does not include—
- (a) supply to a person who carries on a business of buying such goods as those in question and repairing or reconditioning them; and
  - (b) supply by a sale of articles as scrap (that is to say for the value of materials included in the articles and not of the articles themselves);
- and if a person supplies goods by hiring them out or lending them, then, for the purposes of this Act, he does not supply them by reason only of anything done in pursuance of the arrangements for the hiring out or loan.
- (3) Where a person supplies goods to another person under a hire-purchase agreement, conditional sale agreement or credit-sale agreement or under an agreement for the



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hiring of goods (other than a hire-purchase agreement) and the first-mentioned person—

- (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 other person as a means of financing the provision of them for the other person by a further person,

the further person and not the first-mentioned person shall be treated for the purposes of this Act as supplying the goods to the other person.

(4) In this Act—

" conditional sale agreement ", " credit-sale agreement " and " hire-purchase agreement " have the meanings assigned to them by section 189(1) of the Consumer Credit Act 1974, and for the purposes of this Act " goods " in the definitions of those expressions shall have the same meaning as in this Act;

" contravention " includes failure to comply, and related expressions shall be construed accordingly;

" goods " includes substances whether natural or manufactured and whether or not incorporated in or mixed with other goods and—

- (a) in relation to a notice to warn, includes things comprised in land which by operation of law became land on becoming so comprised ; but
- (b) does not include food as defined in section 135(1) of the Food and Drugs Act 1955, feeding stuff and fertiliser as defined in section 66(1) of the Agriculture Act 1970, medicinal products within the meaning of the Medicines Act 1968 in respect of which there is in force a product licence within the meaning of that Act (except cosmetic and toilet products as defined by regulations made by the Secretary of State) and controlled drugs within the meaning of the Misuse of Drugs Act 1971, except drugs which are excepted from section 4(1)(b) of that Act (which makes it unlawful to supply a controlled drug) by regulations under section 7(1) (a) of that Act;

" notice " means notice in writing ;

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

" prohibition order ", " prohibition notice " and " notice to warn " have the meanings assigned to them by section 3(1) of this Act;

" publicised information ", in relation to a disclosure, means information which, before the disclosure occurred, was published in proceedings mentioned in paragraph (a) or (b) or in a warning mentioned in paragraph (e) of section 4(3) of this Act;

" safe " means such as to prevent or adequately to reduce any risk of death and any risk of personal injury from the goods in question or from circumstances in which the goods might be used or kept, and for the purposes of section 1 of this Act the Secretary of State shall be entitled to consider that goods containing radioactive substances are safe or not safe by reference to the radiation from the goods and from other sources and to the consequences of the radiation for users of the goods and other persons ;

" safety regulations " has the meaning assigned to it by section 1(1) of this Act; and

" the statutory maximum " means the prescribed sum within the meaning of section 28 of the Criminal Law Act 1977 as respects England and Wales

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and section 289B of the Criminal Procedure (Scotland) Act 1975 as respects Scotland (which is £1,000 or another sum fixed by order to take account of changes in the value of money);

and references in this Act to the Secretary of State include any other Minister of the Crown in charge of a government department.

## 10 Repeals and transitional provisions

- (1) The enactments and instrument mentioned in the first and second columns of Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) If a draft of regulations under section 1 of the Consumer Protection Act 1961 is approved by a resolution of each House of Parliament, a statutory instrument containing the regulations shall not be subject to annulment in pursuance of subsection (6) of that section.
- (3) In section 3(2) of the said Act of 1961 (under which a person who sells or has certain other dealings in goods which do not comply with the requirements of regulations under that Act is punishable with a fine not exceeding £100 or, in the case of a second or subsequent conviction, with a fine not exceeding £250 and imprisonment for a term not exceeding three months) for the words from " one hundred pounds " to " two hundred and fifty pounds " there shall be substituted the words " one thousand pounds ";  
and in paragraph 5 of the Schedule to that Act (under which a person who obstructs another person in the exercise of powers of inspection conferred on the other person by paragraph 1 of that Schedule is liable to a fine not exceeding £20) for the words " twenty pounds " there shall be substituted the words " two hundred pounds ".
- (4) Section 5(1) of this Act shall apply to the provisions of sections 2 and 3(2), (2A) and (3) of the said Act of 1961 as it applies to the provisions of safety regulations.
- (5) Subsections (2) to (4) of this section shall cease to have effect when the repeal of the said Act of 1961 by this Act comes into force.
- (6) Subsection (4) of section 1 of this Act shall not apply to a proposal to make safety regulations if the Secretary of State is satisfied that the proposed regulations—
  - (a) will relate only to goods in respect of which regulations under section 1 of the said Act of 1961 impose such requirements as are mentioned in section 1(1) of that Act; and
  - (b) will impose substantially similar requirements in respect of the goods;
 and it shall be the duty of the Secretary of State to include, in any safety regulations as respects which the said subsection (4) did not apply by virtue of this subsection, a statement that he was satisfied as aforesaid.

## 11 Application to Northern Ireland

This Act shall have effect, in its application to Northern Ireland, with the following modifications, namely,—

- (a) safety regulations may revoke regulations in force under the Consumer Protection Act (Northern Ireland) 1965 ;
- (b) in section 1(4) the words from " and in " onwards shall be omitted;

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- (c) in paragraph (c) of subsection (7) of section 2 for the words " England or Wales " there shall be substituted the words " Northern Ireland " and at the end of that paragraph there shall be inserted the words " for Northern Ireland ";
- (d) in paragraph (d) of the said subsection (7) for the words " information" and " laid" there shall be substituted respectively the words " complaint " and " made ";
- (e) in section 5 for the references to a weights and measures authority there shall be substituted references to a district council;
- (f) section 8(1) shall be omitted ;
- (g) in section 9(4)—
  - (i) in the definition of " goods ", for the reference to section 135(1) of the Food and Drugs Act 1955 there shall be substituted a reference to section 70(1) of the Food and Drugs Act (Northern Ireland) 1958, and
  - (ii) in the definition of " statutory maximum ", for the reference to England and Wales there shall be substituted a reference to Northern Ireland,and for the purposes of the definition of " statutory maximum" as so amended the provisions of the Criminal Law Act 1977 which relate to the sum mentioned in that definition shall extend to Northern Ireland;
- (h) in section 10(3) to (6) for the references to the Consumer Protection Act 1961 there shall be substituted references to the Consumer Protection Act (Northern Ireland) 1965 and in section 10(4) the word " (2A) " shall be omitted.

## **12 Short title and commencement**

- (1) This Act may be cited as the Consumer Safety Act 1978.
- (2) This Act shall come into force on such day as the Secretary of State may by order appoint; and an order in pursuance of this subsection may appoint different days for different provisions of this Act or for different purposes of the same provision and may contain such transitional provisions as the Secretary of State considers appropriate.

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## SCHEDULES

### SCHEDULE 1

Section 3(2).

#### PROHIBITION ORDERS, PROHIBITION NOTICES AND NOTICES TO WARN

#### PART I

##### PROHIBITION ORDERS

- 1 If the Secretary of State proposes to make a prohibition order (hereafter in this Part of this Schedule referred to as " an order "), then, subject to paragraph 5 of this Schedule, it shall be his duty before he makes the order—
- (a) to publish, in such manner as he thinks fit and not less than 28 days before he makes the order, a notice stating—
- (i) that he proposes to make the order and, in such terms as he thinks fit, the proposed effect of the order, and
- (ii) that any person may make representations in writing to the Secretary of State about the proposed order before a date specified in the notice (which must be after the expiration of the period of 28 days beginning with the date of first publication of the notice); and
- (b) to consider any such representations made within that period.
- 2 The effect of an order must not be more restrictive, but may be less restrictive, than the proposed effect of it as stated in the notice aforesaid.
- 3 Without prejudice to the power to make a further order and subject to the following paragraph, an order shall cease to have effect at the expiration of a period specified in the order which must not be longer than twelve months beginning with the date on which the order comes into force.
- 4 An order may revoke a previous order or may vary it otherwise than by providing for it to be in force after the expiration of twelve months beginning with the date of the coming into force of the previous order.
- 5 Paragraphs 1 and 2 of this Schedule shall not apply to an order if the order contains a statement that in the opinion of the Secretary of State the risk of danger connected with the goods to which the order relates is such that the order must be made without delay.

#### PART II

##### PROHIBITION NOTICES

##### *Preliminary*

- 6 In this Part of this Schedule—

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" notice " means a prohibition notice ;

" notification " means a notification in writing ; and

" the trader " in relation to a proposed notice or an actual notice means the person on whom the proposed notice is proposed to be served or on whom the actual notice has been served.

7 A notice must specify the date on which it comes into force.

#### *General procedure*

8 If the Secretary of State proposes to serve a notice in respect of any goods, then, subject to paragraph 14 of this Schedule, it shall be his duty before he serves the notice to serve on the trader a notification—

- (a) stating that the Secretary of State proposes to serve on him a notice in respect of the goods ; and
- (b) specifying the goods in a manner sufficient to identify them and stating that, for the reasons set out in the notification, the Secretary of State considers that the goods are not safe ; and
- (c) stating that the trader may make representations, in writing or both in writing and orally, for the purpose of satisfying the Secretary of State that the goods are safe but that if the trader intends to make such representations he must, before the expiration of the period of 14 days beginning with the day when the notification is served on him, inform the Secretary of State of his intention indicating whether the representations are to be in writing only or both in writing and oral.

9 Subject to paragraph 14 of this Schedule, the Secretary of State shall not serve a notice on the trader in respect of any goods before the expiration of the period of 14 days beginning with the day on which the Secretary of State served on him a notification in pursuance of the preceding paragraph relating to the goods ; and if within that period the trader informs the Secretary of State as mentioned in sub-paragraph (c) of the preceding paragraph, then—

- (a) the Secretary of State shall not serve a notice on the trader in consequence of the notification before the expiration of the period of 28 days beginning with the day aforesaid ; and
- (b) if during that period the trader makes to the Secretary of State such written representations as are mentioned in the said sub-paragraph (c) the Secretary of State shall not serve a notice on the trader in consequence of the notification before the Secretary of State has considered the report of a person appointed in pursuance of the following paragraph in consequence of the representations.

10 Where, in consequence of the service on the trader of a notification in pursuance of paragraph 8 of this Schedule, the trader informs the Secretary of State as mentioned in sub-paragraph (c) of that paragraph within the period so mentioned and makes to the Secretary of State within that period or the 14 days beginning with the end of that period such written representations as are so mentioned, it shall be the duty of the Secretary of State—

- (a) to appoint a person to consider the written representations; and
- (b) if the trader informed the Secretary of State in pursuance of the said sub-paragraph (c) that the representations would be both written and oral, to inform the trader of the place and time (which must not be before the expiration of the 14 days aforesaid and of 7 days beginning with

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the day when the information is given to the trader) at which the oral representations may be made to the person appointed ;

and the trader or his representative may at that place and time make to the person appointed oral representations for the purpose of satisfying the Secretary of State that the goods in question are safe and may call and examine witnesses in connection with the representations.

- 11 The person appointed in pursuance of the preceding paragraph to consider written representations with respect to any goods shall, after considering the representations, any oral representations made in pursuance of that paragraph with respect to the goods and any statements made by witnesses in connection with the oral representations, make a report (including recommendations) to the Secretary of State about the representations and the proposed notice.
- 12 If at any time after the Secretary of State has served a notification on the trader in pursuance of paragraph 8 of this Schedule the Secretary of State decides not to serve a notice on him in consequence of the notification, it shall be the duty of the Secretary of State to inform him of the decision; and after the Secretary of State informs him of the decision the notification and anything done in consequence of it in pursuance of the preceding paragraphs of this Schedule shall be disregarded for the purposes of those paragraphs.
- 13 Where a notification is served on the trader in respect of any goods in pursuance of paragraph 8 of this Schedule, a notice served on him in consequence of the notification may relate to some only of those goods.

#### *Special procedure*

- 14 Paragraphs 8 to 13 of this Schedule shall not apply to a notice which contains a statement that the Secretary of State considers that the risk of danger connected with the goods to which the notice relates is such that the notice must come into force without delay; and references to a notice in paragraphs 15 to 18 of this Schedule are to a notice containing such a statement.
- 15 A notice in respect of any goods must—
- (a) state that, for the reasons set out in the notice, the Secretary of State considers that the goods are not safe ; and
  - (b) state that the trader may, at such time as the trader thinks fit, make representations in writing to the Secretary of State for the purpose of satisfying him that the goods are safe.
- 16 If representations in writing about a notice are made by the trader to the Secretary of State it shall be the duty of the Secretary of State to consider the representations and either to revoke the notice and to inform the trader that he has revoked it or—
- (a) to appoint a person to consider the representations; and
  - (b) to serve on the trader a notification stating that he may make to the person appointed oral representations for the purpose mentioned in the preceding paragraph and specifying the place and time (which, except with the agreement of the trader, must not be before the expiration of 21 days beginning with the date of service of the notification) at which the oral representations may be made ;
- and the trader or his representative may at that place and time make to the person appointed oral representations for the purpose aforesaid and may call and examine witnesses in connection with the representations.

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17 The person appointed in pursuance of the preceding paragraph to consider written representations with respect to any goods shall, after considering the representations, any oral representations made in pursuance of that paragraph with respect to the goods and any statements made by witnesses in connection with the oral representations, make a report (including recommendations) to the Secretary of State about the representations and the notice in question.

18 Where the Secretary of State has appointed a person in pursuance of paragraph 16 of this Schedule to consider any representations relating to a notice then, without prejudice to the operation of paragraphs 19 and 20 of this Schedule, paragraphs 16 and 17 of this Schedule shall not apply to any subsequent representations in writing about the notice.

#### *Other representations*

19 If at any time the trader on whom a notice has been served makes representations in writing to the Secretary of State for the purpose of satisfying him that the goods to which the notice relates are safe and, by virtue of the preceding paragraph, paragraph 16 of this Schedule does not apply to the representations, it shall be the duty of the Secretary of State to consider the representations and to serve on the trader, before the expiration of one month beginning with the day when the Secretary of State receives the representations, a notification stating—

- (a) that the Secretary of State will revoke the notice or vary it or declines to do so ; or
- (b) that the Secretary of State has appointed a person to consider the representations and that the trader may make to the person appointed, at a place specified in the notification and a time so specified (which, except with the agreement of the trader, must not be before the expiration of the period of 21 days beginning with the date of service of the notification), oral representations for the purpose aforesaid ;

and the trader or his representative may at that place and time make to the person appointed oral representations for the purpose aforesaid and may call and examine witnesses in connection with the representations.

20 The person appointed in pursuance of the preceding paragraph to consider written representations with respect to any goods shall, after considering the representations, any oral representations made in pursuance of that paragraph with respect to the goods and any statements made by witnesses in connection with the oral representations, make a report (including recommendations) to the Secretary of State about the representations and the notice in question.

#### *Miscellaneous*

21 The Secretary of State may revoke or vary a notice by serving on the trader a notification stating that the notice is revoked or, as the case may be, is varied as specified in the notification ; but the Secretary of State shall not have power to vary a notice so as to make the effect of the notice more restrictive for the trader.

22 It shall be the duty of the Secretary of State to consider any report made to him in pursuance of paragraph 17 or 20 of this Schedule and, after considering the report, to inform the trader of the Secretary of State's decision with respect to the notice in question.

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- 23 Where the Secretary of State has appointed a time in pursuance of this Part of this Schedule for oral representations, he may appoint a later time or further times for the representations ; and where he does so references in this Part of this Schedule to the appointed time shall be construed as references to the later time or, as the case may be, as including the further times.
- 24 If a person discloses a secret manufacturing process or a trade secret contained in information obtained by him in consequence of the inclusion of the information in written or oral representations made in pursuance of this Part of this Schedule or in a statement made by a witness in connection with such oral representations, then, subject to the following paragraph, he shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years and a fine and, on summary conviction, to a fine of an amount not exceeding the statutory maximum ; and it is hereby declared that the reference above to written representations includes such written representations as are mentioned in paragraph 19 of this Schedule.
- 25 A person shall not be guilty of an offence under the preceding paragraph in consequence of his disclosure of a process or trade secret contained in information if—
- (a) the information was obtained by him as a person appointed by the Secretary of State in pursuance of this Part of this Schedule to consider the representations in question and the disclosure was made in his report to the Secretary of State about the representations or was made for the purpose of criminal proceedings or an investigation with a view to such proceedings; or
  - (b) the information was obtained by him otherwise than as a person so appointed and the disclosure was made as mentioned in paragraphs (a) to (e) of section 4(3) of this Act; or
  - (c) the disclosure was of publicised information.

### PART III

#### NOTICES TO WARN

- 26 If the Secretary of State proposes to serve on a person a notice to warn in respect of any goods, it shall be the duty of the Secretary of State before he serves the notice to serve on the person a notification in writing—
- (a) containing a draft of the notice and stating that the Secretary of State proposes to serve on the person such a notice in the form of the draft; and
  - (b) stating that, for the reasons set out in the notification, the Secretary of State considers that the goods specified in the draft are not safe ; and
  - (c) stating that the person may make representations, in writing or both in writing and orally, for the purpose of satisfying the Secretary of State that the goods are safe but that if the person intends to make such representations he must, before the expiration of the period of 14 days beginning with the day when the notification is served on him, inform the Secretary of State of his intention indicating whether the representations are to be in writing only or both in writing and oral.
- 27 Paragraphs 9 to 13, 21 and 23 to 25 of this Schedule shall with the necessary modifications have effect in relation to a notice to warn as they have effect in relation to a prohibition notice but as if—



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- (a) the reference to paragraph 14 of this Schedule in the said paragraph 9 were omitted ;
- (b) for the references to paragraph 8 of this Schedule in paragraphs 9, 10, 12 and 13 of this Schedule there were substituted references to the preceding paragraph ;
- (c) in the said paragraph 13 for the words from " relate " onwards there were substituted the words " be less onerous than the draft of the notice contained in the notification " ;
- (d) in the said paragraph 21 the words " or vary " and the words from " or, as " onwards were omitted ; and
- (e) in paragraph 24 of this Schedule the words from " and it is " onwards were omitted and in that paragraph and paragraph 25 of this Schedule for the references to Part II of this Schedule there were substituted references to provisions of that Part as applied by this paragraph.

## SCHEDULE 2

Section 5(3).

### ENFORCEMENT

#### *Preliminary*

1 In this Schedule—

" enforcement authority " means the Secretary of State, any person on whom a duty is imposed by or under section 5 of this Act and any other person by whom that duty may be discharged in pursuance of arrangements made by virtue of any enactment;

" officer ", in relation to an enforcement authority, means a person authorised in writing by the authority to assist the authority in performing such a duty as aforesaid or, where the authority is the Secretary of State, to assist him in enforcing relevant provisions ;

" premises " includes any place, any stall, and any ship, aircraft and other vehicle of any kind; and

" relevant provisions " means provisions of safety regulations or a prohibition order or a prohibition notice.

#### *Purchases*

- 2 An enforcement authority shall have power to purchase goods, and to authorise any of its officers to purchase goods on behalf of the authority, for the purpose of ascertaining whether any relevant provisions are being complied with.

#### *Powers to enter premises and to inspect and seize goods*

- 3 An officer of an enforcement authority 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 relevant provisions have been contravened, inspect any goods and enter any premises other than premises used only as a dwelling ;

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- (b) he may, for the purpose of ascertaining whether an offence under section 2(2) of this Act has been committed, examine any procedure (including any arrangements for carrying out a test) connected with the production of goods;
- (c) if he has reasonable cause to suspect that relevant provisions have been contravened he may, for the purpose of ascertaining whether the provisions have been contravened, 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;
- (d) if he has reasonable cause to believe that relevant provisions have been contravened, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the provisions have been contravened ;
- (e) he may seize and detain any goods (including documents) which he has reason to believe may be required as evidence in proceedings for an offence under section 2 of this Act or under section 3 of this Act so far as it relates to prohibition orders and prohibition notices ;
- (f) he may, for the purpose of exercising his powers under sub-paragraph (d) or (e) above to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that relevant provisions are complied with, require any person having authority to do so to break open any container and, if that person does not comply with the requirement, he may do so himself.

4 An officer seizing any goods or documents in the exercise of his powers under the preceding paragraph shall inform the person from whom they are seized that the officer has seized them.

5 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 (including books and documents) which an officer of an enforcement authority has power under paragraph 3 of this Schedule to inspect are on any premises and that their inspection is likely to disclose evidence that relevant provisions have been contravened, or
  - (ii) that relevant provisions have been or are being or are about to be contravened 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 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 an officer of an enforcement authority to enter the premises, if need be by force.

In the application of this paragraph to Scotland " justice of the peace " shall be construed as including a sheriff.

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- 6 An officer entering any premises by virtue of this Schedule 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 the preceding paragraph he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.
- 7 If any person discloses to any person—
- (a) any information obtained by him in premises which he has entered by virtue of this Schedule ; or
  - (b) any information obtained by him in pursuance of this Schedule ;
- he shall, unless the disclosure was made for the purposes of proceedings for a breach of duty mentioned in section 6(1) of this Act and does not disclose a secret manufacturing process or trade secret or was made as mentioned in paragraphs (a) to (e) of section 4(3) of this Act or in compliance with a direction under section 5(4) of this Act or was of publicised information, be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years and a fine and, on summary conviction, to a fine of an amount not exceeding the statutory maximum.
- 8 If any person who is not an officer of an enforcement authority purports to act as such under this Schedule he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- 9 Nothing in this Schedule 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.

#### *Obstruction*

- 10 Any person who—
- (a) wilfully obstructs an officer of an enforcement authority acting in pursuance of this Schedule ; or
  - (b) wilfully fails to comply with any requirement properly made to him by such an officer under this Schedule ; or
  - (c) without reasonable cause fails to give such an officer 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 Schedule,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.
- 11 If any person, in giving any such information as is mentioned in the preceding paragraph, makes any statement which he knows is false in a material particular or recklessly makes a statement which is false in a material particular he shall be guilty of an offence and liable on conviction on indictment to a fine and on summary conviction to a fine of an amount not exceeding the statutory maximum.
- 12 Nothing in this Schedule shall be construed as requiring a person to answer any question or give any information if to do so might incriminate the person or the person's spouse.

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### *Tests*

- 13 Where any goods seized or purchased by an officer in pursuance of this Schedule are submitted to a test, then—
- (a) if the goods were seized, the officer shall inform the person mentioned in paragraph 4 of this Schedule 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 2 of this Act or under section 3 of this Act so far as it relates to prohibition orders and prohibition notices, the officer shall inform the person from whom the goods were purchased of the result of the test;
- and the officer shall, where as a result of the test such proceedings are instituted against any person, allow him to have the goods tested if it is reasonably practicable to do so.
- 14 The Secretary of State may by regulations provide that any test of goods seized or purchased by or on behalf of an enforcement authority in pursuance of this Schedule shall, in such cases as are specified in the regulations—
- (a) be carried out at the expense of the authority in a manner so specified and by a person specified in or determined under the regulations ; or
  - (b) be carried out either as mentioned in sub-paragraph (a) above or by the authority in a manner specified in the regulations.

### *Compensation*

- 15 Where, in the exercise of his powers under this Schedule, an officer of an enforcement authority seizes and detains any goods and their owner suffers loss by reason thereof or by reason that the goods, during the detention, are lost or damaged or deteriorate, then unless the owner is convicted of an offence under section 2 of this Act or under section 3 of this Act so far as it relates to prohibition orders and prohibition notices in relation to the goods, the authority shall be liable to compensate him for the loss so suffered.
- 16 Any disputed question as to the right to or the amount of any compensation payable under the preceding paragraph shall be determined by arbitration and, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

## SCHEDULE 3

Section 10(1).

### REPEALS

Chapter or Number	Short Title	Extent of Repeal
<a href="#">1961 c. 40.</a>	The Consumer Protection Act 1961.	The whole Act.
<a href="#">1965 c. 14 (N.I.).</a>	The Consumer Protection Act (Northern Ireland) 1965.	The whole Act.
<a href="#">1971 c. 15.</a>	The Consumer Protection Act 1971.	The whole Act.

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Chapter or Number	Short Title	Extent of Repeal
<a href="#">1972 c. 70.</a>	The Local Government Act 1972.	In Schedule 29, paragraph 18(2).
<a href="#">1973 c. 65.</a>	The Local Government (Scotland) Act 1973.	In Schedule 27, paragraphs 149 and 150.
<a href="#">1974 c. 39.</a>	The Consumer Credit Act 1974.	In Schedule 4, paragraphs 20, 21, 46 and 47.
<a href="#">1977 c. 50.</a>	The Unfair Contract Terms Act 1977.	Section 30.
<a href="#">S.I. 1977 No. 595 (N.I. 6).</a>	The Consumer Protection and Advice (Northern Ireland) Order 1977.	Article 3.