



# Rag Flock and Other Filling Materials Act 1951

## 1951 CHAPTER 63

### *Legal Proceedings*

#### **18 Penalties**

A person guilty of an offence under this Act shall, unless a special penalty for that offence is provided by this Act, be liable—

- (a) in the case of a first offence, to a fine not exceeding fifty pounds;
- (b) in the case of a second or subsequent offence, to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months or to both.

#### **19 Offences by corporations**

Where any offence under 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, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this section, the expression "director", in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking being a body corporate whose affairs are managed by the members thereof, means a member of that body corporate.

#### **20 Power of forfeiture**

Where a person is convicted under this Act in respect of any materials or article owned by him, the court may, in addition to any penalty imposed by them, order that the materials or article shall be forfeited and, upon any such order, notwithstanding anything in paragraph (5) of section thirty-nine of the Summary Jurisdiction Act, 1879,

the materials or article shall be forfeited to the local authority for the area where the offence was committed to be disposed of by them in such manner as they think fit.

## **21 Prosecutions**

- (1) All offences under this Act may be prosecuted under the Summary Jurisdiction Acts.
- (2) In any proceedings under this Act in respect of filling materials from which a sample has been taken, the day on which the summons is returnable shall be not less than fourteen days from the day on which it is served, and a copy of any certificate of testing obtained on behalf of the prosecutor shall be served with the summons.
- (3) In any proceedings under this Act in respect of filling materials from which a sample has been taken under section fourteen of this- Act, the part of the sample retained by the person who procured it shall be produced at the hearing.

## **22 Defence available in certain circumstances where some other person is responsible**

- (1) A person against whom proceedings are brought under this Act shall, upon information duly laid by him and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have any person, to whose act or default he alleges that the contravention of the provisions in question was due, brought before the court in the proceedings, and, if after the contravention has been proved the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence.
- (2) Where a defendant seeks to avail himself of the provisions of the foregoing subsection—
  - (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence;
  - (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.
- (3) Where it appears to the authority concerned that an offence has been committed in respect of which proceedings might be taken under this Act against some person and the authority are reasonably satisfied that the offence of which the complaint is made was due to an act or default of some other person and that the first-mentioned person could establish a defence under subsection (1) of this section, they may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person.

In any such proceedings the defendant may be charged with and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

- (4) In Scotland the foregoing subsections shall not apply but—
  - (a) where a contravention of any provision of this Act for which any person is liable to a fine under this Act was due to an act or default of any other person, then, whether proceedings are or are not taken against the first-

mentioned person, that other person may be charged with and convicted of the contravention and shall be liable on conviction to the same punishment as might have been inflicted on the first-mentioned person if he had been convicted of the contravention ; and

- (b) where a person who is charged with a contravention of any provision of this Act proves to the satisfaction of the court that he has used all due diligence to secure that the provision in question was complied with and that the contravention was due to the act or default of some other person, the first-mentioned person shall be acquitted of the contravention.

### **23 Conditions under which warranty may be used in defence**

- (1) A warranty shall only be a defence to proceedings under this Act if—
  - (a) the defendant has within seven days of the service of the summons sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person;
  - (b) in the case of a warranty given by a person resident outside the United Kingdom, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein.
- (2) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

### **24 Evidence of certificates of testing**

- (1) In any proceedings under this Act, the production by one of the parties of a document purporting to be a certificate of a public or prescribed analyst in the prescribed form, or of a document supplied to him by or on behalf of the other party as being a copy of such a certificate, shall be sufficient evidence of the facts stated therein unless, in the first mentioned case, the other party requires that the analyst shall be called as a witness.
- (2) In any proceedings under this Act, if a defendant intends to produce a certificate of a public or prescribed analyst, or under subsection (1) of this section to require that the public or prescribed analyst shall be called as a witness, notice of his intention together, in the first mentioned case, with a copy of the certificate shall be given to the other party at least three clear days before the day on which the summons is returnable, and, if this requirement is not complied with, the court may, if it thinks fit, adjourn the hearing on such terms as it deems proper.

### **25 Power of court to require testing by Government Chemist**

- (1) The court before which any proceedings are taken under this Act may, if it thinks fit, and upon the request of either party shall, cause the part of any sample produced before the court under subsection (3) of section twenty-one of this Act to be sent to the Government Chemist, who shall make a test, and transmit to the court a certificate of the result thereof, and the costs of the test shall be paid by the prosecutor or the defendant as the court may order.

- (2) If, in a case where an appeal is brought, no action has been taken under the foregoing subsection, the provisions thereof shall apply also in relation to the court by which the appeal is heard.

**26 Misuse of warranty or certificate of testing**

A defendant who in any proceedings under this Act wilfully applies to any filling materials or article a warranty or certificate of testing given in relation to any other filling materials or article shall be guilty of an offence.