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STATUTORY INSTRUMENTS

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**1987 No. 2049**

**The Consumer Protection (Northern Ireland) Order 1987**

**PART III**

**MISLEADING PRICE INDICATIONS**

**Offence of giving misleading indication**

**13.**—(1) Subject to this Part, a person shall be guilty of an offence if, in the course of any business of his, he gives (by any means whatever) to any consumers an indication which is misleading as to the price at which any goods, services, accommodation or facilities are available (whether generally or from particular persons).

(2) Subject as aforesaid, a person shall be guilty of an offence if—

- (a) in the course of any business of his, he has given an indication to any consumers which, after it was given, has become misleading as mentioned in paragraph (1); and
- (b) some or all of those consumers might reasonably be expected to rely on the indication at a time after it has become misleading; and
- (c) he fails to take all such steps as are reasonable to prevent those consumers from relying on the indication.

(3) For the purposes of this Article it shall be immaterial—

- (a) whether the person who gives or gave the indication is or was acting on his own behalf or on behalf of another;
- (b) whether or not that person is the person, or included among the persons, from whom the goods, services, accommodation or facilities are available; and
- (c) whether the indication is or has become misleading in relation to all the consumers to whom it is or was given or only in relation to some of them.

(4) A person guilty of an offence under paragraph (1) or (2) shall be liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(5) No prosecution for an offence under paragraph (1) or (2) shall be brought after whichever is the earlier of the following, that is to say—

- (a) the end of the period of three years beginning with the day on which the offence was committed; and
- (b) the end of the period of one year beginning with the day on which the person bringing the prosecution discovered that the offence had been committed.

(6) In this Part—

“consumer”—

- (a) in relation to any goods, means any person who might wish to be supplied with the goods for his own private use or consumption;

- (b) in relation to any services or facilities, means any person who might wish to be provided with the services or facilities otherwise than for the purposes of any business of his; and
- (c) in relation to any accommodation, means any person who might wish to occupy the accommodation otherwise than for the purposes of any business of his;

“price”, in relation to any goods, services, accommodation or facilities, means—

- (a) the aggregate of the sums required to be paid by a consumer for or otherwise in respect of the supply of the goods or the provision of the services, accommodation or facilities; or
- (b) except in Article 14, any method which will be or has been applied for the purpose of determining that aggregate.

### **Meaning of “misleading”**

**14.—(1)** For the purposes of Article 13 an indication given to any consumers is misleading as to a price if what is conveyed by the indication, or what those consumers might reasonably be expected to infer from the indication or any omission from it, includes any of the following, that is to say—

- (a) that the price is less than in fact it is;
- (b) that the applicability of the price does not depend on facts or circumstances on which its applicability does in fact depend;
- (c) that the price covers matters in respect of which an additional charge is in fact made;
- (d) that a person who in fact has no such expectation—
  - (i) expects the price to be increased or reduced (whether or not at a particular time or by a particular amount); or
  - (ii) expects the price, or the price as increased or reduced, to be maintained (whether or not for a particular period); or
- (e) that the facts or circumstances by reference to which the consumers might reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what in fact they are.

**(2)** For the purposes of Article 13, an indication given to any consumers is misleading as to a method of determining a price if what is conveyed by the indication, or what those consumers might reasonably be expected to infer from the indication or any omission from it, includes any of the following, that is to say—

- (a) that the method is not what in fact it is;
- (b) that the applicability of the method does not depend on facts or circumstances on which its applicability does in fact depend;
- (c) that the method takes into account matters in respect of which an additional charge will in fact be made;
- (d) that a person who in fact has no such expectation—
  - (i) expects the method to be altered (whether or not at a particular time or in a particular respect); or
  - (ii) expects the method, or that method as altered, to remain unaltered (whether or not for a particular period); or
- (e) that the facts or circumstances by reference to which the consumers might reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what in fact they are.

(3) For the purposes of paragraphs (1)(e) and (2)(e) a comparison is a relevant comparison in relation to a price or method of determining a price if it is made between that price or that method, or any price which has been or may be determined by that method, and—

- (a) any price or value which is stated or implied to be, to have been or to be likely to be attributed or attributable to the goods, services, accommodation or facilities in question or to any other goods, services, accommodation or facilities; or
- (b) any method, or other method, which is stated or implied to be, to have been or to be likely to be applied or applicable for the determination of the price or value of the goods, services, accommodation or facilities in question or of the price or value of any other goods, services, accommodation or facilities.

### **Application to provision of services and facilities**

**15.**—(1) Subject to paragraphs (2) to (5), references in this Part to services or facilities are references to any services or facilities whatever including, in particular—

- (a) the provision of credit or of banking or insurance services and the provision of facilities incidental to the provision of such services;
- (b) the purchase or sale of foreign currency;
- (c) the supply of electricity;
- (d) the provision of a place, other than on a public road, for the parking of a motor vehicle;
- (e) the making of arrangements for a person to put or keep a caravan on any land other than arrangements by virtue of which that person may occupy the caravan as his only or main residence.

(2) References in this Part to services shall not include references to services provided to an employer under a contract of employment.

(3) References in this Part to services or facilities shall not include references to services or facilities which are provided by an authorised person or appointed representative in the course of the carrying on of an investment business.

(4) In relation to a service consisting in the purchase or sale of foreign currency, references in this Part to the method by which the price of the service is determined shall include references to the rate of exchange.

(5) In this Article—

“appointed representative”, “authorised person” and “investment business” have the same meanings as in the Financial Services Act 1986(1);

“caravan” has the same meaning as in the Caravans Act (Northern Ireland) 1963(2);

“contract of employment” and “employer” have the same meanings as in the Industrial Relations (Northern Ireland) Order 1976(3);

“credit” has the same meaning as in the Consumer Credit Act 1974(4).

### **Application to provision of accommodation etc.**

**16.**—(1) Subject to paragraph (2), references in this Part to accommodation or facilities being available shall not include references to accommodation or facilities being available to be provided by means of the creation or disposal of an interest in land except where—

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(1) 1986 c. 60  
(2) 1963 c. 17 (N.I.)  
(3) 1976 NI 16  
(4) 1974 c. 39

- (a) the person who is to create or dispose of the interest will do so in the course of any business of his; and
  - (b) the interest to be created or disposed of is a relevant interest in a new dwelling and is to be created or disposed of for the purpose of enabling that dwelling to be occupied as a residence, or one of the residences, of the person acquiring the interest.
- (2) Paragraph (1) shall not prevent the application of any provision of this Part in relation to—
- (a) the supply of any goods as part of the same transaction as any creation or disposal of an interest in land; or
  - (b) the provision of any services or facilities for the purposes of, or in connection with, any transaction for the creation or disposal of such an interest.
- (3) In this Article—
- “new dwelling” means any building or part of a building in Northern Ireland which—
- (a) has been constructed or adapted to be occupied as a residence; and
  - (b) has not previously been so occupied or has been so occupied only with other premises or as more than one residence,
- and includes any yard, garden, out-houses or appurtenances which belong to that building or part or are to be enjoyed with it;
- “relevant interest” in relation to a new dwelling means the freehold estate in the dwelling or a leasehold interest in the dwelling for a term of years of more than twenty-one years, not being a term of which twenty-one years or less remains unexpired.

## Defences

17.—(1) In any proceedings against a person for an offence under paragraph (1) or (2) of Article 13 in respect of any indication it shall be a defence for that person to show that his acts or omissions were authorised for the purposes of this paragraph by regulations made under Article 19.

(2) In proceedings against a person for an offence under Article 13(1) or (2) in respect of an indication published in a book, newspaper, magazine, film or radio or television broadcast or in a programme included in a cable programme service, it shall be a defence for that person to show that the indication was not contained in an advertisement.

(3) In proceedings against a person for an offence under Article 13(1) or (2) in respect of an indication published in an advertisement it shall be a defence for that person to show that—

- (a) he is a person who carries on a business of publishing or arranging for the publication of advertisements;
- (b) he received the advertisement for publication in the ordinary course of that business; and
- (c) at the time of publication he did not know and had no grounds for suspecting that the publication would involve the commission of the offence.

(4) In any proceedings against a person for an offence under Article 13(1) in respect of any indication, it shall be a defence for that person to show that—

- (a) the indication did not relate to the availability from him of any goods, services, accommodation or facilities;
- (b) a price had been recommended to every person from whom the goods, services, accommodation or facilities were indicated as being available;
- (c) the indication related to that price and was misleading as to that price only by reason of a failure by any person to follow the recommendation; and

- (d) it was reasonable for the person who gave the indication to assume that the recommendation was for the most part being followed.
- (5) This Article is without prejudice to Article 30.
- (6) In this Article—
  - “advertisement” includes a catalogue, a circular and a price list;
  - “cable programme service” has the same meaning as in the Cable and Broadcasting Act 1984(5).

### **Code of practice**

**18.**—(1) The Department may, after consulting the Director General of Fair Trading and such other persons as the Department considers it appropriate to consult, by order approve any code of practice issued (whether by the Department or another person) for the purpose of—

- (a) giving practical guidance with respect to any of the requirements of Article 13; and
- (b) promoting what appear to the Department to be desirable practices as to the circumstances and manner in which any person gives an indication as to the price at which any goods, services, accommodation or facilities are available or indicates any other matter in respect of which any such indication may be misleading.

(2) A contravention of a code of practice approved under this Article shall not of itself give rise to any criminal or civil liability, but in any proceedings against any person for an offence under Article 13(1) or (2)—

- (a) any contravention by that person of such a code may be relied on in relation to any matter for the purpose of establishing that that person committed the offence or of negating any defence; and
- (b) compliance by that person with such a code may be relied on in relation to any matter for the purpose of showing that the commission of the offence by that person has not been established or that that person has a defence.

(3) Where the Department approves a code of practice under this Article it may, after such consultation as is mentioned in paragraph (1), at any time by order—

- (a) approve any modification of the code; or
- (b) withdraw its approval;

and references in paragraph (2) to a code of practice approved under this Article shall be construed accordingly.

- (4) An order under this Article shall be subject to negative resolution.

### **Power to make regulations**

**19.**—(1) The Department may, after consulting the Director General of Fair Trading and such other persons as the Department considers it appropriate to consult, by regulations make provision—

- (a) for the purpose of regulating the circumstances and manner in which any person—
  - (i) gives any indication as to the price at which any goods, services, accommodation or facilities will be or are available or have been supplied or provided; or
  - (ii) indicates any other matter in respect of which any such indication may be misleading;
- (b) for the purpose of facilitating the enforcement of Article 13 or of any regulations made under this Article.

- (2) The Department shall not make regulations by virtue of paragraph (1)(a) except in relation to—
- (a) indications given by persons in the course of business; and
  - (b) such indications given otherwise than in the course of business as—
    - (i) are given by or on behalf of persons by whom accommodation is provided to others by means of leases or licences; and
    - (ii) relate to goods, services or facilities supplied or provided to those others in connection with the provisions of the accommodation.
- (3) Without prejudice to the generality of paragraph (1), regulations under this Article may—
- (a) prohibit an indication as to a price from referring to such matters as may be prescribed by the regulations;
  - (b) require an indication as to a price or other matter to be accompanied or supplemented by such explanation or such additional information as may be prescribed by the regulations;
  - (c) require information or explanations with respect to a price or other matter to be given to an officer of an enforcement authority and to authorise such an officer to require such information or explanations to be given;
  - (d) require any information or explanation provided for the purposes of any regulations made by virtue of sub-paragraph (b) or (c) to be accurate;
  - (e) prohibit the inclusion in indications as to a price or other matter of statements that the indications are not to be relied upon;
  - (f) provide that expressions used in any indication as to a price or other matter shall be construed in a particular way for the purposes of this Part;
  - (g) provide that a contravention of any provision of the regulations shall constitute a criminal offence punishable—
    - (i) on conviction on indictment by a fine;
    - (ii) on summary conviction, by a fine not exceeding the statutory maximum;
  - (h) apply any provision of this Order which relates to a criminal offence to an offence created by virtue of sub-paragraph (g).
- (4) Regulations under this Article shall be subject to negative resolution and may make such supplemental, consequential and transitional provision as the Department considers appropriate.
- (5) In this Article “lease” includes—
- (a) any tenancy,
  - (b) a sub-lease or sub-tenancy,
  - (c) an agreement for a lease or tenancy, and
  - (d) a statutory tenancy (within the meaning of the Rent (Northern Ireland) Order 1978<sup>(6)</sup>).

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(6) 1978 NI 20