



# Fair Trading Act 1973

## 1973 CHAPTER 41

### PART II

#### REFERENCES TO CONSUMER PROTECTION ADVISORY COMMITTEE

##### *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—

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- (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 ;
  - (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.

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### **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.

### **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).