

SCHEDULES

SCHEDULE 1

Article 9(6).

LIMITATION OF ACTIONS UNDER PART II

1. In subsection (6) (definition of date of knowledge) of section 9A of the Statute of Limitations (Northern Ireland) 1958(1) (in this Schedule referred to as “the 1958 Act”), at the beginning there shall be inserted the words “Subject to subsection (6A),” and after that subsection there shall be inserted the following subsection—

“(6A) In section 9AA and in section 9B so far as that section applies to an action by virtue of Article 9(1) of the Consumer Protection (Northern Ireland) Order 1987 (death caused by defective product) references to a person’s date of knowledge are references to the date on which he first had knowledge of the following facts—

- (a) such facts about the damage caused by the defect as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment; and
- (b) that the damage was wholly or partly attributable to the facts and circumstances alleged to constitute the defect; and
- (c) the identity of the defendant;

but, in determining the date on which a person first had such knowledge there shall be disregarded both the extent (if any) of that person’s knowledge on any date of whether particular facts or circumstances would or would not, as a matter of law, constitute a defect and, in a case relating to loss of or damage to property, any knowledge which that person had on a date on which he had no right of action by virtue of Part II of that Order in respect of the loss or damage.”.

2. After section 9A of the 1958 Act there shall be inserted the following section—

“Actions in respect of defective products.

9AA.—(1) This section shall apply to an action for damages by virtue of any provision of Part II of the Consumer Protection (Northern Ireland) Order 1987.

(2) None of the time limits given in sections 8 to 9A shall apply to an action to which this section applies.

(3) An action to which this section applies shall not be brought after the expiration of the period of ten years from the relevant time, within the meaning of Article 7 of the said Order of 1987; and this subsection shall operate to extinguish a right of action and shall do so whether or not that right of action had accrued, or time under the following provisions of this Act had begun to run, at the end of that period of ten years.

(4) Subject to subsection (5), an action to which this section applies in which the damages claimed by the plaintiff consist of or include damages in respect of personal injuries to the

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plaintiff or any other person or loss of or damage to any property, shall not be brought after the expiration of the period of three years from whichever is the later of—

- (a) the date on which the cause of action accrued; and
- (b) the date of knowledge of the injured person or, in the case of loss of or damage to property, the date of knowledge of the plaintiff or (if earlier) of any person in whom his cause of action was previously vested.

(5) If, in a case where the damages claimed by the plaintiff consist of or include damages in respect of personal injuries to the plaintiff or any other person, the injured person died before the expiration of the period mentioned in subsection (4), that subsection shall have effect as respects the cause of action surviving for the benefit of his estate by virtue of section 14 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937⁽²⁾ as if for the reference to that period there were substituted a reference to the period of three years from whichever is the later of—

- (a) the date of death; and
- (b) the date of the personal representative's knowledge.

(6) For the purposes of this section “personal representative” includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate); and regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

(7) If there is more than one personal representative and their dates of knowledge are different, subsection (5)(b) shall be read as referring to the earliest of those dates.

(8) Expressions used in this section or section 9A(6) to (9) and in Part II of the Consumer Protection (Northern Ireland) Order 1987 have the same meanings in this section or that section as in that Part; and Article 4(1) of that Order (Part II to be construed as enacted for the purpose of complying with the product liability Directive) shall apply for the purpose of construing this section and the following provisions of this Act so far as they relate to an action by virtue of any provision of that Part as it applies for the purpose of construing that Part.”.

3. In section 9B(2) of the 1958 Act (actions under the Fatal Accidents (Northern Ireland) Order 1977⁽³⁾), after the words “section 9A” there shall be inserted the words “or 9AA”.

4. In section 9D of the 1958 Act (discretionary exclusion of time limit)—

- (a) in subsection (1), after the words “section 9A” there shall be inserted the words “or 9AA”;
- (b) after subsection (1) there shall be inserted the following subsection—

“(1A) The court shall not under this section disapply—

- (a) subsection (3) of section 9AA; or
- (b) where the damages claimed by the plaintiff are confined to damages for loss of or damage to any property, any other provision in its application to an action by virtue of Part II of the Consumer Protection (Northern Ireland) Order 1987.”;

- (c) in subsections (2) and (4), after the words “section 9A” there shall be inserted the words “or subsection (4) of section 9AA”;
- (d) in subsection (3)(b), after “section 9A” there shall be inserted “, 9AA”; and
- (e) in subsection (8), after “section 9A” there shall be inserted “, 9AA”.

(2) 1937 c. 9 (N.I.)
(3) 1977 NI 18

5. In section 50 of the 1958 Act (extension of limitation period in case of disability), after subsection (6) there shall be inserted the following subsection—

“(6A) In the case of an action to which section 9AA applies or one by virtue of Article 9(1) of the Consumer Protection (Northern Ireland) Order 1987 (death caused by defective product), subsection (1)—

- (a) shall not apply to the time limit prescribed by subsection (3) of section 9AA or to that time limit as applied by virtue of section 9B(2); and
- (b) in relation to any other time limit prescribed by this Act, shall have effect as if for the words “six years” there were substituted the words “three years”.

6. In section 70 of the 1958 Act (postponement of limitation period in case of fraud, concealment or mistake)—

- (a) in subsection (1), for the words “subsection (3)” there shall be substituted the words “subsections (3) and (4A)”; and
- (b) after subsection (4) there shall be inserted the following subsection—

“(4A) Subsection (1) shall not apply in relation to the time limit prescribed by section 9AA(3) or in relation to that time limit as applied by virtue of section 9B(2).”

SCHEDULE 2

Article 28.

AMENDMENTS OF THE HEALTH AND SAFETY AT WORK (NORTHERN IRELAND) ORDER 1978(4)

1. In Article 2(1) (interpretation)—

- (a) after the definition of “article for use at work” there shall be inserted the following definition—

““article of fairground equipment” means any fairground equipment or any article designed for use as a component in any such equipment;”;

- (b) after the definition of “credit sale agreement” there shall be inserted the following definition—

““customs officer” means an officer within the meaning of the Customs and Excise Management Act 1979(5);”;

- (c) before the definition of “the general purposes of this Part” there shall be inserted the following definition—

““fairground equipment” means any fairground ride, any similar plant which is designed to be in motion for entertainment purposes with members of the public on or inside it or any plant which is designed to be used by members of the public for entertainment purposes either as a slide or for bouncing upon, and in this definition the reference to plant which is designed to be in motion with members of the public on or inside it includes a reference to swings, dodgems and other plant which is designed to be in motion wholly or partly under the control of, or to be put in motion by, a member of the public;”;

- (d) after the definition of “inspector” there shall be inserted the following definition—

(4)
(5) 1979 c. 2

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““micro-organism” includes any microscopic biological entity which is capable of replication”;;

- (e) in the definition of “substance”, after the words “natural or artificial substance” there shall be inserted the words “(including micro-organisms)”.

2.—(1) Article 7 (general duties of manufacturers etc. as regard articles and substances for use at work) shall be amended as follows.

(2) For paragraph (1) there shall be substituted the following paragraphs—

“(1) It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work or any article of fairground equipment—

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being set, used, cleaned or maintained by a person at work;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by sub-paragraph (a);
- (c) to take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and without risks to health at all such times as are mentioned in sub-paragraph (a) and when it is being dismantled or disposed of; and
- (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of sub-paragraph (c) as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.

(1A) It shall be the duty of any person who designs, manufactures, imports or supplies any article of fairground equipment—

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by sub-paragraph (a);
- (c) to take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public; and
- (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of sub-paragraph (c) as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.”.

(3) In paragraph (2) (duty of person who undertakes the design or manufacture of an article for use at work to carry out research), after the word “work” there shall be inserted the words “or of any article of fairground equipment”.

(4) In paragraph (3) (duty of persons who erect or install articles for use at work)—

- (a) after the words “persons at work” there shall be inserted the words “or who erects or installs any article of fairground equipment”; and
 - (b) for the words from “it is” onwards there shall be substituted the words “the article is erected or installed makes it unsafe or a risk to health at any such time as is mentioned in paragraph (1)(a) or, as the case may be, (1A)(a).”.
- (5) For paragraph (4) there shall be substituted the following paragraph—
- “(4) It shall be the duty of any person who manufactures, imports or supplies any substance—
- (a) to ensure, so far as is reasonably practicable, that the substance will be safe and without risks to health at all times when it is being used, handled, processed, stored or transported by a person at work or in premises to which Article 6 applies;
 - (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by sub-paragraph (a);
 - (c) to take such steps as are necessary to secure that persons supplied by that person with the substance are provided with adequate information about any risks to health or safety to which the inherent properties of the substance may give rise, about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health at all such times as are mentioned in sub-paragraph (a) and when the substance is being disposed of; and
 - (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of sub-paragraph (c) as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.”.
- (6) In paragraph (5) (duty of person who undertakes the manufacture of a substance for use at work to carry out research)—
- (a) for the words “substance for use at work” there shall be substituted the word “substance”; and
 - (b) at the end there shall be inserted the words “at all such times as are mentioned in paragraph (4)(a).”.
- (7) In paragraph (8) (relief from duties for persons relying on undertakings by others)—
- (a) for the words “for or to another” there shall be substituted the words “for use at work or an article of fairground equipment and does so for or to another”;
 - (b) for the words “when properly used” there shall be substituted the words “at all such times as are mentioned in sub-paragraph (a) of paragraph (1) or, as the case may be, in sub-paragraph (a) of paragraph (1A).”; and
 - (c) for the words “by paragraph (1)(a)” there shall be substituted the words “by virtue of that sub-paragraph”.
- (8) After that paragraph there shall be inserted the following paragraph—
- “(8A) Nothing in paragraph (7) or (8) shall relieve any person who imports any article or substance from any duty in respect of anything which—
- (a) in the case of an article designed outside the United Kingdom, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who designed the article; or
 - (b) in the case of an article or substance manufactured outside the United Kingdom, was done by and in the course of any trade, profession or other undertaking carried

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on by, or was within the control of, the person who manufactured the article or substance.”.

(9) In paragraph (9) (definition of supplier in certain cases of supply under a hire-purchase agreement), for the words “article for use at work or substance for use at work” there shall be substituted the words “article or substance”.

(10) For paragraph (10) there shall be substituted the following paragraph—

“(10) For the purposes of this Article an absence of safety or a risk to health shall be disregarded in so far as the case in or in relation to which it would arise is shown to be one the occurrence of which could not reasonably be foreseen; and in determining whether any duty imposed by virtue of sub-paragraph (a) of paragraph (1), (1A) or (4) has been performed regard shall be had to any relevant information or advice which has been provided to any person by the person by whom the article has been designed, manufactured, imported or supplied or, as the case may be, by the person by whom the substance has been manufactured, imported or supplied.”.

3. In Article 24 (prohibition notices)—

(a) in paragraphs (1) and (2) (notices in respect of activities which are or are about to be carried on and involve a risk of serious personal injury), for the word “about”, in each place where it occurs, there shall be substituted the word “likely”;

(b) for paragraph (3) there shall be substituted the following paragraph—

“(3) A direction contained in a prohibition notice in pursuance of paragraph (2)(d) shall take effect—

(a) at the end of the period specified in the notice; or

(b) if the notice so declares, immediately.”.

4. After Article 27 there shall be inserted the following Article—

“Power of customs officer to detain articles and substances

27A.—(1) A customs officer may, for the purpose of facilitating the exercise or performance by any enforcing authority or inspector of any of the powers or duties of the authority or inspector under any of the relevant statutory provisions, seize any imported article or imported substance and detain it for not more than two working days.

(2) Anything seized and detained under this Article shall be dealt with during the period of its detention in such manner as the Commissioners of Customs and Excise may direct.

(3) In paragraph (1) the reference to two working days is a reference to a period of forty-eight hours calculated from the time when the goods in question are seized but disregarding so much of any period as falls on a Saturday or Sunday or on Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(6) in Northern Ireland.”.

5. After Article 29 there shall be inserted the following Article—

“Information communicated by the Commissioners of Customs and Excise

29A.—(1) If they think it appropriate to do so for the purpose of facilitating the exercise or performance by any person to whom paragraph (2) applies of any of that person’s powers or duties under any of the relevant statutory provisions, the Commissioners of Customs

(6) 1971 c. 80

and Excise may authorise the disclosure to that person of any information obtained for the purposes of the exercise by the Commissioners of their functions in relation to imports.

(2) This paragraph applies to an enforcing authority and to an inspector.

(3) A disclosure of information made to any person under paragraph (1) shall be made in such manner as may be directed by the Commissioners of Customs and Excise and may be made through such persons acting on behalf of that person as may be so directed.

(4) Information may be disclosed to a person under paragraph (1) whether or not the disclosure of the information has been requested by or on behalf of that person.”

6. In Article 30 (restrictions on disclosure of information), in paragraph (1)(a), after the words “furnished to any person” there shall be inserted the words “under Article 29A or”.

7. In Article 31(1)(h) (offence of obstructing an inspector), after the word “duties” there shall be inserted the words “or obstructs a customs officer in the exercise of his powers under Article 27A”.

SCHEDULE 3

Article 35(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

The Trade Descriptions Act 1968 (1968 c. 29)

1. In section 28(5A) of the Trade Descriptions Act 1968 (disclosure of information authorised for purpose specified in section 174(3) of the Consumer Credit Act 1974(7), after “Consumer Protection Act 1987” there shall be inserted “or Article 29(2)(a), (b) or (c) of the Consumer Protection(Northern Ireland) Order 1987”.

The Consumer Credit Act 1974 (1974 c. 39)

2. In section 174(3)(a) of the Consumer Credit Act 1974 (exceptions to general restrictions on disclosure of information), after “Consumer Protection Act 1987” there shall be inserted “or the Consumer Protection(Northern Ireland) Order 1987”.

The Torts (Interference with Goods) Act 1977 (1977 c. 32)

3. In section 1 of the Torts (Interference with Goods) Act 1977 (meaning of “wrongful interference”), after “Consumer Protection Act 1987” there shall be inserted “or Part II of the Consumer Protection(Northern Ireland) Order 1987”.

The Estate Agents Act 1979 (1979 c. 38)

4. In section 10(3)(a) of the Estate Agents Act 1979 (exceptions to general restrictions on disclosure of information), after “Consumer Protection Act 1987” there shall be inserted “or the Consumer Protection (Northern Ireland) Order 1987”.

The Competition Act 1980 (1980 c. 21)

5. In section 19(3) of the Competition Act 1980 (enactments specified in exceptions to general restrictions on disclosure of information), after paragraph (j) there shall be inserted the following paragraph—

(7) 1974 c. 39

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“(k) the Consumer Protection (Northern Ireland) Order 1987.”

The Telecommunications Act 1984 (1984 c. 12)

6. In section 101(3) of the Telecommunications Act 1984 (enactments specified in exceptions to general restrictions on disclosure of information), after paragraph (h) there shall be inserted the following paragraph—

“(i) the Consumer Protection (Northern Ireland) Order 1987.”

The Industrial Relations (Northern Ireland) Order 1987 (1987 NI 9)

7. In Article 18(2) of the Industrial Relations (Northern Ireland) Order 1987 (proceedings against trade unions in relation to which the appropriate limit does not apply), after sub-paragraph (b) there shall be inserted the following—

“or

(c) to any proceedings by virtue of Part II of the Consumer Protection (Northern Ireland) Order 1987 (product liability).”

SCHEDULE 4

Article 34(2).

REPEALS

Chapter or Number	Short Title	Extent of Repeal
1978 NI 9.	The Health and Safety at Work (Northern Ireland) Order 1978.	In Article 2(2), the definition of “substance for use at work”.