

CHAPTER 97

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CONSUMER PROTECTION AND SAFETY

AN ACT to provide for the protection and safety of consumers and for other matters incidental thereto.

(1st November, 1988.)

23/1987.

1. This Act may be cited as the Consumer Protection and Safety Act. **Short title.**

2. (1) In this Act— **Interpretation.**

“agreement” means any agreement or arrangement, whether or not it is intended to be legally enforceable;

“business” includes a professional practice, or any other undertaking which is carried on for gain or reward or in the course of which goods or services are supplied otherwise than free of charge;

“commercial activities” means

(a) the production and supply of goods in Antigua and Barbuda,

(b) the supply of a service in Antigua and Barbuda,

(c) the exportation of goods from Antigua and Barbuda;

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price

or part of it is payable by instalments and the property in the goods is to remain in the seller, although the buyer is to be in possession of the goods until conditions as to payment of instalments or otherwise are fulfilled;

"Council" means the Consumer Guidance Council established by section 5 of this Act;

"consumer" means a person to whom goods or services are supplied or sought to be supplied in the course of a business carried on by a person supplying or seeking to supply them, where that first named person does not receive or seek to receive the goods or service in the course of a business carried on by him;

"consumer trade practice" means any practice which is carried on in connection with the supply of goods to or the supply of services for consumers and which relates to

(a) the terms or conditions, whether as to price or otherwise, on which goods or services are supplied or are sought to be supplied or the manner in which those terms or conditions are communicated to customers;

(b) the promotion by canvassing, advertising, labelling or marking of goods or any other manner of promoting the supply of goods or services;

(c) the way in which goods are packed or otherwise prepared for the purpose of being supplied;

(d) methods of salesmanship employed in dealing with customers; or

(e) methods of demanding or securing payment for goods or services supplied;

"contract of employment" means a contract of service or apprenticeship whether expressed or implied and whether oral or in writing;

"credit sale agreement" means an agreement for the sale of goods under which the purchase price is payable by five or more instalments;

"Director" means the Director of Consumer Affairs;

"goods" means except in parts IV – VI commodities that are the subject of trade or commerce including buildings and other structures, ships and aircraft, but does not include electricity;

"hire purchase agreement" means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, and where by virtue of two or more agreements, none of which itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee, the agreements shall be treated for the purpose of this Act as a single agreement made at the time when the last of the agreements was made;

"notice" means notice in writing;

"notice to warn" has the meaning given in section 32;

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

"prohibition notice" has the meaning given in section 32;

"publicised information" in relation to a disclosure means information which, before the disclosure occurred, was published, in proceedings mentioned in section 33(3)(a) or (b) or in a warning mentioned in section 33(3)(d) 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

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the purpose of section 30 of this Act, the Minister is 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" means regulations made by the Minister under section 30 of this Act.

(2) For the purposes of this Act a person is a consumer in relation to a person supplying goods or services

(a) whether or not the person supplying the goods or services has a business in Antigua and Barbuda;

(6) if the goods or services are supplied in accordance with oral or written arrangements made in Antigua and Barbuda or in accordance with correspondence posted from or to Antigua and Barbuda, although the goods and services are supplied wholly or partly outside Antigua and Barbuda.

(3) A reference to a person to or for whom goods or services are supplied includes a reference to a guarantor of such person and a reference to the terms or conditions on which goods or services are supplied includes a reference to the terms or conditions on which a person undertakes to act as a guarantor, and in this subsection "guarantor" in relation to a person to or for whom goods or services are supplied includes a person who undertakes to indemnify the supplier of goods or services against any loss which he may incur in respect of the supply of the goods or service to or for that person.

(4) For the purposes of this Act a person supplies or seeks to supply goods if in the course of carrying on a business (whether or not a business of dealing in the goods in question) as principal or agent

(a) he sells (otherwise than under a hire-purchase agreement) hires out or lends goods to another person;

(6) he enters into a hire-purchase agreement, or a contract for work and materials to furnish goods to another person;

(c) he exchanges goods for any consideration other than money; or

(d) he gives goods to another person, either as a prize or otherwise.

(5) For the purposes of this Act, a person who conducts "antecedent negotiations" in relation to a hire-purchase, credit-sale or conditional sale agreement is to be treated as a person supplying or seeking to supply goods, and in this paragraph "antecedent negotiations" in relation to such agreements means any negotiations or agreement with the hirer or buyer whereby he was induced to make the agreement or which otherwise promoted the transaction to which the agreement relates.

(6) Goods or services supplied by a person carrying on a business are supplied in the course of that business if payment for the supply of the goods or services is made or (whether by contract, or by virtue of any law or otherwise) is required to be made.

(7) In this Act, a reference to supply

(a) does not include supply to a person with whom the goods were insured against damage;

(b) (except in relation to a notice to warn) does not include supply which is incidental to the letting or sale of land;

(c) (except in relation to a prohibition notice) does not include either supply to a person who carries on a business of buying goods of the type in question and repairing and reconditioning them or supply by a sale of articles as scrap (i.e. for the value of materials included in the articles and not of the articles themselves);

and a person who supplies goods by hiring them or lending them does not for the purpose of this Act, supply them by reason only of anything done in pursuance of the arrangement for the hiring out or loan.

(8) Where a person (the supplier) supplies goods to another person (the customer) under a hire-purchase, conditional sale, or credit-sale agreement or under an agreement for the hiring of goods (other than a hire-purchase

agreement) and the supplier carries on the business of financing the provision of goods for others by means of such agreements and in the course of that business acquired his interest in the goods supplied to the customer as a means of financing the provision of goods for the customer by a third party, the third party and not the supplier shall be treated for the purposes of this Act as supplying the goods to the customer.

(9) In this Act "the supply for services" includes

(a) the undertaking and performance for gain or reward of engagements (whether professional or other) for the supply of any matter other than goods; and

(b) the rendering of services to order, and the provision of services by making them available to potential users,

but does not include the rendering of any services under a contract of employment.

(10) For the purposes of this Act, any two companies are to be treated as interconnected if one of them is a company of which the other is a subsidiary or if both of them are subsidiaries of the same company, and "group of interconnected companies" means a group consisting of two or more companies all of which are interconnected with each other.

PART I

Administration

Establishment of
Department of
Consumer
Affairs.

3. There is established a Department of Consumer Affairs (in this Act called the Department) with responsibility for all matters relating to consumer affairs and the protection of consumers under this Act.

Appointment of
Director and staff
of the
Department.

4. (1) There may be appointed a Director of Consumer Affairs (in this Act called the Director) who shall be directly responsible for the administration of the Department and who shall perform the functions assigned to the Director by this Act.

(2) The Department shall be provided with such number of public officers as are required for the proper discharge of its functions.

(3) Any appointments under subsection (1) or (2) shall, if the appointment is to be an office in the Public Service, be made pursuant to the Constitution, but otherwise shall be made by the Minister.

5. (1) The Director shall from time to time

Functions of the Director.

(a) review and keep under review commercial activities in Antigua and Barbuda relating to

- (i) goods supplied to consumers in Antigua and Barbuda or goods produced with a view to being so supplied; or
- (ii) services supplied to consumers in Antigua and Barbuda,

and shall collect information relating to such activities and to persons who conduct them, with the object of informing himself of and identifying circumstances relating to practices which may adversely affect the economic interests of consumers in Antigua and Barbuda;

(b) receive and collate available evidence of commercial activities involving practices that may adversely affect the interest of consumers in Antigua and Barbuda,

and shall where he thinks fit, or where requested by the Minister, provide information and assistance or make recommendations to the Minister in respect of any matter assigned to the Director under this Act, or in respect to any action which in the Director's opinion it would be expedient for the Minister or any other Minister to take in relation to a matter falling under this Act.

(2) Where evidence relating to a course of conduct by a person carrying on a business is made available to the Director, and the conduct is conduct which may be detrimental to the interests of consumers in Antigua and Barbuda or unfair to consumers, the Director shall consider the evidence with a view to determining what action he should take under this Act.

**Establishment of
Consumer
Guidance
Council.**

6. There is established an advisory council called the Consumer Guidance Council (in this Act called the Council) for the purpose of performing the functions assigned to the Council by this Act.

**Appointment of
Council
Members.**

7. The Council shall comprise of the following

(a) two persons nominated by the Minister in his discretion, one of whom shall be appointed Chairman, and the other Vice-Chairman of the Council;

(b) two persons nominated by the Minister from the private sector, with knowledge of commercial activity and the mechanics of the production and supply of goods and services to consumers in Antigua and Barbuda;

(c) three persons nominated by the Minister and qualified to advise on matters mentioned in paragraph (b) by virtue of their knowledge, experience or interest in organizations established for the protection of consumers, one of whom shall have knowledge in the enforcement of the law relating to Weights and Measures;

(d) two ex-officio members, one being the Director of Consumer Affairs who shall also be the Secretary of the Council, and the other being the Director of the Bureau of Standards.

Tenure of office.

8. (1) The Minister shall appoint members nominated to the Council by instrument in writing for a period not exceeding two years and a member so appointed is eligible for re-appointment on the expiration of his term of office.

(2) The Minister may at any time revoke the appointment of the Chairman or any other nominated member of the Council.

**Resignation of
Council member.**

9. A nominated member of the Council may resign his office at any time by letter addressed to the Minister, and conveyed to the Chairman, and such resignation takes effect from the date the letter is received by the Minister.

**Publication of
membership of
the Council.**

10. The names of the members of the Council shall be published in the *Gazette*, and any subsequent change in the members of the Council shall be similarly gazetted.

11. Where the Chairman is absent or unable to act, the Vice-Chairman shall preside at Council meetings, and where both the Chairman and Vice-Chairman are absent or unable to act, the members of the Council present at a meeting shall elect one of their members to preside.

Chairing of
Council
meetings.

12. (1) The Council shall meet once every quarter and at such other times as are necessary or expedient for transacting the business of the Council.

Meetings and
quorum of
Council.

(2) The quorum at meetings is five and decisions of the Council shall be taken by a majority of votes.

13. (1) A member of the Council whose interest may directly or indirectly be affected by a decision of the Council on any matter, shall disclose the nature of his interest at the first meeting of the Council at which he is present after the relevant facts have come to his knowledge.

Conflict of
Interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Council, and after the disclosure the member concerned may not vote on the matter, and unless otherwise directed by the Council, shall not be present at any meeting when the matter is being decided.

14. All documents made by and all decisions of the Council shall be authenticated by the Chairman or the Secretary of the Council.

Authentication of
documents.

PART II

Consumer Protection

15. (1) Subject to subsection (2) the Minister or the Director may refer to the Council the question whether a consumer trade practice specified in the reference adversely affects the economic interests of consumers in Antigua and Barbuda, and the Minister shall, where he makes a reference to the Council, transmit a copy of the reference to the Director.

Reference to the
Council.

(2) No reference under subsection (1) shall be made to the Council where the consumer trade practice in question is carried on in connection only with the supply of goods or services listed in the First Schedule.

First Schedule.

(3) The Council may request the Director to assist the Council in carrying out an investigation on a reference made to them under this section, and where such a request is made the Director shall give to the Council

(a) any information in his possession relating to matters falling within the scope of the investigation; and

(b) such other assistance as the Council may require and which is within the power of the Director to give in relation to the investigation.

(4) The Council shall consider the question raised in a reference made under this section and shall in every case

(a) prepare a report on the question; and

(b) submit a copy of the report to the Minister and the Director.

Reference to the Council with proposals and recommendations to Minister to make Order.

16. (1) Where it appears to the Director that a consumer trade practice has or is likely to have the effect

(a) with respect to a consumer's rights, of misleading the consumer, or withholding from him adequate record of his rights and obligations under a consumer transaction;

(b) with respect to any matter connected with a consumer transaction, of misleading or confusing the consumer;

(c) of subjecting consumers to undue pressure to enter consumer transactions;

(d) of causing the terms or conditions on which consumers enter into consumer transactions to be so adverse to them as to be onerous,

the Director may make a reference to the Council under section 15 and in addition may, if he thinks fit, include with the reference such proposals as he considers requisite for the purpose of preventing the continuance of the particular trade practice, together with a recommendation that the Minister makes an Order in respect of the consumer trade practice, or in respect of any class or classes of consumer transactions, containing any of the proposals outlined by the Director

in the reference, or containing any of the requirements or prohibitions specified in the Second Schedule.

Second Schedule.

(2) In formulating proposals to be included by virtue of subsection (1) in a reference, the Director shall have regard to the manner in which and the class or classes of consumer transactions in relation to which the consumer trade practice may adversely affect the economic interests of consumers in Antigua and Barbuda.

(3) Where a reference is made by virtue of this section the Director shall

(a) state in the reference which of the effects mentioned in subsection (1) he thinks the consumer trade practice has or is likely to have; and

(b) arrange to have the reference published in full in the *Gazette*, so however that no information respecting the identity of a person carrying on the trade practice may be published.

17. (1) In its report on a reference referred to in section 16, the Council shall address the question

Report of Council on reference referred to in section 16.

(a) whether the consumer trade practice in the reference adversely affects the economic interests of consumers in Antigua and Barbuda; and

(b) whether it does so by reason in whole or in part that it has or is likely to have any of the effects specified in section 16(1).

(2) Where the answer to subsection (1)(a) is in the affirmative by virtue of the reason specified in subsection (1)(b) the Council shall state

(a) whether it agrees with the proposals included in the reference; or

(b) would agree with the proposals included in the reference if they were modified in a manner specified in the report.

(3) The Council shall make its report on a reference referred to in section 16 to the Minister and shall set out in the report the complete reference.

Power of
Minister to make
Order.

18. (1) Where the Council states in its report that it agrees with the proposals set out in a reference, the Minister may if he thinks fit, by Order, make such provision as is in his opinion appropriate for giving effect to the proposals.

(2) Where the Council states in its report that it would agree with the proposals set out in a reference if they were modified in a manner specified in the report, the Minister may if he thinks fit, by Order, make in his discretion such provision as is in his opinion appropriate for giving effect either to the proposals as set out in the reference or to the proposals as modified in the manner specified in the report.

Second Schedule.

(3) The Minister may include in an Order made under this section, any requirement or prohibition specified in the Second Schedule, or such supplementary or incidental provision as he considers appropriate in the circumstances.

(4) An Order made under this section, or an Order varying or revoking such an Order shall be subject to negative resolution of the Legislature.

Penalty for
contravention of
Order under
section 18.

19. A person who fails to comply with a requirement or contravenes a prohibition imposed by an Order under section 18 is liable

(a) on summary conviction to a fine of ten thousand dollars and to imprisonment for twelve months;

(b) on conviction on indictment to a fine of twenty-five thousand dollars and to imprisonment for five years.

Offences due to
default of other
person.

20. Where a person commits an offence under section 17 due to the act or default of some other person, that other person is guilty of the offence and may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first named person.

Defences in
proceedings
under section 19.

21. (1) In proceedings for an offence under section 19 it is a defence for a person charged to prove

(a) that he committed the offence due to a mistake, to an accident, to reliance on information supplied to

him, to the act or default of another person or to some other cause beyond his control; and

(b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or any person under his control.

(2) Where a person alleges as his defence that he committed an offence under section 19 due to the act or default of another person or to reliance on information supplied by another person, the person charged may not, without the leave of the court, rely on the defence unless within a period ending seven clear days before the hearing he serves on the prosecutor a notice in writing, giving such information identifying or assisting in the identification of that other person as is then in his possession.

(3) Where an offence under section 19 consists of the publication of an advertisement, it is a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements, and that he received the advertisement for publication in the ordinary course of business and although he exercised all due diligence to avoid the commission of the offence, he did not know and had no reason to suspect that its publication would amount to an offence under section 19.

22. A contract for the supply of goods or services is not void or unenforceable by reason only of an Order made under section 18, and subject to section 23 of the Interpretation Act (which relates to offences under two or more laws) this Part does not

Limitation of effect of Order under section 18. Cap. 224.

(a) confer a right of action in court proceedings (other than proceedings for the recovery of a fine) in respect of the contravention of such an Order;

(b) affect a restriction imposed by or under any other law; or

(c) derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part.

PART III

Additional Functions of Director for
Protection of Consumers

Additional
functions of
Director.

23. (1) Where it appears that a person carrying on a business has in the course of that business persisted in a course of conduct which

(a) is detrimental to the interests of consumers in Antigua and Barbuda, whether those interests are economic interests or interests in respect of health, safety or other matters; and

(b) is unfair to customers

the Director shall endeavour by communication or otherwise with that person to obtain from him a satisfactory written assurance that he will refrain from continuing the course of conduct and from carrying on any similar course of conduct in the course of the business.

(2) For the purpose of subsection (1)(b) a course of conduct is unfair to consumers if

(a) it consists of contraventions of one or more laws imposing duties, prohibitions or restrictions enforceable by criminal proceedings, whether or not the duty, prohibition or restriction is imposed in relation to consumers as such and whether or not the person carrying on the business has been convicted of an offence; or

(b) it consists of things done or omitted to be done in the course of a business in breach of contract or in breach of a duty (other than a contractual duty) owed to any person by virtue of any law or rule of law and enforceable by civil proceedings, whether or not in such a case civil proceedings in respect of the breach have been brought.

(3) For the purpose of deciding whether it appears that a person has persisted in a course of conduct as mentioned in subsection (1), the Director shall have regard to

(a) complaints received by him, whether from consumers or from other persons; or

(b) other information collected by or furnished to him whether by virtue of this Act or otherwise.

24. Where under section 23(1) the Director endeavours to obtain a written assurance from a person conducting a business and the person

Failure to give satisfactory written assurance.

(a) fails to give the Director a satisfactory written assurance; or

(b) gives an assurance but fails to observe it

the Director may bring proceedings in a magistrate's court against the person who is liable on conviction to a fine of ten thousand dollars and to imprisonment for three months.

25. (1) Where in proceedings before a magistrate's court under section 24, the court finds that the defendant in the course of a business carried on by him, has persisted in a course of conduct as mentioned in section 23(1) and

Undertaking of defendant in s. 23 proceedings.

(a) the defendant gives an undertaking

(i) to refrain from continuing that course of conduct and to refrain from carrying on any similar course of conduct in the course of his business; or

(ii) to take particular steps which in the opinion of the court, would suffice to prevent the continuance of the course of conduct and to prevent the carrying on by the defendant of any similar course of conduct in the course of his business,

the court may if it thinks fit accept the undertaking and reprimand and discharge the defendant; instead of making an order under section 24;

(b) the defendant does not give an undertaking as mentioned in paragraph (a) which is accepted by the court, and it appears to the Court that unless an order is made against the defendant he is likely to continue that course of conduct or carry on a similar course of conduct, the court may make an order under this section against the defendant.

(2) The Court shall in making an Order under this section indicate the nature of the conduct to which its findings relate and shall direct the defendant

(a) to refrain from continuing that course of conduct; and

(b) to refrain from carrying on any similar course of conduct in the course of his business.

(3) A person who

(a) violates an undertaking given to the Court under subsection (1)(a) is liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for one year; or

(b) fails to comply with an order under subsection (2) is liable on summary conviction to a fine of twenty-five hundred dollars for every day on which the offence continues.

Persons
consenting to or
conniving at
conduct
detrimental to
interest of
consumers.

26. (1) This section applies where the Director has reasonable grounds for believing that a company has in the course of its business persisted in a course of conduct as mentioned in section 23(1) with the consent or the connivance of a person (in this part referred to as the "accessory") who in relation to the company

(a) was at the time a director, manager, secretary or other similar officer of the company, or a person purporting to act in such capacity; or

(b) had at the time a controlling interest in the company.

(2) In a case to which this section applies the Director shall endeavour by communication or otherwise with the accessory to obtain from him a satisfactory written assurance that he will refrain

(a) from continuing to consent to or connive at the course of conduct in question;

(b) from carrying on a similar course of conduct in the course of any business which may at any time be carried on by him; and

(c) from consenting to or conniving at the carrying on of any such course of conduct by any other company with which he has the relationship described in subsection (1).

(3) Where the accessory

(a) fails to give to the Director a written assurance as mentioned in subsection (2); or

(b) gives an assurance as mentioned in subsection (2), and it appears to the Director that he has failed to observe it

the Director may bring proceedings in a magistrate's court against the accessory who is liable on conviction to a fine of ten thousand dollars and imprisonment for three months.

(4) The Director may bring proceedings in a magistrate's court against an accessory although proceedings are not commenced under section 24 against the company referred to in subsection (1).

(5) For the purpose of this section, a person has a controlling interest in a company if that person can directly or indirectly determine the manner in which one-half of the votes which could be cast at a general meeting of the company are to be cast, in matters and in circumstances which do not bring into play special voting rights or restrictions on voting rights.

27. (1) Where in proceedings under section 26 the Court finds that an accessory has consented to or connived at the carrying on by a company of a course of conduct as mentioned in section 23(1) and

Undertaking of or Order against an accessory in s; 26 proceedings.

(a) the accessory gives an undertaking

(i) to refrain from acting in a manner described in section 26(2); or

(ii) to take particular steps which in the Court's opinion would suffice to prevent him from acting in that manner

the Court may if it thinks fit accept the undertaking, and reprimand and discharge the accessory;

(b) the accessory does not give an undertaking as mentioned in paragraph (a) which is accepted by the Court, and it appears to the Court that unless an Order is made against the accessory he is likely to persist in

the same or similar conduct the Court may make an Order under this section against the accessory.

(2) The Court shall in making an Order under this section, indicate the nature of the conduct to which its finding relates and shall direct the accessory to refrain from consenting to or conniving at the course of conduct mentioned in section 23(1).

(3) An accessory who

(a) violates an undertaking given to the Court under subsection (1)(a) is liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for one year; or

(b) fails to comply with an order of the Court under subsection (2) is liable on summary conviction to a fine of twenty-five hundred dollars for every day on which the offence continues.

Provisions as to
interconnected
companies.

28. (1) Where an Order under section 25(2) or section 27(2) is made against a company which is a member of a group of interconnected companies, the Court in making the Order may direct that it is binding on all members of the group as if each of them were the company against which the order is made.

(2) Where an Order under section 25(2) or 27(2) is made against a company and while the order is in force the company becomes a member of a group of interconnected companies or, a group of interconnected companies of which it is a member is increased by the addition of other members, the Court may direct that the order is thereafter binding on each member of the group as if each were the company against which the order was made.

(3) The Court may exercise its power under subsection (2) whether or not the company against which the original order is made was at the time the order was made a member of a group of interconnected companies, and if it were a member, whether or not the Court had made a direction at the time of the original order.

PART IV

Consumer *Safety*

29. In this Part and in Parts V and VI "goods" includes natural and manufactured substances whether or not they are incorporated in or mixed with other goods, and in relation to a notice to warn, includes things comprised in land which by operation of law become land by virtue of being so comprised, but does not include "food" or "drugs" within the meaning of the Public Health Act, or "controlled drugs" within the meaning of the Misuse of Drugs Act.

Definition of "goods".

Cap. 353.

Cap. 283.

30. (1) The Minister may make regulations (in this Act referred to as "safety regulations") containing such provisions as the Minister considers appropriate for the purpose of ensuring that goods are safe or that appropriate information is provided and inappropriate information is not provided in respect of goods, and in particular may make regulations

Safety regulations in respect of goods.

(a) with respect to the composition, content, design, construction, finish or packing of goods or with respect to other matters relating to goods;

(b) requiring goods to conform to a particular standard or to be approved or to be of the kind approved by a particular person;

(c) requiring information that goods conform to a standard, are approved, or are of the kind approved by a particular person to be given, and determining the manner in which such information is to be given;

(d) with respect to standards for goods which may be standards set out in the regulations or standards or parts of standards particulars of which have been prescribed in Antigua and Barbuda or elsewhere;

(e) with respect to the Minister approving from time to time and for any purpose of the regulations standards or parts of standards which have been prescribed in Antigua and Barbuda or elsewhere;

(f) with respect to the giving, refusal, alteration and revocation of approval for goods or kinds of goods, with respect to conditions and alteration of conditions attached

to the fees which may be charged for such approval, and with respect to appeals against refusal, alterations, revocation, conditions of and alteration of conditions of such approval;

(g) with respect to testing or inspecting goods, for determining the manner in which tests or inspections required by the Regulations are to be carried out, and determining the standards to be observed in carrying out such tests or inspections;

(h) specifying the manner of dealing with goods where some or all do not satisfy a test prescribed by the Regulations, or a standard connected with a procedure;

(i) requiring warnings or instructions or other information relating to goods to be marked on or accompany the goods or to be given in some other manner connected with the goods and for ensuring that inappropriate information is not given in respect of goods either by means of misleading marks or otherwise;

(j) prohibiting persons from supplying, offering or agreeing to supply, or exposing or possessing for supply goods which are designed to be used as component parts of other goods and which if so used would cause the other goods to contravene the requirements of the Regulations.

(2) Safety regulations may

(a) contain provisions requiring persons on whom a duty is imposed by section 36 to have regard in performing the duty so far as it relates to a safety regulation, to any matter specified in a direction issued by the Minister in relation to that safety regulation;

(b) contain provisions for securing that a person is not guilty of an offence under section 31(1) unless it is provided that the goods in question do not conform to a particular standard;

(c) contain provisions for securing that proceedings for an offence under section 31(1) are not begun except by or with the consent of the Director of Public Prosecutions;

(a) contain provisions enabling summary proceedings for an offence under section 31(1) to be commenced at any time within twelve months from the time when the offence was committed;

(e) make different provisions for different circumstances or provisions relating only to specified circumstances;

(f) provide for exemptions from any provision of the regulations;

(g) contain such incidental and supplemental provisions as the Minister considers appropriate.

31. (1) A person who contravenes a safety regulation which **Offences against safety regulations.**

(a) prohibits a person from supplying, offering or agreeing to supply, or exposing or possessing for supply any goods;

(b) requires persons who make or process goods in the course of a business

(i) to carry out a particular test or use a particular procedure in connection with the making or processing of goods with a view to ascertaining whether the goods satisfy other requirements of the regulations; or

(ii) to deal or not deal in a particular way with a quantity of goods of which the whole or a part does not satisfy the test or does not satisfy standards connected with the procedure;

(c) prohibits the provision by means of a mark or otherwise, of information of a particular kind in connection with goods,

is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three months.

(2) Where a person commits an offence under subsection (1) due to the act or default of some other person, the other person is guilty of the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person.

(3) It is a defence to an offence under subsection (1) for the accused to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) Where the defence under subsection (3) involves an allegation that the offence was committed due to the act or default of another person or due to reliance on information supplied by another person, the person charged may not, without the leave of the court, rely on the defence unless within a period ending seven clear days before the hearing he serves on the prosecutor a notice in writing, giving such information identifying or assisting in the identification of that other person as is then in his possession.

Orders and notices to prohibit supply of goods or giving warning of danger from goods.
Third Schedule.

32. (1) The Minister may

(a) subject to Part I of the Third Schedule make Orders (in this Act referred to as "prohibition orders") prohibiting persons from supplying, offering or agreeing to supply or exposing or possessing for supply

- (i) goods which the Minister considers are not safe and which are described in the Order; and
- (ii) goods which are designed to be used as component parts of other goods and which, if so used, would cause the other goods to be goods described in the Order;

(b) subject to Part II of the Third Schedule, serve on any person a notice (in this Act referred to as a "prohibition notice") prohibiting the person, except with the consent of the Minister and in accordance with any conditions on which the consent is given from supplying, offering, or agreeing to supply, or exposing or possessing for supply any goods which the Minister considers are not safe and which are described in the notice;

(c) subject to Part III of the Third Schedule, serve on any person a notice (in this Act referred to as a "notice to warn") requiring the person to publish at his own expense, in a form and manner and on occasions specified in the notice, a warning about any goods specified in the notice which the Minister considers are not safe and which the person supplies or has supplied.

(2) Section 30(2) paragraphs (e) to (g) apply to prohibition orders as they apply to safety regulations.

(3) A person who contravenes a prohibition order, a prohibition notice or a notice to warn is liable on summary conviction to a fine of fifteen thousand dollars or imprisonment for six months.

(4) It is a defence to an offence under subsection (3) for the accused to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) Where a defence under subsection (4) involves an allegation that the offence was committed due to the act or default of another person, the person charged may not, without the leave of the court, rely on the defence unless within a period ending seven clear days before the hearing he serves on the prosecutor a notice in writing, giving such information identifying or assisting in the identification of that other person as is then in his possession.

(6) Where a person commits an offence under subsection (3) due to the act or default of some other person, the other person is guilty of the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person.

33. (1) If, for the purpose of deciding whether to make, vary or revoke safety regulations or a prohibition order, to serve, vary or revoke a prohibition notice, or to serve or revoke a notice to warn, the Minister considers that he requires information which another person is likely to be able to furnish, the Minister may serve on the person a notice requiring him

Power to obtain information.

(a) to furnish to the Minister within a period specified in the notice, such information as is specified;

(b) to produce the documents specified in the notice at a time and place appointed in the notice and to permit a person appointed by the Minister for that purpose to take copies of the documents.

(2) A person who

(a) fails without reasonable cause to comply with a notice served on him under subsection (1) is liable on summary conviction to a fine of ten thousand dollars or imprisonment for six months;

(b) in purporting to comply with a requirement contained in a notice served on him under subsection (1), furnishes information which he knows is false in a material particular or recklessly furnishes information which is false in a material particular is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for twelve months.

(3) No person shall disclose information obtained by virtue of this section except

(a) for the purpose of criminal proceedings or an investigation with a view to such proceedings;

(b) for the purpose of facilitating the performance by the Director of his functions under Part III or for the purpose of any proceedings under Part III;

(c) for the purpose of enabling the Minister to decide whether to make, vary or revoke safety regulations or prohibition orders, or whether to serve, vary or revoke a prohibition notice, or to serve or revoke a notice to warn; or

(d) 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 Minister.

(4) Subsection (3) does not apply to publicised information.

(5) A person who contravenes subsection (3) is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three months.

PART V

Enforcement

- 34.** In this Part "premises" includes any place, stall, ship, aircraft or other vehicle of any kind. **Definition of premises.**
- 35.** The Minister may designate one or more persons to be Inspectors under this Act, and shall provide every Inspector with a certificate of his designation in the form set out in the Fourth Schedule. **Inspectors.**
Fourth Schedule.
- 36.** An Inspector may enforce any Order made under section 18, and any safety regulation, prohibition order or prohibition notice made or issued under this Act. **Duty of Inspectors.**
- 37.** The Minister or an Inspector authorised by the Minister may make such purchases of goods or obtain such services as may be expedient for the purpose of ascertaining or determining whether any safety regulations, prohibition order or prohibition notice or an Order made under section 18 is being complied with. **Power to make purchases.**
- 38.** (1) An Inspector who has reasonable cause to believe that an offence under this Act has been committed, may at all reasonable times and on production of his credentials enter any premises other than premises or parts of premises used exclusively as a dwelling house and while there may **Power to enter premises to inspect and seize goods.**
- (a) inspect any goods found;
- (b) require any person carrying on a business on the premises or employed in or connected with the business to produce books or documents relating to the business and to permit the inspector to take copies of or any entry in such books or documents;
- (c) examine any procedure (including any arrangements for carrying out a test connected with the production of goods);
- (d) seize and detain goods for testing;
- (e) seize and detain goods or documents which he believes may be required as evidence in proceedings under this Act;

(f) for the purpose of exercising his powers to seize goods under this section and to the extent that it is reasonably necessary in order to ensure that an Order under section 18, a safety regulation or a prohibition notice or prohibition order is being complied with, require any person having authority to do so to break open any container or open any vending machine, and if the person does not comply, the Inspector may do so himself.

(2) An inspector who seizes goods or documents by virtue of this section shall in a written statement specifying the nature and amount of items seized, inform the person from whom they are seized and in the case of goods seized from a vending machine shall inform the person whose name is written on the machine as being the proprietor 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) For the purpose of proceedings taken or transactions made under this Act, the written statement of an Inspector given under subsection (2) has effect as a receipt for the goods or documents seized.

(4) A magistrate who is satisfied by sworn information in writing that there are reasonable grounds to believe

(a) that goods, books or documents which an Inspector has power to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under this Act; or

(b) that an offence under this Act has been, is being, or is about to be committed on any premises; and

(c) 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

(d) that an application for admission or the giving of the notice mentioned in paragraph (c) 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,

may by warrant under his hand which shall continue in force for a period of one month, authorise any Inspector to enter the premises if needs be by force.

(5) An Inspector who enters premises by virtue of this section may take with him such other persons and equipment as appears necessary to him, and on leaving premises which he enters by virtue of a warrant under subsection (4), where either the premises are unoccupied, or where the occupier is temporarily absent, he shall affix a notice in a conspicuous place stating that the premises were entered for the purpose of this section, and as far as practicable shall leave the premises as effectively secured as he found them.

39. (1) A person who

(a) wilfully obstructs an Inspector acting in the exercise of any power conferred on him by or under section 38;

(b) wilfully fails to comply with any requirement properly made to him by an Inspector under section 38;

(c) without reasonable cause fails to give an Inspector acting under section 38, such assistance or information as he may reasonably require of the person for the performance of the Inspector's functions under this Part;

is guilty of an offence and is liable on summary conviction to a fine of twenty-five hundred dollars.

(2) A person who

(a) in giving information as mentioned in subsection (1)(c) makes a statement which he knows to be false;

(b) not being an Inspector purports to act as an Inspector under section 38 or under this Act;

(c) discloses to another person, where the disclosure is not made in the performance of his duty

(i) information with respect to a manufacturing process or trade secret obtained by him in premises which he has entered by virtue of section 38;

Offences
connected to
exercise of power
under section 38.

- (ii) information obtained by him under section 38 or under this Act;

is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars, and on conviction on indictment to a fine of ten thousand dollars and to imprisonment for two years.

(3) This section does not require a person to answer a question or give information where to do so might incriminate the person or the person's spouse.

Notice of Test.

40. (1) Where goods seized or purchased by an Inspector in pursuance of this Part are submitted to a test, the Inspector shall

(a) if the goods were seized inform the person from whom they were seized of the result of the test;

(b) if the goods were purchased and the test leads to proceedings for an offence under section 19 or 31(1), or under section 32(3) so far as it relates to prohibition orders and prohibition notices, 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 38(2), of the result of the test;

and where as a result of the test proceedings for an offence are instituted against a person, the Inspector shall allow the person to have the goods tested independently if it is reasonably practicable to do so.

(2) The Minister may by Order provide for the testing of goods seized or purchased by an Inspector in pursuance of this Act and in particular may in those Orders provide that the test be carried out at the Ministry's expense in a manner, by a person, and at a laboratory or testing facility specified in the Order.

Compensation.

41. (1) Where in the exercise of his powers under section 38 an Inspector seizes and detains any goods, and the owner suffers loss by reason of the goods being seized or by reason that during the detention the goods are lost or damaged or deteriorate, unless the owner is convicted of

an offence under this Act committed in relation to the goods, the owner is entitled to compensation 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 on the written application of the owner or of the Attorney-General be determined as follows

(a) if the amount of the compensation claimed does not exceed five thousand dollars, by a Magistrate; or

(b) if the amount of the compensation claimed exceeds five thousand dollars by a Judge of the Supreme Court,

in like manner as if the Magistrate or the Judge were a single arbitrator appointed pursuant to the provisions of the Arbitration Act, and the provisions of that Act shall apply accordingly. **Cap. 33.**

(3) Compensation payable under this section shall be defrayed out of moneys provided for the purpose by Parliament.

42. (1) Any obligation imposed on a person by regulations, 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 defences and other incidents applying to actions for breach of statutory duty. **Civil liability.**

(2) An agreement is void so far as it would, apart from this subsection, have the effect of excluding or restricting an obligation mentioned in subsection (1) or liability for a breach of such an obligation.

(3) A reference in this section to an obligation imposed by safety regulations does not include a reference to an obligation to which the regulations do not apply.

(4) Contravention of a safety regulation, a prohibition order or a prohibition notice and the commission of an offence under section 31 or 32 does not affect the validity of a contract or rights arising under a contract except in so far as the contract otherwise provides.

PART VI

Miscellaneous

Service of documents.

43. The principal office of a company registered outside Antigua and Barbuda or a partnership carrying on business outside Antigua and Barbuda is its principle office within Antigua and Barbuda for the purpose of service of any document required or authorised by this Act to be served on any person.

Publication of information and advice.

44. (1) The Director may arrange for the publication, in such form and in such manner as he considers appropriate, of such information and advice as appears to him to be expedient to give to consumers in Antigua and Barbuda regarding any matter in respect of which he has a function under section 5.

(2) In arranging for the publication of information or advice, the Director shall have regard to the need for excluding, as far as it is practicable—

(a) matters relating to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interest of that individual; and

(b) matters relating specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.

(3) Without prejudice to the exercise of his powers under subsection (1), the Director shall encourage relevant associations to prepare, and to disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers in Antigua and Barbuda.

(4) In this section "relevant association" means any association, whether or not incorporated, whose membership consists wholly or mainly of persons engaged in the production or supply of goods or in the supply of services or of persons employed by or representing persons so engaged and whose objects or activities include the promotion of the

interests of persons so engaged, and includes a consumer association.

45. No prosecution for an offence under this Act shall be commenced after the expiration of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier. **Limitation of prosecutions.**

46. Where an offence under this Act which has been committed by a company whose affairs were managed by its members is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a member of the company in connection with his functions of management, he as well as the company is liable to be proceeded against and punished accordingly. **Offences by companies.**

47. (1) Subject to subsections (2) to (4), no information relative to a particular business which has been obtained under or by virtue of this Act, other than Part II, shall, so long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business. **Restrictions on disclosure of information.**

(2) Subsection (1) does not apply to any disclosure of information which is made for the purpose of facilitating the performance of any functions of the Minister, the Director or the Council under this Act.

(3) Subsection (1) does not apply to any disclosure of information which is made for the purposes of any legal proceedings under this Act.

(4) Nothing in subsection (1), shall be construed—

(a) as limiting the matters which may be included in, or made public as part of, a report of the Council; or

(b) as applying to any information which has been made public as part of such a report.

(5) A person who discloses information in contravention of this section is liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

FIRST SCHEDULE Section 15 (2)

GOODS OR SERVICES EXCLUDED IN ACCORDANCE WITH SECTION 15

1. The services of Ministers or other persons of religion in their capacity as such Ministers or persons.
 2. Electricity supplied by the Public Utilities Authority.
 3. Telephone services supplied by the Public Utilities Authority.
 4. Water supplied by the Public Utilities Authority.
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SECOND SCHEDULE Section 16 (1)

MATTERS FALLING WITHIN SCOPE OF PROPOSALS UNDER SECTION 16(1)

1. In this Schedule.
"specified consumer trade practice" means the consumer trade practice specified in the reference to which the proposals are made;
"specified consumer transactions" means transactions which are relevant consumer transactions in relation to that consumer trade practice and are of a description specified in the proposals;
"specified" elsewhere than in the above expressions means specified in the proposals.
2. Prohibition of specified consumer trade practice either generally or in relation to specified consumer transactions.
3. Prohibition of specified consumer transaction unless carried out at specified times or at a place of a specified description.
4. Prohibition of the inclusion in specified consumer transactions of terms or conditions purporting to exclude or limit

the liability of a party to such a transaction in respect of specified matters.

5. A requirement that contracts relating to specified consumer transactions must include specified terms or conditions.

6. A requirement that contracts or other documents relating to specified consumer transactions must comply with specified provisions as to lettering (whether as to size, type, colouring or otherwise).

7. A requirement that specified information must be given to parties to specified consumer transactions.

THIRD SCHEDULE

Section 32

PROHIBITION ORDERS, PROHIBITION NOTICES AND NOTICES TO WARN

PART I

Prohibition Orders

1. If the Minister proposes to make a prohibition order (hereafter in this Part of this Schedule referred to as "an order"), **then**, subject to paragraph 5, he shall before he makes the order—

(a) publish, in such manner as he thinks fit and not less than twenty-six 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 Minister about the proposed order before a date specified in the notice (which must be after the expiration of the period of twenty-eight days beginning with the date of first publication of the notice); and

(b) consider any representations made with respect to the notice within the period specified.

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.

3. Without prejudice to the power to make a further order and subject to paragraph 4, an order ceases to have effect at the expiration of a period specified in the order which must be no longer than twelve months beginning with the date on which the order comes into force.

4. An order may revoke another 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 original order.

5. Paragraphs 1 and 2 do not apply to an order if the order contains a statement that in the opinion of the Minister 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—

"notice" means a prohibition notice;

"notification" means a notification in writing;

"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 Minister proposes to serve a notice in respect of any goods, then, subject to paragraph 14, he shall before he serves the notice serve on the trader a notification—

(a) stating that the Minister proposes to serve on him a notice in respect of the goods;

(b) specifying the goods in a manner sufficient to identify them and stating that, for the reasons set out in the notification, the Minister 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 Minister that the goods are safe but that if the trader intends to make such representations he must, before the expiration of the period of fourteen days beginning with the day when the notification is served on him, inform the Minister of his intention and indicate whether the representations are to be in writing only or both in writing and orally.

9. Subject to paragraph 14, the Minister shall not serve a notice on the trader in respect of any goods before the expiration of the period of fourteen days beginning with the day on which the Minister served on him a notification in pursuance of paragraph 8 relating to the goods; and if within that period the trader informs the Minister as mentioned in paragraph 8(c) then—

(a) the Minister shall not serve a notice on the trader in consequence of the notification before the expiration of the period of twenty-eight days beginning with the day aforesaid; and

(b) if during that period the trader makes to the Minister such written representations as are mentioned in paragraph 8(c) the Minister shall not serve a notice on the trader in consequence of the notification before the Minister has considered the report of a person appointed in pursuance of paragraph 10 in consequence of the representations.

10. Where, in consequence of the service on the trader of a notification in pursuance of paragraph 8, the trader informs the Minister as mentioned in paragraph 8(c) within the period so mentioned and makes to the Minister within that period or the fourteen days beginning with the end of that period such written representations as are so mentioned, the Minister shall—

(a) appoint a person to consider the written representations; and

(b) if the trader informed the Minister in pursuance of paragraph 8(c) that the representations would be both written and oral, inform the trader of the place and time (which must not be before the expiration of the fourteen days aforesaid and of seven days beginning with 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 Minister 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 paragraph 10 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 Minister about the representations and the proposed notice.

12. If at any time after the Minister has served a notification on the trader in pursuance of paragraph 8 the Minister decides not to serve a notice on him in consequence of a notification, the Minister shall inform him of the decision; and after the Minister informs him of the decision the notification and anything done in consequence of it in pursuance of the preceding paragraphs 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, 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 do not apply to a notice which contains a statement that the Minister 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 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 Minister considers that the goods are not safe; and

(b) state that the trader may, at such time as the trader thinks fit, make representation in writing to the Minister for the purpose of satisfying him that the goods are safe.

16. If the representations in writing about a notice are made by the trader to the Minister, the Minister shall consider the representations and either revoke the notice and inform the trader that he has revoked it or—

(a) appoint a person to consider the representations; and

(b) serve on the trader a notification stating that he may make to the person appointed oral representations for the purpose mentioned in paragraph 15 and specifying the place and time (which, except with the agreement of the trader, must not be before the expiration of twenty-one days beginning with the date of service of the notification) at which the oral representations may be made,

and the trader or his representatives 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.

17. The person appointed in pursuance of paragraph 16 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 statement made by witnesses in connection with oral representations, make a report (including recommendations) to the Minister about the representations and the notice in question.

18. Where the Minister has appointed a person in pursuance of paragraph 16 to consider any representations relating to a notice then, without prejudice to the operation of paragraphs 19 and 20, paragraphs 16 and 17 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 Minister for the purpose of satisfying him that the goods to which the notice relates are safe and, by virtue of paragraph 18, paragraph 16 does not apply to the representations, the Minister shall consider the representations and serve on the trader, before the expiration of one month beginning with the day when the Minister receives the representations, a notification stating—

(a) that the Minister will revoke the notice or vary it or declines to do so; or

(b) that the Minister 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

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twenty-one days beginning with the date of service of the notification) oral representations for the purpose, and the trader or his representative may at that place and time make to the person appointed oral representations for the purpose and may call and examine witnesses in connection with the representations.

20. The person appointed in pursuance of paragraph 19 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 statement made by witnesses in connection with the oral representations, make a report (including recommendations) to the Minister about the representations and the notice in question.

Miscellaneous

21. The Minister 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 Minister shall not have the power to vary a notice so as to make the effect of the notice more restrictive for the trader.

22. The Minister shall consider any report made to him in pursuance of paragraph 17 or 20 and, after considering the report, inform the trader of this decision with respect to the notice in question.

23. Where the Minister has appointed a time in pursuance of this part for oral representations, he may appoint a later time or future times for the representations; and where he does so references in this part 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 or in a statement made by a witness in connection with such oral representations, then, subject to the following paragraph, he is liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months; and it is hereby declared that the references above to written representations includes such written representations as are included in paragraph 19.

25. A person shall not be guilty of an offence under paragraph 24 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 Minister in pursuance of this Part to consider the representations in question and the disclosure was made in his report to the Minister about the representations or was for the purpose of criminal proceedings;

(b) the information was obtained by him otherwise than as a person so appointed and the disclosure was made as mentioned in section 33(3); or

(c) the disclosure was of publicised information.

PART III

Notice to Warn

26. If the Minister proposes to serve on a person a notice to warn in respect of any goods, the Minister shall, before he serves the notice, serve on the person a notification in writing—

(a) containing a draft of the notice and stating that the Minister proposes to serve on the person such a notice in the form of the draft; and

(b) stating that, for the reason set out in the notification the Minister 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 Minister that the goods are safe but that if the person intends to make such representations he must, before the expiration of the period of fourteen days beginning with the day when the notification is served on him, inform the Minister of his intentions and indicate whether the representations are to be in writing only or both in writing and orally.

27. Paragraphs 9 to 13, 21 and 23 to 25 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—

(a) the reference to paragraph 14 in paragraph 9, were omitted;

(b) for the references to paragraph 8 in paragraphs 9, 10, 12 and 13 there were substituted references to paragraph 26;

(c) in paragraph 13 for the words from "relate" onwards there were substituting the words "be less onerous than the draft of the notice contained in the notification";

(d) in paragraph 21 the words "or vary" and the words from "or as" onwards were omitted; and

(e) in paragraph 24 the words from "and it is" onwards were omitted and in that paragraph and paragraph 25 for the references to this Part there were substituting references to provisions of that Part as applied by this paragraph.

FOURTH SCHEDULE

Section 35

CERTIFICATION OF DESIGNATED INSPECTOR

(SECTION 35 OF THE CONSUMER PROTECTION AND SAFETY ACT)

Official Stamp

| | |
|-------------------------------------|----------------|
| This is to certify that..... | AFFIX PASSPORT |
| has been designated as an Inspector | SIZE |
| under section 35 of the Consumer | PHOTOGRAPH |
| Protection and Safety Act. | HERE |

.....
Signature of Inspector.

.....
Signature of Minister.