

CHAPTER 326D

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CHAPTER 326D

CONSUMER PROTECTION

An Act to make new provision for the protection and safety of consumers, and for connected purposes. 2002-20.

[16th January, 2003] Commence-
ment.
2003/1.

PART I

PRELIMINARY

1. This Act may be cited as the *Consumer Protection Act*.

Short title.

2. (1) In this Act, except so far as the context requires otherwise,

"business" includes a trade or profession and the activities of a professional or trade association or of a public authority;

Interpreta-
tion
generally.

"commencement date" means the date on which this Act comes into operation;

"the Commission" means the Fair Trading Commission established by section 3 of the *Fair Trading Commission Act*;

Cap. 326B.

"consumer" means an individual who

(a) acquires from a supplier goods or services of a kind ordinarily intended for private use or consumption;

(b) does not acquire the goods or services for the purpose of

(i) supplying them in trade or commerce; or

(ii) consuming them in the course of a process of production or manufacture; and

- (c) in the case of goods, does not acquire them for the purpose of repairing or treating in trade or commerce other goods or fixtures on land;

"consumer goods" means goods which are ordinarily intended for private use or consumption;

"distance selling regulations" means regulations under section 27;

"goods" includes substances, growing crops and things comprised in land by virtue of being attached to land, and any ship, aircraft or vehicle;

"the Minister" means the Minister responsible for Consumer Affairs;

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

"regulations" means regulations made under this Act;

"safety regulations" means regulations under section 38;

"services" is to be construed in accordance with subsection (3);

"substance" means any natural or artificial substance, whether in solid, liquid or gaseous form or in the form of a vapour, and includes substances that are comprised in or mixed with other goods;

"to supply" includes,

- (a) in relation to goods, to supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in relation to services, to provide, grant or confer;

"trade or commerce" means trade or commerce within Barbados or between Barbados and a place or places outside Barbados.

(2) Where it is alleged in any proceeding under this Act that a person was a consumer in relation to particular goods or services, it shall be presumed, unless the contrary is proved, that the person was a consumer in relation to those goods or services.

(3) A reference in this Act to the supply of services does not include a reference to the rendering of any services under a contract of employment; and for that purpose "contract of employment" means a contract of service or apprenticeship, whether it is express or implied, and, if it is express, whether it is oral or in writing.

PART II

UNFAIR CONTRACT TERMS

3. In this Part and the *Schedule*,

"consumer contract" means a contract between a supplier and a consumer where the contract is one

- (a) of which the proper law is the law of Barbados or to which section 10 applies; and
- (b) in which, where the subject-matter of the contract is goods, the goods are consumer goods;

"contract term" means a term in a consumer contract, being a term that has not been individually negotiated within section 4.

4. (1) A contract term is not individually negotiated for the purposes of this Part or the *Schedule* if it was drafted in advance and the consumer was not able to influence the substance of the term.

(2) Notwithstanding that a specific contract term or aspects of a specific contract term was or were in fact individually negotiated, the terms of the rest of the contract fall to be regarded as terms that have not been individually negotiated for the purposes of this Part if an assessment of the contract overall shows that the contract is a pre-formulated standard contract.

5. It is for a supplier who claims that a contract term was individually negotiated to show that it was.

Interpretation of this Part. Schedule.

Terms that have not been individually negotiated. Schedule.

Burden of proof.

ss.6-8

Written terms to be plain and intelligible.

6. (1) A supplier shall ensure that any written contract term is expressed in plain, intelligible language.

(2) If there is doubt about the meaning of a written contract term, the interpretation that is most favourable to the consumer shall prevail.

Unfair terms.

7. A contract term is unfair if, to the detriment of the consumer, it causes a significant imbalance in the rights of the supplier and the consumer.

Assessment of unfairness.

8. (1) In determining whether a contract term is unfair, consideration is to be given to the following:

- (a) the nature of the goods or services for which the contract was concluded;
- (b) all the other terms of the contract or of another contract on which it is dependent;
- (c) the interests of the supplier;
- (d) the interests of the particular class of consumers who are likely to adhere to the contract;
- (e) all the circumstances attending the conclusion of the contract at the time of its conclusion.

(2) In so far as a contract term is in plain, intelligible language, the assessment of its fairness shall not relate

- (a) to the definition of the main subject-matter of the contract; or
- (b) to the adequacy of the price or remuneration as against the goods or services supplied in exchange.

(3) Where it is asserted in any proceedings in reliance on this Part that a contract term is unfair, it is for the supplier to show that the contract term is not unfair.

(4) Without prejudice to the generality of subsection (1), a contract term which is described in the *Schedule* is unfair.

Schedule.

9. An unfair contract term is unenforceable against the consumer.

Effect of
unfair term.

10. (1) Where the proper law of a consumer contract would, but for a term in that contract that the proper law should be the law of some country other than Barbados (or a term to the like effect), be the law of Barbados, this Part applies to the contract notwithstanding that term.

Proper law.

(2) Where a consumer contract to which subsection (1) applies contains a term that purports to substitute, or has the effect of substituting, provisions of the law of some country other than Barbados for all or any of the provisions of this Part, this Part applies to the contract notwithstanding that term.

11. (1) A term of a consumer contract, including a term that is not set out in the contract but is incorporated in the contract by a term of the contract, is void if it purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying,

Application
of this Part.

(a) the application in relation to that contract of all or any of the provisions of this Part; or

(b) the exercise of a right conferred by such a provision.

(2) A term of a consumer contract is not to be taken as purporting to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with that provision.

PART III

UNFAIR TRADE PRACTICES

12. (1) A person shall not, in trade or commerce as a supplier, engage in conduct that is, or is likely to be, misleading or deceptive.

Misleading
or decep-
tive
conduct.

(2) Nothing in this Part is to be construed as limiting the generality of subsection (1).

False
representa-
tions.

- 13.** A person shall not, in trade or commerce as a supplier,
- (a) falsely represent that goods are of a particular standard, quality, grade, composition, style or model or have had a particular history or a particular previous use;
 - (b) falsely represent that services are of a particular standard, quality, value or grade;
 - (c) falsely represent that goods are new;
 - (d) falsely represent that a particular person has agreed to acquire goods or services;
 - (e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits that they do not have;
 - (f) represent that he has a sponsorship, approval or affiliation that he does not have;
 - (g) make false or misleading representations concerning the price of any goods or services;
 - (h) make false or misleading representations concerning the need for any goods, services, replacements or repairs, or concerning the availability of facilities for the repair of goods or the availability of spare parts for goods;
 - (i) make false or misleading representations concerning the place of origin of goods; or
 - (j) make false or misleading representations concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy relating to goods or services.

Offering
gifts and
prizes.

- 14.** A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply of goods or services, offer a gift, prize or other free item with the intention of not providing the gift, prize or other free item as offered.

15. A person shall not, in trade or commerce as a supplier, engage in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity, of goods. Misleading conduct in relation to goods.

16. A person shall not, in trade or commerce as a supplier, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity, of services. Misleading conduct in relation to services.

17. A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services, unless, Full cost to be stated in certain cases.

- (a) where the transaction is not a credit transaction, he also specifies the cash price of the goods or services;
- (b) where the transaction is a credit transaction, he also specifies
 - (i) the total sum to be paid for the goods or services;
 - (ii) the number of instalments by which payment is to be made;
 - (iii) the rate of interest that will be charged; and
 - (iv) the deposit, if any, that must be made.

18. (1) A person shall not, in trade or commerce as a supplier, supply goods to which more than one price is appended at a price that is greater than the lower, or lowest, of the prices in question. Dual pricing.

(2) In subsection (1), a reference to a price appended to goods includes a reference to a price

- (a) that is annexed or affixed to, or is written, printed, stamped or located on, or otherwise applied to, the goods or any band, ticket, covering, label, reel or thing used in connection with the goods;
- (b) that is used in connection with the goods or anything on which the goods are mounted for display or exposed for sale;

- (c) that is determined on the basis of anything encoded on or in relation to the goods;
- (d) that is published in relation to the goods in a catalogue available to the public if
 - (i) a time is specified in the catalogue as the time after which the goods will not be sold at that price and that time has not passed; or
 - (ii) in any other case, the catalogue may reasonably be regarded as not out-of-date; or
- (e) that is in any other way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods.

(3) Where a price appended to goods is written, stamped or located wholly or partly over another price, or other prices, appended to the goods, all the prices are, for the purposes of subsection (1), prices appended to the goods.

(4) It is a defence to a prosecution of a person for a contravention of this section that

- (a) the contravention in respect of which the prosecution was instituted was due to the act or default of another person (other than a director, employee or agent of the defendant), to an accident or to some other cause beyond the defendant's control; and
 - (b) the defendant had taken all reasonable precautions and exercised due diligence to avoid the contravention.
- (5) A price shall be disregarded for the purposes of this section if
- (a) the goods to which the price is appended are duty-free goods and the price is expressed in a currency other than Barbados currency; or
 - (b) the price was appended to the goods outside Barbados in relation to the supply of the goods outside Barbados.

(6) In this section "price" includes any representation that may reasonably be inferred to be a representation of a price.

19. (1) A person shall not, in trade or commerce as a supplier, advertise for supply at a special price goods or services that he does not intend to offer for supply, or that he has no reasonable grounds for believing that he can supply, at that price, for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement. Bait advertising.

(2) A person who has a limited stock of goods, or whose capacity to supply services is limited, does not contravene subsection (1) if he states in the advertisement mentioned in that subsection that his stock of the goods, or, as the case may be, his capacity to supply the services, is limited.

20. A person shall not, in trade or commerce as a supplier, induce a consumer to acquire goods or services under a contract by representing that the consumer will, after the contract is made, receive a rebate, commission or other benefit in return for giving the first-mentioned person the names of prospective customers or otherwise assisting that person to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after the contract is made. Referral selling.

21. A person shall not, in trade or commerce as a supplier, accept payment or other consideration for goods or services where at the time of the acceptance Falsely accepting payment.

- (a) he intends not to supply the goods or services; or
- (b) he intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

22. A person shall not, in trade or commerce as a supplier, make a false or misleading statement concerning the profitability or risk or any other material aspect of any business activity that he has represented as one that can be, or can be to a considerable extent, carried on at a person's place of residence. Misleading statements.

Pyramid
selling.

23. (1) A person shall not promote or operate a pyramid selling scheme.

(2) For the purposes of this section, the term "pyramid selling scheme" means a scheme

- (a) that provides for the supply of goods or services or both for reward; and
- (b) that, to many participants, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply goods or services; and
- (c) that is unfair, or is likely to be unfair, to many of the participants in that
 - (i) the financial rewards of many of the participants are dependent on the recruitment of additional participants; and
 - (ii) the number of additional participants that must be recruited to produce reasonable rewards to participants is either not attainable, or is not likely to be attained, by many of the participants.

(3) In subsection (2), "participants" means participants in the scheme.

Assertion
of right to
payment
prohibited
in certain
cases.

24. (1) A person shall not, in trade or commerce as a supplier, assert a right to payment from a consumer for unsolicited goods or services.

(2) A person shall not, in trade or commerce as a supplier, assert a right to payment from another person of a charge for the making in a directory of an entry relating to that other person, unless the first-mentioned person knows or has reasonable cause to believe that the other person has authorised the making of the entry.

(3) A person is not liable to make any payment to a supplier, and is entitled to recover against a supplier any payment made by the person to the supplier, in full or part satisfaction of a charge for the making of an unauthorised entry in a directory.

(4) For the purposes of this section, a person shall be deemed to assert a right to a payment from another person for unsolicited goods or services or of a charge for the making of an unauthorised entry in a directory if the first-mentioned person

- (a) makes a demand for the payment, or asserts a present or prospective right to the payment;
- (b) threatens to bring any legal proceeding with a view to obtaining the payment;
- (c) places or causes to be placed the name of the other person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment;
- (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
- (e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services or the charge for the making of the entry and not stating as prominently, or more prominently, that no claim is made to the payment, or to payment of the price or charge, as the case may be.

(5) A person shall not be taken for the purposes of this section to have authorised the making of an entry in a directory unless

- (a) a document authorising the making of the entry has been signed by him or by another person authorised by him;
- (b) a copy of the document has been given to him before the right to payment of a charge for the making of the entry is asserted; and
- (c) the document specifies
 - (i) the name of the directory;
 - (ii) the name and address of the person publishing the directory;
 - (iii) particulars of the entry;

(iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated; and

(v) the duration of the authorisation.

(6) Subsections (2) and (3) do not apply to or in relation to a payment if the payment relates to

(a) a contract that was made before the commencement date; or

(b) a contract that is made on or after that date by reason of the acceptance after that date of an offer that was made before that date.

(7) In a proceeding against a person in respect of a contravention of this section

(a) in the case of a contravention constituted by asserting a right to payment from a person for unsolicited goods or services, the burden lies on the defendant of proving that he had reasonable cause to believe that there was a right to payment;

(b) in the case of a contravention constituted by asserting a right to payment from a person of a charge for the making of an entry in a directory, the burden lies on the defendant of proving that the defendant knew or had reasonable cause to believe that the person had authorised the making of the entry.

(8) In this section, "making", in relation to an entry in a directory, means including or arranging for the inclusion of the entry.

Liability of recipient of unsolicited goods.

25. (1) A person to whom unsolicited goods are supplied by a person in trade or commerce as a supplier is not liable to make any payment for the loss of or damage to the goods other than loss or damage resulting from the doing by the first-mentioned person of a wilful and unlawful act in relation to the goods during the period specified in subsection (5).

(2) Subject to subsection (3), where, on or after 16th January, 2003, a supplier sends unsolicited goods to a person,

- (a) neither the supplier nor any person claiming under the supplier is entitled after the expiration of the time specified in subsection (5) to take action for the recovery of the goods from the person to whom the goods were sent; and
 - (b) upon the expiration of that time, the goods become by virtue of this section the property of the person to whom the goods were sent freed and discharged from all liens and charges of any description.
- (3) Subsection (2) does not apply to or in relation to unsolicited goods sent to a person if
- (a) the person has during the period specified in subsection (5) unreasonably refused to permit the sender or the owner of the goods to take possession of the goods;
 - (b) the sender or the owner of the goods has within that time taken possession of the goods; or
 - (c) the goods were received by the person in circumstances in which he knew, or might reasonably be expected to have known, that the goods were not intended for him.
- (4) The supplier is liable to pay to the recipient of unsolicited goods such reasonable costs as are incurred in respect of the storage of those goods.
- (5) The period referred to in subsections (1), (2) and (3) is,
- (a) if the person who receives the unsolicited goods gives notice with respect to the goods to the sender in accordance with subsection (6),
 - (i) the period of one month next following the day on which the notice is given; or
 - (ii) the period of 3 months next following the day on which the person received the goods,
- whichever first expires;

- (b) in any other case, the period of 3 months next following the day on which the person received the goods.
- (6) A notice under subsection (5) shall be in writing and shall
 - (a) state the name and address of the person who received the goods;
 - (b) state the address at which possession may be taken of the goods if it is an address other than that of that person; and
 - (c) contain a statement to the effect that the goods are unsolicited goods.

Contraven-
tion of this
Part.

26. (1) Subject to this section, a person who contravenes any requirement or prohibition contained in any provision of sections 12 to 24 applying to him is guilty of an offence.

(2) Subject to subsection (3), in a prosecution under this section it is a defence if the defendant proves

- (a) that the contravention in respect of which the proceeding was instituted was due to a mistake, to reliance on information supplied by another person, to the act or default of another person, to an accident or to some other cause beyond his control; and
- (b) that he took reasonable precautions and exercised due diligence to avoid the contravention.

(3) If a defence provided by subsection (2) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the court, entitled to rely on that defence unless he has, not later than 7 days before the day on which the hearing of the proceeding commenced, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his possession.

(4) In a proceeding under this section in relation to a contravention of a provision of this Part committed by the publication of an advertisement, it is a defence if the defendant proves 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 did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Part.

PART IV

CONTROL OF DISTANCE SELLING

27. (1) The Minister may, after consulting the Commission, by regulations under this section ("distance selling regulations") make such provision as he considers appropriate for the purpose of protecting consumers in relation to distance contracts.

Distance
selling
regulations.

(2) Without prejudice to the generality of subsection (1), distance selling regulations may contain provisions

- (a) regulating the advertising and marketing (including advertising and marketing by mail-order or doorstep selling) of business that is to be conducted by way of distance contracts;
- (b) with respect to the information that must be supplied to persons to whom distance contracts are offered;
- (c) with respect to the transparency, clarity and fairness of distance contracts;
- (d) requiring information to be given to any such person as may be determined by or under the regulations for the purpose of enabling that person to exercise any function conferred on him by the regulations;
- (e) for the resolution of disputes and differences between parties to distance contracts, including resolution of such disputes and differences otherwise than by a court;
- (f) creating summary offences for contraventions of the regulations and, notwithstanding section 19(10) of the *Interpretation Act*, imposing in respect of conviction of any such offence,

Cap. 1.

- (i) in the case of an individual, a fine of \$10 000 or imprisonment for a term of 2 years, or both;
 - (ii) in the case of a person other than an individual, a fine of \$100 000.
- (3) Without prejudice as aforesaid, distance selling regulations may
- (a) contain different provisions for different cases;
 - (b) provide for exemptions from or exceptions to any provisions of the regulations;
 - (c) contain such supplemental, consequential and transitional provisions as the Minister considers appropriate.
- (4) In this section,

"distance contract" means a contract concerning goods or services concluded between a supplier and a consumer under a scheme operated by the supplier, who, for the purposes of the contract, makes exclusive use of one or more means of distance communication up to and including the point at which the contract is concluded;

"means of distance communication" means a means which, without the simultaneous presence of the supplier and the consumer, may be used for the conclusion of a contract between the parties.

PART V

PRODUCT LIABILITY

Interpreta-
tion of this
Part.

28. (1) In this Part,

"agricultural produce" means any produce, whether of the soil or otherwise, of stock-farming or of fisheries;

"to manufacture", in relation to animals or agricultural produce, includes to rear or grow;

"producer", in relation to a product, means

- (a) the person who manufactured the product;
- (b) in the case of a substance which has been won or abstracted, the person who won or abstracted the substance;
- (c) in the case of a product which has not been won or abstracted but initial characteristics of which are attributable to an industrial or other process having been carried out, for example, in relation to agricultural produce, the person who carried out that process;

"product" means any goods, including animals or agricultural produce reared or grown for supply, and, subject to subsection (2), includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise.

(2) For the purposes of this Part, a person who supplies any product in which other products are comprised, whether by virtue of being component parts or raw materials or otherwise, shall not be treated by reason only of his supply of that product as supplying any of the other products so comprised.

29. (1) Subject to this Part, where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) applies is liable for the damage. Liability for defects.

(2) This subsection applies to

- (a) the producer of the product;
- (b) any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product;
- (c) any person who has imported the product into Barbados in order, in the course of any business of his, to supply it to another.

(3) Subject to this Part, where any damage is caused wholly or partly by a defect in a product, any person who supplied the product, whether to the person who suffered the damage, to the producer of any product in which the product in question is comprised or to any other person, is liable for the damage if

- (a) the person who suffered the damage requests the supplier to identify one or more of the persons, whether still in existence or not, to whom subsection (2) applies in relation to the product;
- (b) that request is made within a reasonable time after the damage occurs; and
- (c) the supplier fails, within a reasonable time after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

(4) Where two or more persons are liable by virtue of this Part for the same damage, their liability is joint and several.

(5) This section is without prejudice to any liability arising otherwise than by virtue of this Part.

Defect
inferred.

30. (1) Subject to this section, there is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes "safety", in relation to a product, includes safety with respect to products comprised in that product and safety in the context of risks of damage to property as well as in the context of risks of death or personal injury.

(2) In determining for the purposes of subsection (1) what persons generally are entitled to expect in relation to a product, all the circumstances shall be taken into account, including

- (a) the manner in which and purposes for which the product has been marketed, its get-up, the use of any mark in relation to the product and any instructions for, or warnings with respect to, doing or refraining from doing anything with or in relation to the product;

(b) what might reasonably be expected to be done with or in relation to the product; and

(c) the time when the product was supplied by its producer to another;

and nothing in this section requires a defect to be inferred from the fact alone that the safety of a product which is supplied after that time is greater than the safety of the product in question.

31. (1) Subject to this section, in this Part "damage" means death or personal injury to any person or any loss of or damage to any property, including land. Damage giving rise to liability.

(2) A person is not liable under section 29 for any damage to any property which, at the time of the damage, is not

(a) of a description of property ordinarily intended for private use, occupation or consumption; and

(b) intended by the person suffering the damage mainly for his own private use, occupation or consumption.

(3) In determining for the purposes of this Part who has suffered any damage to property and when any such damage occurred, the damage shall be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge of the material facts about the damage.

(4) For the purposes of subsection (3), the material facts about any damage to any property are such facts about the damage as would lead a reasonable person with an interest in the property to consider the damage sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(5) For the purposes of subsection (3), a person's knowledge includes knowledge which he might reasonably have been expected to acquire

(a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek;

but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable by him only with the help of expert advice unless he has failed to take all reasonable steps to obtain and, where appropriate, to act on that advice.

Application
of certain
enactments.

32. (1) Any damage for which a person is liable under section 29 shall be deemed to have been caused

Cap. 193A.

(a) for the purposes of the *Accident Compensation (Reform) Act*, by that person's wrongful act, fault or neglect;

Cap. 205.

(b) for the purposes of the *Law Reform (Miscellaneous Provisions) Act* by that person's wrongful or negligent act or omission.

(2) Where

(a) a person's death is caused wholly or partly by a defect in a product, or a person dies after suffering damage which has been so caused;

(b) a request such as mentioned in subsection (3)(a) of section 29 is made to a supplier of the product by that person's personal representatives or, in the case of a person whose death is caused wholly or partly by the defect, by any dependant or relative of that person; and

(c) the conditions specified in paragraphs (b) and (c) of that subsection are satisfied in relation to that request,

Cap. 193A.

Cap. 205.

this Part shall have effect for the purposes of the *Accident Compensation (Reform) Act* and the *Law Reform (Miscellaneous Provisions) Act* as if liability of the supplier to that person under that subsection did not depend on that person having requested the supplier to identify certain persons or on the said conditions having been satisfied in relation to a request made by that person.

Cap. 195.

Cap. 193A.

(3) Where any damage is caused partly by a defect in a product and partly by the fault of the person suffering the damage, the *Contributory Negligence Act* and section 4 of the *Accident Compensation (Reform) Act* have effect as if the defect were the fault of every person liable by virtue of this Part for the damage caused by the defect.

33. The liability of a person by virtue of this Part to a person who has suffered damage caused wholly or partly by a defect in a product, or to a dependant or relative of such a person, shall not be limited or excluded by any contract term, by any notice or by any other provision.

Prohibition on exclusions from liability.

34. In any proceedings under this Part against any person, in this section referred to as "the person proceeded against", in respect of a defect in a product it is a defence for him to show

Defences in civil proceedings.

- (a) that the defect is attributable to compliance with a requirement imposed by or under any enactment;
- (b) that the person proceeded against did not at any time supply the product to another;
- (c) that the following conditions are satisfied, that is to say:
 - (i) that the only supply of the product to another by the supplier was otherwise than in the course of a business of the supplier;
 - (ii) that section 29(2) does not apply to the supplier, or applies to him by virtue only of things done otherwise than with a view to profit;
- (d) that the defect did not exist in the product at the relevant time;
- (e) that the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control; or
- (f) that the defect
 - (i) constituted a defect in a product, in this paragraph referred to as "the subsequent product", in which the product in question has been comprised; and
 - (ii) was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

Application to Crown. **35. (1)** Subject to subsection (2), this Part binds the Crown.

Cap. 197. (2) The Crown shall not, as regards the Crown's liability by virtue of this Part, be bound by this Part further than the Crown is made liable in tort or in reparation under the *Crown Proceedings Act*.

PART VI

CONSUMER SAFETY

Interpretation of this Part. **36. (1)** In this Part,

"consumer goods" has the meaning given by section 37(6);

"safe", in relation to any goods, means such that there is no risk, or no risk, apart from one reduced to a minimum, that any of the following will (whether immediately or after a definite or indefinite period) cause the death of, or any personal injury to, any person whatsoever, that is to say:

- (a) the goods;
- (b) the keeping, use or consumption of the goods;
- (c) the assembly of any of the goods which are, or are to be, supplied unassembled;
- (d) the emission or leakage from the goods or, as a result of the keeping, use or consumption of the goods, from anything else;
- (e) the reliance on the accuracy of any measurement, calculation or other reading made by, or by means of, the goods.

(2) In the definition of "safe" in subsection (1) references to the keeping, use or consumption of any goods are references to

- (a) the keeping, use or consumption of the goods by the persons by whom, and in all or any of the ways or circumstances in which, they might reasonably be expected to be kept, used or consumed; and

- (b) the keeping, use or consumption of the goods either alone or in conjunction with other goods in conjunction with which they might reasonably be expected to be kept, used or consumed.

37. (1) A person shall not

- (a) supply any consumer goods which fail to comply with the general safety requirement;
- (b) offer or agree to supply any such goods; or
- (c) expose or possess any such goods for supply.

General
safety
require-
ment.

(2) For the purposes of this section, consumer goods fail to comply with the general safety requirement if they are not reasonably safe having regard to all the circumstances, including

- (a) the manner in which, and purposes for which, the goods are being or would be marketed, the get-up of the goods, the use of any mark in relation to the goods and any instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the goods;
- (b) any standards of safety published by any person or authority, and having legal effect as published, either for goods of a description which applies to the goods in question or for matters relating to goods of that description; and
- (c) the existence of any means by which it would have been reasonable for the goods to have been made safer.

(3) For the purposes of this section, consumer goods shall not be regarded as failing to comply with the general safety requirement in respect of

- (a) anything which is shown to be attributable to compliance with any requirement imposed by or under any enactment; or

- (b) any failure to do more in relation to any matter than is required by
 - (i) any safety regulations imposing requirements with respect to that matter;
 - (ii) any standards of safety prescribed for the purposes of this section and imposing requirements with respect to that matter; or
 - (iii) any provision of any enactment imposing such requirements with respect to that matter as are designated for the purposes of this subsection by any such enactment.
- (4) In any proceedings against a person for an offence under this section in respect of any goods, it is a defence for him to show
 - (a) that he reasonably believed that the goods would not be used or consumed in Barbados;
 - (b) that both of the following conditions are satisfied:
 - (i) that he supplied the goods, offered or agreed to supply them or, as the case may be, exposed or possessed them for supply in the course of carrying on a retail business;
 - (ii) that, at the time he supplied the goods or agreed or offered to supply them, or exposed or possessed them for supply, he neither knew nor had reasonable grounds for believing that the goods failed to comply with the general safety requirement; or
 - (c) that the terms on which he supplied the goods or agreed or offered to supply them or, in the case of goods which he exposed or possessed for supply, the terms on which he intended to supply them provided for, or contemplated, the acquisition of an interest in the goods by the persons supplied or to be supplied.
- (5) For the purposes of subsection (4)(b), goods are supplied in the course of carrying on a retail business if

-
- (a) whether or not they are themselves acquired for a person's private use or consumption, they are supplied in the course of carrying on a business of making a supply of consumer goods available to persons who generally acquire them for private use or consumption; and
- (b) the descriptions of goods the supply of which is made available in the course of that business do not, to a significant extent, include manufactured or imported goods which have not previously been supplied in Barbados.
- (6) In this section the expression "consumer goods" does not include aircraft other than hang-gliders.
- (7) A person who contravenes this section is guilty of an offence.

38. (1) The Minister may, after consulting the Barbados National Standards Institution, by regulations under this section ("safety regulations"), make such provisions as he considers appropriate for the purposes of section 37(3) and for the purpose of securing

- (a) that goods to which this section applies are safe;
- (b) that goods to which this section applies which are unsafe, or would be unsafe in the hands of persons of a particular description, are not made available to persons generally or, as the case may be, to persons of that description; and
- (c) that appropriate information is, and inappropriate information is not, provided in relation to goods to which this section applies.
- (2) Without prejudice to the generality of subsection (1), safety regulations may contain provisions
- (a) with respect to the performance, composition or contents, design, construction, finish or packaging of goods to which this section applies, and with respect to other matters relating to such goods;
- (b) with respect to the giving, refusal, alteration or cancellation of approvals of such goods, of descriptions of such goods or of standards for such goods;

- (c) with respect to the conditions that may be attached to any approval given under the regulations;
- (d) prescribing the fees to be paid on the giving or alteration of any approval under the regulations and on the making of an application for such an approval or alteration;
- (e) with respect to appeals against refusals, alterations and cancellations of approval given under the regulations and against the conditions contained in such approvals;
- (f) for requiring goods to which this section applies to be approved under the regulations, or to conform to the requirements of the regulations or to descriptions or standards specified in or approved by or under the regulations;
- (g) with respect to the testing or inspection of goods to which this section applies, including provision for determining the standards to be applied in carrying out any test or inspection;
- (h) with respect to the ways of dealing with goods of which some or all do not satisfy a test required by or under the regulations or a standard connected with a procedure so required;
- (i) requiring a mark, warning or instruction or any other information relating to goods to be put on or to accompany the goods or to be used or provided in some other manner in relation to the goods, and for securing that inappropriate information is not given in relation to goods either by means of misleading marks or otherwise;
- (j) prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods to which this section applies and component parts and raw materials for such goods;
- (k) requiring information to be given to any such person as may be determined by or under the regulations for the purpose of enabling that person to exercise any function conferred on him by the regulations.

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- (3) Without prejudice as aforesaid, safety regulations may
- (a) contain different provisions for different cases;
 - (b) provide for exemptions from any provisions of the regulations;
 - (c) contain such supplemental, consequential and transitional provisions as the Minister considers appropriate.
- (4) Safety regulations shall not provide for any contravention of the regulations to be an offence.
- (5) This section applies to goods other than aircraft, but does not apply to hang-gliders.

39. (1) Where safety regulations prohibit a person from supplying or offering or agreeing to supply any goods or from exposing or possessing any goods for supply, that person is guilty of an offence if he contravenes the prohibition. Contra-
ven-
tion of
safety
regulations.

(2) Where safety regulations require a person who makes or processes any goods in the course of carrying on a business

- (a) to carry out a particular test or use a particular procedure in connection with the making or processing of the goods with a view to ascertaining whether the goods satisfy any requirements of such regulations; or
- (b) to deal or not to deal in a particular way with a quantity of the goods of which the whole or part does not satisfy such a test or does not satisfy standards connected with such a procedure,

that person is guilty of an offence if he does not comply with the requirement.

(3) If a person contravenes a provision of safety regulations which prohibits or requires the provision, by means of a mark or otherwise, of information of a particular kind in relation to goods, he is guilty of an offence.

(4) Where safety regulations require any person to give information to another for the purpose of enabling that other to exercise any function, that person is guilty of an offence if

- (a) he fails without reasonable cause to comply with the requirement; or
- (b) in giving the information which is required of him
 - (i) he makes any statement which he knows is false in a material particular; or
 - (ii) he recklessly makes any statement which is false in a material particular.

PART VII

RECALL OF GOODS

Compulsory recall of goods.

- 40.** (1) Subject to sections 43 and 45, where
- (a) a person, in this section referred to as the "supplier", in trade or commerce supplies consumer goods on or after 16th January, 2003; and
 - (b) it appears to the Minister that the goods are goods of a kind which will or may cause injury to any person and that the supplier has not taken satisfactory action to prevent the goods causing injury to any person,

the Minister may, by notice in writing published in the *Gazette*, require the supplier to do one or more of the following:

- (aa) take action within the period specified in the notice to recall the goods;
- (bb) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following:
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods specified in the notice;

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- (ii) the circumstances, being circumstances specified in the notice, in which the use of the goods is dangerous;
 - (iii) procedures for disposing of the goods specified in the notice;
- (cc) inform the public, or a class of persons specified in the notice, in the manner and within the period specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
- (i) except where the notice specifies a dangerous characteristic of the goods, repair the goods;
 - (ii) replace the goods;
 - (iii) refund to a person to whom the goods were supplied, whether by the supplier or by another person, the price of the goods,

within the period specified in the notice.

(2) The Minister may by notice in writing published in the *Gazette* give directions as to the manner in which the supplier is to carry out a recall of goods required under subsection (1).

(3) Where the supplier under subsection (1) undertakes to repair goods, the supplier shall cause the goods to be repaired so that any defect in the goods specified in the notice under subsection (1) is remedied.

(4) Where the supplier under subsection (1) undertakes to replace goods, the supplier shall replace the goods with like goods which, if a defect in, or a dangerous characteristic of, the first-mentioned goods was specified in the notice under subsection (1), do not have that defect or characteristic.

(5) Where the supplier under subsection (1) undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(6) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under subsection (1), a person who has supplied or supplies any of the recalled goods to another person outside Barbados shall, as soon as practicable after the supply of those goods, give a notice in writing to that other person

- (a) stating that the goods are subject to recall; and
- (b) if the goods contain a defect or have a dangerous characteristic, setting out the nature of that defect or characteristic.

(7) Where a person is required under subsection (6) to give a notice in writing to another person, the first-mentioned person shall, within 10 days after giving that notice, provide the Minister with a copy of that notice.

(8) A person who contravenes subsection (7) is guilty of an offence.

Compliance with goods recall notice.

41. Where a notice under section 40(1) is in force in relation to a person, he

- (a) shall comply with the requirements and directions in the notice; and
- (b) shall not, in trade or commerce,
 - (i) where the notice specifies a defect in, or a dangerous characteristic of, the goods, supply goods of the kind to which the notice relates which have that defect or characteristic;
 - (ii) in any other case, supply goods of the kind to which the notice relates.

Loss or damage caused by contravention of goods recall notice.

42. Where

- (a) a person contravenes section 41 by
 - (i) supplying goods of a kind in relation to which a notice under section 40(1) is in force; or
 - (ii) failing to comply with the requirements of such a notice; and

- (b) another person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods,

that other person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods, or by the failure of the first-mentioned person to comply with the notice, as the case may be.

43. (1) Subject to section 45, where the Minister proposes to publish a notice under section 40(1) in relation to goods of a particular kind, the Minister shall prepare

Conference to be held in certain cases.

- (a) a draft of the notice that he proposes to publish; and
 (b) a summary of his reasons,

and shall, by notice in writing published in the *Gazette*, invite any person, in this section referred to as a "supplier", who supplied or proposes to supply goods of that kind to notify the Minister, within the period, in this section referred to as "the relevant period", of 10 days commencing on the day specified in the last-mentioned notice, being not earlier than the day on which that notice is published in the *Gazette*, whether the supplier wishes the Minister to hold a conference in relation to the proposed publication of the first-mentioned notice.

(2) A notice published under subsection (1) shall set out a copy of the draft notice under section 40(1) and a copy of the summary of the reasons for the proposed publication of the notice.

(3) If no supplier notifies the Minister in writing within the relevant period, or within such longer period as the Minister allows, that the supplier wishes the Minister to hold a conference in relation to the proposed publication of the notice under section 40(1), the Minister shall proceed to take such action under section 40 as he thinks fit.

(4) If a supplier notifies the Minister in writing within the relevant period, or within such longer period as the Minister allows, that the supplier wishes the Minister to hold a conference in relation to the proposed publication of the notice under section 40(1), the Minister shall appoint a day (being not later than 14 days after the end of that period), time and place for the holding of the conference, and give notice of the day, time and place so appointed to each supplier who so notified the Minister.

(5) At a conference under this section

(a) the Minister or a person or persons nominated in writing by the Minister is or are entitled to be present;

(b) each supplier who notified the Minister in accordance with subsection (4) is entitled to be present or to be represented;

(c) any other person whose presence at the conference is considered by the Minister to be appropriate is entitled to be present or to be represented; and

(d) the procedure to be followed shall be as determined by the Minister.

(6) The Minister shall cause a record of proceedings at a conference under this section to be kept.

(7) The Minister shall, as far as is practicable, ensure that each person who, in accordance with subsection (5), is entitled to be present or who is representing such a person at a conference is given a reasonable opportunity at the conference to present his case and, in particular, to inspect any documents which the Minister proposes to consider for the purpose of making a decision after the conclusion of the conference, other than any document that contains particulars of a secret formula or process, and to make submissions in relation to those documents.

Action
after con-
clusion of
conference.

44. As soon as is practicable after the conclusion of a conference in relation to the proposed publication of a notice under section 40(1), the Minister shall proceed to consider what action he should take under section 40.

45. (1) Where it appears to the Minister that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Minister may, by notice in writing published in the *Gazette*, publish a notice in relation to the goods under section 40(1) without delay.

Exception in case of danger to public.

(2) Where the Minister publishes a notice in the *Gazette* under subsection (1)

- (a) in a case where the notice is published before the Minister takes any action under section 43(1) in relation to goods of a particular kind, section 43 does not apply in relation to the action that the Minister may take under section 40(1) in relation to goods of that kind; or
- (b) in any other case, any action taken by the Minister under section 43(1) in relation to goods of a particular kind ceases to have effect and, if a conference had, under section 43, been arranged or had commenced, the Minister may publish the notice under section 40(1) without regard to the action taken under section 43.

46. (1) Where the Minister or an officer authorised by the Minister for the purposes of this section, in this section referred to as an "authorised officer", has reason to believe that a person who, in trade or commerce, supplies consumer goods of a particular kind which will or may cause injury to any person is capable of furnishing information, producing documents or giving evidence relating to goods of that kind, the Minister or the authorised officer may, by notice in writing served on that person, require him

Power to obtain information, documents and evidence.

- (a) to furnish to the Minister or to an authorised officer, and within such reasonable time as is specified in the notice, any such information;
- (b) to produce to the Minister or to an authorised officer, in accordance with such reasonable requirements as are specified in the notice, any such documents; or
- (c) in person or by his representative to appear before the Minister or an authorised officer at such reasonable time and place as are specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

(2) Where an authorised officer has reason to believe that consumer goods will or may cause injury to a person, he may, for the purposes of ascertaining whether goods of that kind will or may cause injury to any person, enter any premises in or from which he has reason to believe that a person supplies goods of that kind in trade or commerce and

- (a) inspect goods of that kind;
- (b) take samples of goods of that kind;
- (c) inspect any documents relating to goods of that kind and make copies of, or take extracts from, those documents; or
- (d) inspect equipment used in the manufacturing, processing or storage of goods of that kind.

(3) The powers of an authorised officer under subsection (2) shall not be exercised except

- (a) pursuant to a warrant issued under subsection (5); or
- (b) in circumstances where the exercise of those powers is required without delay in order to protect life or public safety.

(4) An authorised officer may apply to a magistrate for the issue under subsection (5) of a warrant to exercise the powers of an authorised officer under subsection (2) in relation to premises.

(5) Where an application is made to a magistrate under subsection (4), he may issue a warrant authorising an authorised officer named in the warrant, with such assistance as the officer thinks necessary and if necessary by force, to enter the premises specified in the warrant and to exercise the powers of an authorised officer under subsection (2) in relation to those premises.

- (6) A magistrate shall not issue a warrant under subsection (5) unless
 - (a) an affidavit has been furnished to the magistrate setting out the grounds on which the issue of the warrant is being sought;

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- (b) the applicant or some other person has given to the magistrate such further information (if any) as he may require concerning the grounds on which the issue of the warrant is being sought; and
- (c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (7) A warrant issued under subsection (5) shall
- (a) specify the purpose for which the warrant is issued;
- (b) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) include a description of the kind of goods authorised to be inspected or sampled; and
- (d) specify a day, not being later than 7 days after the day on which the warrant is issued, at the end of which the warrant ceases to have effect.
- (8) Where an authorised officer takes samples under subsection (2)(b), he shall pay a reasonable price for the goods sampled.
- (9) A person who
- (a) refuses or fails to comply with a notice under this section to the extent that he is capable of complying with it; or
- (b) in purported compliance with such a notice furnishes information or gives evidence that, to his knowledge, is false or misleading in a material particular,
- is guilty of an offence.
- (10) A person who refuses or fails to provide an authorised officer acting in accordance with subsection (2) with all reasonable facilities and assistance for the effective exercise of the authorised officer's powers under that subsection is guilty of an offence.

(11) Any information furnished or evidence given by a person under this section, any document produced by a person under this section, and any information, evidence or document obtained under this section, is not admissible in evidence against him

- (a) in any proceedings instituted by him; or
- (b) in any other proceedings, other than proceedings against him for a contravention of a provision of this section.

Voluntary recall.

47. (1) Where a person voluntarily takes action to recall goods because the goods will or may cause injury to any person, he shall, within 2 days after taking that action, give a notice in writing to the Minister

- (a) stating that the goods are subject to recall; and
- (b) setting out the nature of the defect in, or dangerous characteristic of, the goods.

(2) A person who contravenes subsection (1) is guilty of an offence.

Suppliers to be given notice in certain cases.

48. (1) Where the Minister publishes a notice in writing in the *Gazette* under section 43(1) or 45(1), he shall, within 2 days after the publication of that notice in the *Gazette*, or, if it is not practicable to do so within that period, as soon as practicable after the end of that period, either

- (a) cause a copy of the notice to be given to each person who, to the knowledge of the Minister, supplies goods of the kind to which the notice relates; or
- (b) cause a copy of the notice to be published in every local newspaper circulating in Barbados.

(2) A failure to comply with subsection (1) in relation to a notice does not invalidate the notice.

Certain action not to affect insurance contracts.

49. The liability of an insurer under a contract of insurance with a person, being a contract relating to

- (a) the recall of goods supplied or proposed to be supplied by that person; or

- (b) that person's liability with respect to possible defects in goods supplied or proposed to be supplied by that person,

shall not be affected by reason only that that person gives to the Minister or to a public officer information relating to any goods supplied or proposed to be supplied by that person.

PART VIII

INDUSTRY CODES

50. In this Part,

"applicable industry code", in relation to a person who is a participant in an industry, means

Interpretation of this Part.

- (a) the prescribed provisions of any mandatory industry code relating to the industry; or
- (b) the prescribed provisions of any voluntary industry code relating to the industry that bind that person,

as the case may be;

"consumer", in relation to an industry, means a consumer of goods or services supplied by participants in that industry;

"industry" includes franchising, and franchisors and franchisees are participants in the industry of franchising, whether or not they are also participants in another industry;

"industry code" means a code regulating the conduct of participants in an industry towards other participants in the industry or towards consumers in the industry, and "mandatory" and "voluntary", in relation to an industry code or specified provisions of such a code, means respectively a code or specified provisions of a code that is or are declared by regulations under section 52 to be mandatory or voluntary, as the case may be, in relation to that industry;

"participant" means participant as a supplier.

Contra-
ven-
tion of
industry
codes.

51. A participant in an industry shall not, in trade or commerce, contravene an applicable industry code.

Regulations
relating to
industry
codes.

52. The Commission may, with the approval of the Minister, make regulations

- (a) prescribing an industry code, or specified provisions of an industry code, for the purposes of this Part;
- (b) declaring an industry code, or specified provisions of an industry code, to be mandatory or voluntary;
- (c) for a voluntary industry code, or specified provisions of a voluntary industry code, specifying
 - (i) the method by which a person is bound by the code or those provisions; and
 - (ii) the method by which a person ceases to be so bound, whether by reference to provisions of the code or otherwise;
- (d) making such provision as the Commission thinks fit for the registering of persons bound or otherwise affected by an industry code;
- (e) creating for contraventions of an applicable industry code summary offences punishable as mentioned in section 61(1)(c).

Binding
force of
industry
codes.

53. For the purposes of this Part, a voluntary industry code, or provisions of such a code, binds or bind a person who has agreed, as prescribed, to be bound by the code or those provisions and who has not subsequently ceased, as prescribed, to be bound by it or them.

PART IX

ADMINISTRATION AND ENFORCEMENT

54. (1) It is the duty of the Commission

- (a) to administer this Act; and
- (b) to enforce the provisions of this Act.

Fair
Trading
Commis-
sion to
administer
and enforce
this Act.

(2) For the purposes of its duty under subsection (1)(b), the Commission may institute and carry on such proceedings in respect of contraventions of the provisions of this Act as may be necessary to ensure observance of those provisions; and any officer of the Commission, if so authorised by the Commission, may institute and carry on any such proceedings on behalf of the Commission, whether or not he is an attorney-at-law.

(3) Without prejudice to any other power that the Commission has towards the carrying out of its duty under subsection (1), the Commission has the powers conferred on the Commission by sections 55 to 59.

55. (1) The Commission may

- (a) serve on any person a notice (a "prohibition notice") prohibiting that person, except with the Commission's consent, from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, any relevant goods which the Commission considers are unsafe and which are described in the notice;
- (b) serve on any person a notice (a "warning notice") requiring that person at his own expense to publish, in a form and manner and on occasions specified in the notice, a warning about relevant goods which the Commission considers are unsafe, being goods which that person supplies or has supplied and which are described in the notice.

Power of
Commis-
sion to issue
prohibition
notices and
warning
notices.

(2) Regulations may make provision with respect to prohibition notices and warning notices, and may prescribe the manner in which information is to be given to any person.

(3) A consent given by the Commission for the purposes of a prohibition notice or a warning notice may impose such conditions on the doing of anything for which the consent is required as the Commission considers appropriate.

(4) In this section "relevant goods" means, in relation to a prohibition notice or a warning notice, any goods to which section 38 applies.

(5) A person who contravenes a prohibition notice or a warning notice is guilty of an offence.

Power of
Commission to
obtain
informa-
tion.

56. (1) If in pursuance of its duty under section 54(1)(a) the Commission considers that, for the purpose of deciding whether

- (a) regulations need to be made, varied or revoked; or
- (b) a prohibition notice needs to be served, varied or revoked; or
- (c) a warning notice needs to be served or revoked,

the Commission needs information which another person is likely to be able to furnish, it may serve on that other person a notice under this section.

(2) A notice served on a person under this section may require that person

- (a) to furnish to the Commission, within a period specified in the notice, such information as is so specified;
- (b) to produce such records as are specified in the notice at a time and place so specified, and to permit a person appointed by the Commission for the purpose to take copies of the records at that time and place.

(3) A person is guilty of an offence if he

- (a) fails, without reasonable cause, to comply with a notice served on him under this section; or

- (b) in purporting to comply with a requirement which by virtue of paragraph (a) of subsection (2) is contained in such a notice
 - (i) furnishes information which he knows is false in a material particular; or
 - (ii) recklessly furnishes information which is false in a material particular.

57. (1) The Commission may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Commission has a function under this Act.

Power of Commission to accept and enforce undertakings.

(2) A person who gave an undertaking under subsection (1) may withdraw or vary the undertaking at any time, but only with the consent of the Commission.

(3) If the Commission considers that a person who gave such an undertaking has breached any of its terms, the Commission may apply to the court for an order under subsection (4).

(4) If on such an application the court is satisfied that a person who gave an undertaking under subsection (1) has breached a term of the undertaking, the court may make all or any of the following orders:

- (a) an order directing the person to comply with the terms of the undertaking;
- (b) an order directing the person to pay to the Government an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) an order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the court considers appropriate.

(5) In this section and sections 58, 59 and 60, "the court" means the High Court.

Injunctions. **58.** (1) The court may, on the application of the Commission, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following:

- (a) a contravention of any of the provisions of Part II, III, V, VI or VII of this Act;
- (b) any attempt to contravene such a provision;
- (c) aiding, abetting, counselling or procuring any other person to contravene such a provision;
- (d) inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to contravene such a provision;
- (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision;
- (f) conspiring with any other person to contravene such a provision.

(2) The court may at any time rescind or vary an injunction granted under this section.

(3) Where an application is made to the court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the court may,

- (a) if it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
- (b) if in the opinion of the court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,

whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.

(4) Where an application is made to the court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the court may,

- (a) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
- (b) if in the opinion of the court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,

whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

59. Where, on the application of the Commission, the court is satisfied that a person has engaged in conduct constituting a contravention of any of the provisions of Part II, III, V, VI or VII of this Act, the court may, whether or not that person has previously engaged in such conduct, make either or both of the following orders:

Orders to disclose information etc.

- (a) an order requiring that person, or any other person involved in the contravention, to disclose, at that person's own expense, to the public, or to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that person has access;
- (b) an order requiring that person, or any other person involved in the contravention, to publish, at that person's own expense, in such manner and at such times as are specified in the order, corrective statements the terms of which are specified in, or are to be determined in accordance with, the order.

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Other
orders.

60. (1) Where, in any proceedings under this Part of this Act, the court finds that a person, whether or not that person is a party to the proceedings, has suffered, or is likely to suffer, loss or damage by conduct of any other person that constitutes or would constitute

- (a) a contravention of any of the provisions of Part II, III, V, VI or VII of this Act;
- (b) aiding, abetting, counselling, or procuring the contravention of such a provision;
- (c) inducing by threats, promises or otherwise the contravention of such a provision;
- (d) being in any way directly or indirectly knowingly concerned in, or party to, the contravention by any other person of such a provision; or
- (e) conspiring with any other person to contravene such a provision,

the court may (whether or not it grants an injunction or makes any other order under this Part of this Act) make all or any of the orders referred to in subsection (2).

(2) For the purposes of subsection (1), the court may make the following orders:

- (a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct referred to in subsection (1), or of a collateral arrangement relating to such a contract, to be void and, if the court thinks fit, to have been void *ab initio* or at all times on and after such date, before the date on which the order is made, as is specified in the order;
- (b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date, before the date on which the order is made, as is so specified;

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- (c) an order directing the person who engaged in the conduct referred to in subsection (1) to refund money or return property to the person who suffered the loss or damage;
- (d) an order directing the person who engaged in the conduct referred to in subsection (1) to pay to the person who suffered the loss or damage the amount of the loss or damage;
- (e) an order directing the person who engaged in the conduct referred to in subsection (1), at that person's own expense, to repair, or provide parts for, goods that had been supplied by the person who engaged in the conduct to the person who suffered, or is likely to suffer, the loss or damage;
- (f) an order directing the person who engaged in the conduct referred to in subsection (1), at that person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.
- (3) An application under subsection (1) may be made at any time within 6 years from the time when the matter giving rise to the application occurred.
- (4) An order made under subsection (2)(a) or (b) shall not prevent proceedings being instituted or commenced under this Part of this Act.

PART X

MISCELLANEOUS

- 61.** (1) Subject to sections 27, 38 and 52, the Commission may, with the approval of the Minister, make regulations under this section Regulations generally.
- (a) generally for carrying this Act into effect;
- (b) prescribing anything which by this Act is permitted or required to be prescribed; and

Cap. 1. (c) except where provision is made to the contrary in this Act, creating summary offences for contraventions of the regulations and, notwithstanding section 19(10) of the *Interpretation Act*, imposing in respect of conviction of such an offence

(i) in the case of an individual, a fine of \$10 000 or imprisonment for a term of 2 years, or both;

(ii) in the case of a person other than an individual, a fine of \$100 000.

(2) Regulations under this or any other section are subject to negative resolution.

Offences. **62.** (1) A person who is guilty of an offence under this Act is liable on summary conviction

(a) in the case of an individual, to a fine of \$10 000 or to imprisonment for a term of 2 years, or to both; or

(b) in the case of a person other than an individual, to a fine of \$100 000.

(2) Where a body corporate has been convicted of an offence under this Act, any director or officer of the body corporate who knowingly authorised, permitted or acquiesced in the act or omission that constituted the offence is also guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 2 years, or to both.

Bodies corporate. **63.** (1) Where in a proceeding under this Act, in respect of any conduct engaged in by a body corporate, it is necessary to establish the intention of the body corporate, it is sufficient to show that a director of the body corporate by whom the conduct was engaged in had that intention.

(2) Any conduct engaged in on behalf of a body corporate by a director of the body corporate or by any other person at the direction or with the consent or agreement, whether express or implied, of a director of the body corporate shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

SCHEDULE

*(Section 8(4))*CONTRACT TERMS WHICH ARE UNFAIR IF NOT
INDIVIDUALLY NEGOTIATED

1. Any contract term which has the object or effect of The terms.
- (a) excluding or limiting the legal liability of a supplier in the event of the death of the consumer or personal injury to the latter resulting from an act or omission of that supplier; or
 - (b) inappropriately excluding or limiting the legal rights of the consumer *vis-a-vis* the supplier or another party in the event of total or partial non-performance or inadequate performance by the supplier of any of the contractual obligations of the supplier, including the option of off-setting a debt owed to the supplier against any claim which the consumer may have against him; or
 - (c) making an agreement binding on the consumer whereas provision of services by the supplier is subject to a condition whose realisation depends on his own will alone; or
 - (d) permitting the supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the supplier where the latter is the party cancelling the contract; or
 - (e) requiring the consumer to pay a disproportionately high sum in compensation if he fails to fulfil his obligation; or
 - (f) authorising the supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the supplier to retain the sums paid for services not yet supplied by him where it is the supplier himself who dissolves the contract; or
 - (g) enabling the supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so; or

- (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express his desire not to extend the contract is unreasonably early; or
- (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract; or
- (j) enabling the supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract; or
- (k) enabling the supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided; or
- (l) providing for the price of goods to be determined at the time of delivery or allowing a supplier to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded; or
- (m) giving the supplier the right to determine whether the goods or services supplied by the supplier are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract; or
- (n) limiting the supplier's obligation to respect commitments undertaken by his agents, or making his commitments subject to compliance with a particular formality; or
- (o) obliging the consumer to fulfil all his obligations where the supplier does not perform his; or
- (p) giving the supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement; or
- (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

2. Paragraph 1(*g*) does not apply to a term by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties immediately. Exception to paragraph 1(*g*).

3. Paragraph 1(*j*) does not apply to a term under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties at the earliest opportunity and that the latter are free to dissolve the contract immediately. Exception to paragraph 1(*j*).

4. Paragraph 1(*j*) does not apply to a term under which a supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract. Exception to paragraph 1(*j*).

5. Sub-paragraphs (*g*), (*j*) and (*l*) of paragraph 1 do not apply to Exceptions to paragraph 1(*g*), (*j*) and (*l*).

(*a*) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the supplier does not control; or

(*b*) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.

6. Paragraph 1(*l*) does not apply to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described. Exception to paragraph 1(*l*).