

Statutory Instrument 1992 No. 3288

The Package Travel, Package Holidays and Package Tours regulations 1992

Parliamentary Under-Secretary of State, Department of Trade and Industry

STATUTORY INSTRUMENTS

1992 No. 3288

CONSUMER PROTECTION

The Package Travel, Package Holidays and Package Tours Regulations 1992

Made 22nd December 1992

Coming into force 23rd December 1992

Whereas the Secretary of State is a Minister designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to measures relating to consumer protection as regards package travel, package holidays and package tours;

And whereas a draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to section 2(2) of and paragraph 2(2) of Schedule 2 to that Act;

Now, therefore the Secretary of State in exercise of the powers conferred on him by section 2(2) of that Act hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Package Travel, Package Holidays and Package Tours Regulations 1992 and shall come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

"brochure" means any brochure in which packages are offered for sale;

"contract" means the agreement linking the consumer to the organiser or to the retailer, or to both, as the case may be;

"the Directive" means Council Directive 90/314/EEC on package travel, package holidays and package tours;

"offer" includes an invitation to treat whether by means of advertising or otherwise, and cognate expressions shall be

construed accordingly;

"organiser" means the person who, otherwise than occasionally, organises packages and sells or offers them for sale, whether directly or through a retailer;

"the other party to the contract" means the party, other than the consumer, to the contract, that is, the organiser or the retailer, or both, as the case may be;

"package" means the pre-arranged combination of at least two of the following components when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation:—

(a) transport;

(b) accommodation;

(c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package,

and

(i) the submission of separate accounts for different components shall not cause the arrangements to be other than a package;

(ii) the fact that a combination is arranged at the request of the consumer and in accordance with his specific instructions (whether modified or not) shall not of itself cause it to be treated as other than pre-arranged;

and

"retailer" means the person who sells or offers for sale the package put together by the organiser.

(2) In the definition of "contract" in paragraph (1) above, "consumer" means the person who takes or agrees to take the package ("the principal contractor") and elsewhere in these Regulations "consumer" means, as the context requires, the principal contractor, any person on whose behalf the principal contractor agrees to purchase the package ("the other beneficiaries") or any person to whom the principal contractor or any of the

other beneficiaries transfers the package ("the transferee").

Application of Regulations

3.—(1) These Regulations apply to packages sold or offered for sale in the territory of the United Kingdom.

(2) Regulations 4 to 15 apply to packages so sold or offered for sale on or after 31st December 1992.

(3) Regulations 16 to 22 apply to contracts which, in whole or part, remain to be performed on 31st December 1992

Descriptive matter relating to packages must not be misleading

4.—(1) No organiser or retailer shall supply to a consumer any descriptive matter concerning a package, the price of a package or any other conditions applying to the contract which contains any misleading information.

(2) If an organiser or retailer is in breach of paragraph (1) he shall be liable to compensate the consumer for any loss which the consumer suffers in consequence.

Requirements as to brochures

5.—(1) Subject to paragraph (4) below, no organiser shall make available a brochure to a possible consumer unless it indicates in a legible, comprehensible and accurate manner the price and adequate information about the matters specified in Schedule 1 to these Regulations in respect of the packages offered for sale in the brochure to the extent that those matters are relevant to the packages so offered.

(2) Subject to paragraph (4) below, no retailer shall make available to a possible consumer a brochure which he knows or has reasonable cause to believe does not comply with the requirements of paragraph (1).

(3) An organiser who contravenes paragraph (1) of this regulation and a retailer who contravenes paragraph (2) thereof shall be guilty of an offence and liable:—

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale; and

(b) on conviction on indictment, to a fine.

(4) Where a brochure was first made available to consumers generally before 31st December 1992 no liability shall arise under this regulation in

respect of an identical brochure being made available to a consumer at any time.

Circumstances in which particulars in brochure are to be binding

6.—(1) Subject to paragraphs (2) and (3) of this regulation, the particulars in the brochure (whether or not they are required by regulation 5(1) above to be included in the brochure) shall constitute implied warranties (or, as regards Scotland, implied terms) for the purposes of any contract to which the particulars relate.

(2) Paragraph (1) of this regulation does not apply—

(a) in relation to information required to be included by virtue of paragraph 9 of Schedule 1 to these Regulations; or

(b) where the brochure contains an express statement that changes may be made in the particulars contained in it before a contract is concluded and changes in the particulars so contained are clearly communicated to the consumer before a contract is concluded.

(3) Paragraph (1) of this regulation does not apply when the consumer and the other party to the contract agree after the contract has been made that the particulars in the brochure, or some of those particulars, should not form part of the contract.

Information to be provided before contract is concluded

7.—(1) Before a contract is concluded, the other party to the contract shall provide the intending consumer with the information specified in paragraph (2) below in writing or in some other appropriate form.

(2) The information referred to in paragraph (1) is:—

(a) general information about passport and visa requirements which apply to British Citizens who purchase the package in question, including information about the length of time it is likely to take to obtain the appropriate passports and visas;

(b) information about health formalities required for the journey and the stay; and

(c) the arrangements for security for the money paid over and (where applicable) for the repatriation of the consumer in the event of insolvency.

(3) If the intending consumer is not provided with the information

required by paragraph (1) in accordance with that paragraph the other party to the contract shall be guilty of an offence and liable:—

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale; and

(b) on conviction on indictment, to a fine.

Information to be provided in good time

8.—(1) The other party to the contract shall in good time before the start of the journey provide the consumer with the information specified in paragraph (2) below in writing or in some other appropriate form.

(2) The information referred to in paragraph (1) is the following:—

(a) the times and places of intermediate stops and transport connections and particulars of the place to be occupied by the traveller (for example, cabin or berth on ship, sleeper compartment on train);

(b) the name, address and telephone number—

(i) of the representative of the other party to the contract in the locality where the consumer is to stay, or, if there is no such representative,

(ii) of an agency in that locality on whose assistance a consumer in difficulty would be able to call, or, if there is no such representative or agency, a telephone number or other information which will enable the consumer to contact the other party to the contract during the stay; and

(c) in the case of a journey or stay abroad by a child under the age of 16 on the day when the journey or stay is due to start, information enabling direct contact to be made with the child or the person responsible at the place where he is to stay; and

(d) except where the consumer is required as a term of the contract to take out an insurance policy in order to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness, information about an insurance policy which the consumer may, if he wishes, take out in respect of the risk of those costs being incurred.

(3) If the consumer is not provided with the information required by paragraph (1) in accordance with that paragraph the other party to the

contract shall be guilty of an offence and liable:—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; and
- (b) on conviction on indictment, to a fine.

Contents and form of contract

9.—(1) The other party to the contract shall ensure that—

- (a) depending on the nature of the package being purchased, the contract contains at least the elements specified in Schedule 2 to these Regulations;
- (b) subject to paragraph (2) below, all the terms of the contract are set out in writing or such other form as is comprehensible and accessible to the consumer and are communicated to the consumer before the contract is made; and
- (c) a written copy of these terms is supplied to the consumer.

(2) Paragraph (1)(b) above does not apply when the interval between the time when the consumer approaches the other party to the contract with a view to entering into a contract and the time of departure under the proposed contract is so short that it is impracticable to comply with the sub-paragraph.

(3) It is an implied condition (or, as regards Scotland, an implied term) of the contract that the other party to the contract complies with the provisions of paragraph (1).

(4) In Scotland, any breach of the condition implied by paragraph (3) above shall be deemed to be a material breach justifying rescission of the contract.

Transfer of bookings

10.—(1) In every contract there is an implied term that where the consumer is prevented from proceeding with the package the consumer may transfer his booking to a person who satisfies all the conditions applicable to the package, provided that the consumer gives reasonable notice to the other party to the contract of his intention to transfer before the date when departure is due to take place.

(2) Where a transfer is made in accordance with the implied term set out

in paragraph (1) above, the transferor and the transferee shall be jointly and severally liable to the other party to the contract for payment of the price of the package (or, if part of the price has been paid, for payment of the balance) and for any additional costs arising from such transfer.

Price revision

11.—(1) Any term in a contract to the effect that the prices laid down in the contract may be revised shall be void and of no effect unless the contract provides for the possibility of upward or downward revision and satisfies the conditions laid down in paragraph (2) below.

(2) The conditions mentioned in paragraph (1) are that—

(a) the contract states precisely how the revised price is to be calculated;

(b) the contract provides that price revisions are to be made solely to allow for variations in:—

(i) transportation costs, including the cost of fuel,

(ii) dues, taxes or fees chargeable for services such as landing taxes or embarkation or disembarkation fees at ports and airports, or

(iii) the exchange rates applied to the particular package;
and

(3) Notwithstanding any terms of a contract,

(i) no price increase may be made in a specified period which may not be less than 30 days before the departure date stipulated; and

(ii) as against an individual consumer liable under the contract, no price increase may be made in respect of variations which would produce an increase of less than 2%, or such greater percentage as the contract may specify, ("non-eligible variations") and that the non-eligible variations shall be left out of account in the calculation.

Significant alterations to essential terms

12. In every contract there are implied terms to the effect that—

(a) where the organiser is constrained before the departure to alter significantly an essential term of the contract, such as the price (so far as regulation 11 permits him to do so), he will notify the

consumer as quickly as possible in order to enable him to take appropriate decisions and in particular to withdraw from the contract without penalty or to accept a rider to the contract specifying the alterations made and their impact on the price; and

(b) the consumer will inform the organiser or the retailer of his decision as soon as possible.

Withdrawal by consumer pursuant to regulation 12 and cancellation by organiser

13.—(1) The terms set out in paragraphs (2) and (3) below are implied in every contract and apply where the consumer withdraws from the contract pursuant to the term in it implied by virtue of regulation 12(a), or where the organiser, for any reason other than the fault of the consumer, cancels the package before the agreed date of departure.

(2) The consumer is entitled—

(a) to take a substitute package of equivalent or superior quality if the other party to the contract is able to offer him such a substitute; or

(b) to take a substitute package of lower quality if the other party to the contract is able to offer him one and to recover from the organiser the difference in price between the price of the package purchased and that of the substitute package; or

(c) to have repaid to him as soon as possible all the monies paid by him under the contract.

(3) The consumer is entitled, if appropriate, to be compensated by the organiser for non-performance of the contract except where—

(a) the package is cancelled because the number of persons who agree to take it is less than the minimum number required and the consumer is informed of the cancellation, in writing, within the period indicated in the description of the package; or

(b) the package is cancelled by reason of unusual and unforeseeable circumstances beyond the control of the party by whom this exception is pleaded, the consequences of which could not have been avoided even if all due care had been exercised.

(4) Overbooking shall not be regarded as a circumstance falling within the provisions of sub-paragraph (b) of paragraph (3) above.

Significant proportion of services not provided

14.—(1) The terms set out in paragraphs (2) and (3) below are implied in every contract and apply where, after departure, a significant proportion of the services contracted for is not provided or the organiser becomes aware that he will be unable to procure a significant proportion of the services to be provided.

(2) The organiser will make suitable alternative arrangements, at no extra cost to the consumer, for the continuation of the package and will, where appropriate, compensate the consumer for the difference between the services to be supplied under the contract and those supplied.

(3) If it is impossible to make arrangements as described in paragraph (2), or these are not accepted by the consumer for good reasons, the organiser will, where appropriate, provide the consumer with equivalent transport back to the place of departure or to another place to which the consumer has agreed and will, where appropriate, compensate the consumer.

Liability of other party to the contract for proper performance of obligations under contract

15.—(1) The other party to the contract is liable to the consumer for the proper performance of the obligations under the contract, irrespective of whether such obligations are to be performed by that other party or by other suppliers of services but this shall not affect any remedy or right of action which that other party may have against those other suppliers of services.

(2) The other party to the contract is liable to the consumer for any damage caused to him by the failure to perform the contract or the improper performance of the contract unless the failure or the improper performance is due neither to any fault of that other party nor to that of another supplier of services, because—

(a) the failures which occur in the performance of the contract are attributable to the consumer;

(b) such failures are attributable to a third party unconnected with the provision of the services contracted for, and are unforeseeable or unavoidable; or

(c) such failures are due to—

(i) unusual and unforeseeable circumstances beyond the control of the party by whom this exception is pleaded, the

consequences of which could not have been avoided even if all due care had been exercised; or

(ii) an event which the other party to the contract or the supplier of services, even with all due care, could not foresee or forestall.

(3) In the case of damage arising from the non-performance or improper performance of the services involved in the package, the contract may provide for compensation to be limited in accordance with the international conventions which govern such services.

(4) In the case of damage other than personal injury resulting from the non-performance or improper performance of the services involved in the package, the contract may include a term limiting the amount of compensation which will be paid to the consumer, provided that the limitation is not unreasonable.

(5) Without prejudice to paragraph (3) and paragraph (4) above, liability under paragraphs (1) and (2) above cannot be excluded by any contractual term.

(6) The terms set out in paragraphs (7) and (8) below are implied in every contract.

(7) In the circumstances described in paragraph (2)(b) and (c) of this regulation, the other party to the contract will give prompt assistance to a consumer in difficulty.

(8) If the consumer complains about a defect in the performance of the contract, the other party to the contract, or his local representative, if there is one, will make prompt efforts to find appropriate solutions.

(9) The contract must clearly and explicitly oblige the consumer to communicate at the earliest opportunity, in writing or any other appropriate form, to the supplier of the services concerned and to the other party to the contract any failure which he perceives at the place where the services concerned are supplied.

Security in event of insolvency—requirements and offences

16.—(1) The other party to the contract shall at all times be able to provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency.

(2) Without prejudice to paragraph (1) above, and subject to paragraph

(4) below, save to the extent that—

(a) the package is covered by measures adopted or retained by the member State where he is established for the purpose of implementing Article 7 of the Directive; or

(b) the package is one in respect of which he is required to hold a licence under the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1972¹³¹ or the package is one that is covered by the arrangements he has entered into for the purposes of those Regulations,

the other party to the contract shall at least ensure that there are in force arrangements as described in regulations 17, 18, 19 or 20 or, if that party is acting otherwise than in the course of business, as described in any of those regulations or in regulation 21.

(3) Any person who contravenes paragraph (1) or (2) of this regulation shall be guilty of an offence and liable:—

(a) on summary conviction to a fine not exceeding level 5 on the standard scale; and

(b) on conviction on indictment, to a fine.

(4) A person shall not be guilty of an offence under paragraph (3) above by reason only of the fact that arrangements such as are mentioned in paragraph (2) above are not in force in respect of any period before 1 April 1993 unless money paid over is not refunded when it is due or the consumer is not repatriated in the event of insolvency.

(5) For the purposes of regulations 17 to 21 below a contract shall be treated as having been fully performed if the package or, as the case may be, the part of the package has been completed irrespective of whether the obligations under the contract have been properly performed for the purposes of regulation 15.

Bonding

17.—(1) The other party to the contract shall ensure that a bond is entered into by an authorised institution under which the institution binds itself to pay to an approved body of which that other party is a member a sum calculated in accordance with paragraph (3) below in the event of the insolvency of that other party.

(2) Any bond entered into pursuant to paragraph (1) above shall not be expressed to be in force for a period exceeding eighteen months.

(3) The sum referred to in paragraph (1) above shall be such sum as may reasonably be expected to enable all monies paid over by consumers under or in contemplation of contracts for relevant packages which have not been fully performed to be repaid and shall not in any event be a sum which is less than the minimum sum calculated in accordance with paragraph (4) below.

(4) The minimum sum for the purposes of paragraph (3) above shall be a sum which represents:—

(a) not less than 25% of all the payments which the other party to the contract estimates that he will receive under or in contemplation of contracts for relevant packages in the twelve month period from the date of entry into force of the bond referred to in paragraph (1) above; or

(b) the maximum amount of all the payments which the other party to the contract expects to hold at any one time, in respect of contracts which have not been fully performed,
whichever sum is the smaller.

(5) Before a bond is entered into pursuant to paragraph (1) above, the other party to the contract shall inform the approved body of which he is a member of the minimum sum which he proposes for the purposes of paragraphs (3) and (4) above and it shall be the duty of the approved body to consider whether such sum is sufficient for the purpose mentioned in paragraph (3) and, if it does not consider that this is the case, it shall be the duty of the approved body so to inform the other party to the contract and to inform him of the sum which, in the opinion of the approved body, is sufficient for that purpose.

(6) Where an approved body has informed the other party to the contract of a sum pursuant to paragraph (5) above, the minimum sum for the purposes of paragraphs (3) and (4) above shall be that sum.

(7) In this regulation—

"approved body" means a body which is for the time being approved by the Secretary of State for the purposes of this regulation;

"authorised institution" means a person authorised under the law of a member State to carry on the business of entering into bonds of the kind required by this regulation.

Bonding where approved body has reserve fund or insurance

18.—(1) The other party to the contract shall ensure that a bond is entered into by an authorised institution, under which the institution agrees to pay to an approved body of which that other party is a member a sum calculated in accordance with paragraph (3) below in the event of the insolvency of that other party.

(2) Any bond entered into pursuant to paragraph (1) above shall not be expressed to be in force for a period exceeding eighteen months.

(3) The sum referred to in paragraph (1) above shall be such sum as may be specified by the approved body as representing the lesser of—

(a) the maximum amount of all the payments which the other party to the contract expects to hold at any one time in respect of contracts which have not been fully performed; or

(b) the minimum sum calculated in accordance with paragraph (4) below.

(4) The minimum sum for the purposes of paragraph (3) above shall be a sum which represents not less than 10% of all the payments which the other party to the contract estimates that he will receive under or in contemplation of contracts for relevant packages in the twelve month period from the date of entry referred to in paragraph (1) above.

(5) In this regulation "approved body" means a body which is for the time being approved by the Secretary of State for the purposes of this regulation and no such approval shall be given unless the conditions mentioned in paragraph (6) below are satisfied in relation to it.

(6) A body may not be approved for the purposes of this regulation unless—

(a) it has a reserve fund or insurance cover with an insurer authorised in respect of such business in a member State of an amount in each case which is designed to enable all monies paid over to a member of the body of consumers under or in contemplation of contracts for relevant packages which have not been fully performed to be repaid to those consumers in the event of the insolvency of the member; and

(b) where it has a reserve fund, it agrees that the fund will be held by persons and in a manner approved by the Secretary of State.

(7) In this regulation, authorised institution has the meaning given to that expression by paragraph (7) of regulation 17.

Insurance

19.—(1) The other party to the contract shall have insurance under one or more appropriate policies with an insurer authorised in respect of such business in a member State under which the insurer agrees to indemnify consumers, who shall be insured persons under the policy, against the loss of money paid over by them under or in contemplation of contracts for packages in the event of the insolvency of the contractor.

(2) The other party to the contract shall ensure that it is a term of every contract with a consumer that the consumer acquires the benefit of a policy of a kind mentioned in paragraph (1) above in the event of the insolvency of the other party to the contract.

(3) In this regulation:

"appropriate policy" means one which does not contain a condition which provides (in whatever terms) that no liability shall arise under the policy, or that any liability so arising shall cease:—

(i) in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy;

(ii) in the event of the policy holder not making payments under or in connection with other policies; or

(iii) unless the policy holder keeps specified records or provides the insurer with or makes available to him information therefrom.

Monies in trust

20.—(1) The other party to the contract shall ensure that all monies paid over by a consumer under or in contemplation of a contract for a relevant package are held in the United Kingdom by a person as trustee for the consumer until the contract has been fully performed or any sum of money paid by the consumer in respect of the contract has been repaid to him or has been forfeited on cancellation by the consumer.

(2) The costs of administering the trust mentioned in paragraph (1) above shall be paid for by the other party to the contract.

(3) Any interest which is earned on the monies held by the trustee

pursuant to paragraph (1) shall be held for the other party to the contract and shall be payable to him on demand.

(4) Where there is produced to the trustee a statement signed by the other party to the contract to the effect that—

(a) a contract for a package the price of which is specified in that statement has been fully performed;

(b) the other party to the contract has repaid to the consumer a sum of money specified in that statement which the consumer had paid in respect of a contract for a package; or

(c) the consumer has on cancellation forfeited a sum of money specified in that statement which he had paid in respect of a contract for a relevant package,

the trustee shall (subject to paragraph (5) below) release to the other party to the contract the sum specified in the statement.

(5) Where the trustee considers it appropriate to do so, he may require the other party to the contract to provide further information or evidence of the matters mentioned in sub-paragraph (a), (b) or (c) of paragraph (4) above before he releases any sum to that other party pursuant to that paragraph.

(6) Subject to paragraph (7) below, in the event of the insolvency of the other party to the contract the monies held in trust by the trustee pursuant to paragraph (1) of this regulation shall be applied to meet the claims of consumers who are creditors of that other party in respect of contracts for packages in respect of which the arrangements were established and which have not been fully performed and, if there is a surplus after those claims have been met, it shall form part of the estate of that insolvent other party for the purposes of insolvency law.

(7) If the monies held in trust by the trustee pursuant to paragraph (1) of this regulation are insufficient to meet the claims of consumers as described in paragraph (6), payments to those consumers shall be made by the trustee on a pari passu basis.

Monies in trust where other party to contract is acting otherwise than in the course of business

21.—(1) The other party to the contract shall ensure that all monies paid over by a consumer under or in contemplation of a contract for a relevant package are held in the United Kingdom by a person as trustee for the consumer for the purpose of paying for the consumer's package.

(2) The costs of administering the trust mentioned in paragraph (1) shall be paid for out of the monies held in trust and the interest earned on those monies.

(3) Where there is produced to the trustee a statement signed by the other party to the contract to the effect that—

(a) the consumer has previously paid over a sum of money specified in that statement in respect of a contract for a package and that sum is required for the purpose of paying for a component (or part of a component) of the package;

(b) the consumer has previously paid over a sum of money specified in that statement in respect of a contract for a package and the other party to the contract has paid that sum in respect of a component (or part of a component) of the package;

(c) the consumer requires the repayment to him of a sum of money specified in that statement which was previously paid over by the consumer in respect of a contract for a package; or

(d) the consumer has on cancellation forfeited a sum of money specified in that statement which he had paid in respect of a contract for a package,

the trustee shall (subject to paragraph (4) below) release to the other party to the contract the sum specified in the statement.

(4) Where the trustee considers it appropriate to do so, he may require the other party to the contract to provide further information or evidence of the matters mentioned in sub-paragraph (a), (b), (c) or (d) of paragraph (3) above before he releases to that other party any sum from the monies held in trust for the consumer.

(5) Subject to paragraph (6) below, in the event of the insolvency of the other party to the contract and of contracts for packages not being fully performed (whether before or after the insolvency) the monies held in trust by the trustee pursuant to paragraph (1) of this regulation shall be applied to meet the claims of consumers who are creditors of that other party in respect of amounts paid over by them and remaining in the trust fund after deductions have been made in respect of amounts released to that other party pursuant to paragraph (3) and, if there is a surplus after those claims have been met, it shall be divided amongst those consumers pro rata.

(6) If the monies held in trust by the trustee pursuant to paragraph (1)

of this regulation are insufficient to meet the claims of consumers as described in paragraph (5) above, payments to those consumers shall be made by the trustee on a pari passu basis.

(7) Any sums remaining after all the packages in respect of which the arrangements were established have been fully performed shall be dealt with as provided in the arrangements or, in default of such provision, may be paid to the other party to the contract.

Offences arising from breach of regulations 20 and 21

22.—(1) If the other party to the contract makes a false statement under paragraph (4) of regulation 20 or paragraph (3) of regulation 21 he shall be guilty of an offence.

(2) If the other party to the contract applies monies released to him on the basis of a statement made by him under regulation 21(3)(a) or (c) for a purpose other than that mentioned in the statement he shall be guilty of an offence.

(3) If the other party to the contract is guilty of an offence under paragraph (1) or (2) of this regulation shall be liable—

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) on conviction on indictment, to a fine.

Enforcement

23. Schedule 3 to these Regulations (which makes provision about the enforcement of regulations 5, 7, 8, 16 and 22 of these Regulations) shall have effect.

Due diligence defence

24.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 5, 7, 8, 16 or 22 of these Regulations, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by paragraph (1) above involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or

(b) to reliance on information given by another, that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings, or, in Scotland, the trial diet, he has served a notice under paragraph (3) below on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) above by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

(a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and

(b) to whether he had any reason to disbelieve the information.

Liability of persons other than principal offender

25.—(1) Where the commission by any person of an offence under regulation 5, 7, 8, 16 or 22 of these Regulations is due to an act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under any of the provisions mentioned in paragraph (1) above (including where it is so guilty by virtue of the said paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Where an offence under any of the provisions mentioned in paragraph (1) above committed in Scotland by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner, he (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) On proceedings for an offence under regulation 5 by virtue of paragraph (1) above committed by the making available of a brochure it shall be 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 brochures and that he received the brochure for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under these Regulations.

Prosecution time limit

26.—(1) No proceedings for an offence under regulation 5, 7, 8, 16 or 22 of these Regulations or under paragraphs 5(3), 6 or 7 of Schedule 3 thereto shall be commenced after—

(a) the end of the period of three years beginning within the date of the commission of the offence; or

(b) the end of the period of one year beginning with the date of the discovery of the offence by the prosecutor,
whichever is the earlier.

(2) For the purposes of this regulation a certificate signed by or on behalf of the prosecutor and stating the date on which the offence was discovered by him shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be treated as so signed unless the contrary is proved.

(3) In relation to proceedings in Scotland, subsection (3) of section 331 of the Criminal Procedure (Scotland) Act 1975 (date of commencement of proceedings)^[4] shall apply for the purposes of this regulation as it applies for the purposes of that section.

Saving for civil consequences

27. No contract shall be void or unenforceable, and no right of action in civil proceedings in respect of any loss shall arise, by reason only of the commission of an offence under regulations 5, 7, 8, 16 or 22 of these Regulations.

Terms implied in contract

28. Where it is provided in these Regulations that a term (whether so described or whether described as a condition or warranty) is implied in the contract it is so implied irrespective of the law which governs the contract.

Denton of Wakefield

22 December 1992

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