

# The Consumer Protection Act 1987

## Part 1

1.—(1) This Part shall have effect for the purpose of making such provision as is necessary in order to comply with the product liability Directive and shall be construed accordingly.

(2) In this Part, except in so far as the context otherwise requires—

["agricultural produce" means any produce of the soil, of stock-farming or of fisheries;]

"dependant" and "relative" have the same meaning as they have in, respectively, the Fatal Accidents Act 1976 and the Damages (Scotland) Act 1976;

"producer", in relation to a product, means—

(a) the person who manufactured it;

(b) in the case of a substance which has not been manufactured but has been won or abstracted, the person who won or abstracted it;

(c) in the case of a product which has not been manufactured, won or abstracted but essential 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 or electricity and (subject to subsection (3) below) includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise;

and

"the product liability Directive" means the Directive of the Council of the European Communities, dated 25th July 1985, (No. 85/374/EEC) on the approximation of the laws, regulations and administrative provisions of the member States concerning liability for defective products.

(3) For the purposes of this Part a person who supplies any product in which 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 products so comprised.

2.—(1) Subject to the following provisions of this Part, where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) below applies shall be liable for the damage.

(2) This subsection applies to—

(a) the producer of the product;

It is this EC Directive (85/374/EEC) that the UK had to implement, and did so by passing Part 1 of the CPA 1987—see the definition in s 1(2).

See Chapter 21.

Definition of 'products' for the purposes of the Act—see also s 45. The case *A v National Blood Authority* [2001] says that blood received in transfusions is also a 'product' covered by the Act.

Post-Brexit, regulations have been passed which will change the tense of s 1(1), so that it will read 'This part was enacted for the purpose...' and '...as was necessary...' (Product Safety and Metrology etc. (Amendment) etc.) (EU Exit) Regulations 2019, SI 2019/696).

Anything in square brackets means this is a section inserted by later legislation or regulations.

'Producers' are those that can be held liable under the Act—as the rest of this section reveals (see emboldened text), the concept of who a producer is has been quite broadly defined.

This is what makes a defendant liable—if they produce a product that has a defect which causes harm.

See definition of 'producer', above (s 1).





This means that 'own-branders' can be construed as producers, even if they did not actually make the product but someone else made it for them—e.g. Co-op's own-brand cornflakes. However, the situation is less clear if the distinction 'made for X' or 'selected for X' is used on a product—does this imply that the own-brander does not 'hold himself out to be the producer'?

For an explanation of this term, see the chapter on damages, **Chapter 21**.

People are generally entitled to expect what is 'socially accepted' as a risk that comes with the product—see e.g. *Richardson v LRC Products* [2000]; *Bogle v McDonald's* [2002] and contrast *A v National Blood Authority*.

e.g. the packaging.

e.g. industry standard marks such as the 'Kite Mark'.

(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 a member State from a Place outside the member States in order, in the course of any business of his, to supply it to another.

(3) Subject as aforesaid, 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) shall be 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) above applies in relation to the product;

(b) that request is made within a reasonable period after the damage occurs and at a time when it is not reasonably practicable for the person making the request to identify all those persons; and

(c) the supplier fails, within a reasonable period after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

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

(6) This section shall be without prejudice to any liability arising otherwise than by virtue of this Part.

3.—(1) Subject to the following provisions of 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, shall include 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) above 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 shall require 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.

Importers can also be construed as producers, meaning that there will always be someone in the EU who can be sued.

Post-Brexit, s 2(2)(c) is to be amended to remove reference to imports into 'member States', replacing it with '...imported the product into the United Kingdom' (Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019).

This section provides that even suppliers (retailers) can be liable in certain (limited) circumstances, e.g. where the retailer either cannot or does not identify the producer.

Definition of 'defect'—the key part of the Act and what most of the case law pertains to.

Later (controversially) re-defined by Burton J in *A v National Blood Authority* as 'all the relevant circumstances', excluding consideration of whether reasonable care was taken by the manufacturer.

Instructions or warnings with a product can render it 'safe' and therefore not defective—see e.g. *Worsley v Tambrands* [2000].



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4.—(1) In any civil proceedings by virtue of this Part against any person (“the person proceeded against”) in respect of a defect in a product it shall be a defence for him to show—

(a) that the defect is attributable to compliance with any requirement imposed by or under any enactment or with any Community obligation; or

(b) that the person proceeded against did not at any time supply the product to another; or

(c) that the following conditions are satisfied, that is to say—

(i) that the only supply of the product to another by the person proceeded against was otherwise than in the course of a business of that person’s; and

(ii) that section 2(2) above does not apply to that person or applies to him by virtue only of things done otherwise than with a view to profit; or

(d) that the defect did not exist in the product at the relevant time; or

(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 (“the subsequent product”) in which the product in question had 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.

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5.—(1) Subject to the following provisions of this section, in this Part “damage” means death or personal injury or any loss of or damage to any property (including land).

(2) A person shall not be liable under section 2 above in respect of any defect in a product for the loss of or any damage to the product itself or for the loss of or any damage to the whole or any part of any product which has been supplied with the product in question comprised in it.

(3) A person shall not be liable under section 2 above for any loss of or damage to any property which, at the time it is lost or damaged, is not—

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

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It is controversial that any defences are built into the Act—but the liability is ‘strict’, not ‘absolute’.

The ‘development risks’ or ‘state of the art’ defence. This is the most controversial of all the defences and the wording used in the CPA was challenged by the European Commission in *EC v UK [1997]*. They alleged that the CPA definition allowed a subjective interpretation of what a ‘reasonable producer’ could have been expected to know at the time, when the standard set by the Directive was meant to be objective. In that case it was deemed that all ‘accessible’ information or knowledge had to be taken into account.

Post-Brexit, s 4(1)(a) is to be amended to read ‘any retained Community obligation’ (Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019).

Definition of ‘damage’—i.e. what harms can be claimed for under the CPA. It is surprising, perhaps, that this definition comes so late.

This would be pure economic loss in negligence and is also irretrievable under the Act.



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

(4) No damages shall be awarded to any person by virtue of this Part in respect of any loss of or damage to any property if the amount which would fall to be so awarded to that person, apart from this subsection and any liability for interest, does not exceed £275.

(5) In determining for the purposes of this Part who has suffered any loss of or damage to property and when any such loss or damage occurred, the loss or 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 loss or damage.

(6) For the purposes of subsection (5) above the material facts about any loss of or damage to any property are such facts about the loss or damage as would lead a reasonable person with an interest in the property to consider the loss or 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.

(7) For the purposes of subsection (5) above 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.

(8) Subsections (5) to (7) above shall not extend to Scotland.

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To take a claim for property damage, the loss must amount to more than £275. This means small claims are excluded under the Act.