

CHAPTER 219

CONSUMER PROTECTION

Acts Nos.1 of 1979. 37 of 1980. AN ACT TO MAKE PROVISION FOR THE REGULATION OF INTERNAL TRADE; FOR THE PROTECTION OF THE CONSUMER; FOR THE ESTABLISHMENT OF FAIR TRADE PRACTICES. AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[Parts I, II and IV — 1st January. 1979.]

Short title. 1. (1) This Act may be cited as the Consumer Protection Act.

(2) (a) The provisions of Parts I, II and IV of this Act shall come into operation on the first day of January, 1979.

(b) The provisions of Part III of this Act may be brought into operation from time to time by the President by Proclamation published in the Gazette. Upon the publication of such Proclamation, the provisions of the aforesaid Part shall, forthwith or on such later date as may be specified in that Proclamation, come into operation throughout Sri Lanka or in such part or parts of Sri Lanka as may be so specified and shall be in force for such period as may be specified in such Proclamation.

PART I

REGULATION OF TRADE

Appointment of officers. 2. (1) There may be appointed for the purposes of this Act by name or by office, a Commissioner of Internal Trade (hereinafter referred as the " Commissioner ").

(2) There may be appointed by name or by office such number of Deputy Commissioners and Assistant Commissioners of Internal Trade, and other officers as may be necessary for the purposes of this Act.

(3) Every Deputy Commissioner or Assistant Commissioner shall in the exercise of his powers, the discharge of his duties or the performance of his functions, be subject to the general direction and control of the Commissioner.

(4) Every Deputy Commissioner or Assistant Commissioner may subject to the general direction and control of the Commissioner, within the area of his jurisdiction exercise, discharge or perform all or any of the powers, duties or functions vested in, imposed upon, or assigned to, the Commissioner by or under this Act.

3. (1) The Commissioner may, in consultation with such persons as are in the opinion of the Commissioner, interested in the manufacture, importation, sale and consumption of any article, decide on a scheme of distribution of such article. The Commissioner may, in any such scheme of distribution, make provision requiring the labelling, price-marking and packeting of articles.

Scheme of distribution.

(2) Every such scheme of distribution shall be published in the Gazette and in at least one Sinhala, one Tamil and "ne English newspaper.

4. (1) The Commissioner may either on his own motion or on receipt of any complaint in writing inquire into the working of the scheme of distribution of any article.

Inquiries to working of the scheme of distribution.

(2) After any such inquiry the Commissioner may vary or adjust any such scheme of distribution. Such variation or adjustment shall be published as provided in section 3 (2).

(3) Any trader who contravenes any of the provisions of the scheme of distribution of any article shall be guilty of an offence under this Act.

(4) No prosecution of any trader under subsection (3) shall be instituted except with the sanction of the Commissioner.

Commissioner may undertake studies of distribution of articles, &c.

- 5. The Commissioner may—
 - (a) undertake such studies in respect of articles as would ensure the availability to the consumer of such articles of a satisfactory quality at reasonable price and in adequate quantities;
 - (b) promote, assist and encourage State or other organizations including organizations of consumers for the purposes described in paragraph (a); and
 - (c) assist and encourage associations of traders to enter into agreements with the Commissioner for the purposes described in section 10.

Commissioner to issue directions to manufacturers or traders in respect of price-marking, labelling and packing of articles.

- 6. (t) The Commissioner may, for the protection of the consumer, issue general directions to manufacturers or traders in respect of labelling, price-marking and packing of any article and may, likewise by general directions issued to any class of manufacturers or traders or by special directions issued to any particular manufacturer or trader, specify in relation to that class or that manufacturer or trader, as the case may be—
 - (a) the maximum quantity of any article to be sold on any day;
 - (b) the times during which and the places at which, such article may be sold; and
 - (c) any other conditions as to the manufacture, marketing, labelling or sale of that article.

(2) Every general direction issued by the Commissioner under subsection (1) shall be published in the Gazette and every special direction issued to any manufacturer or trader by the Commissioner under subsection (1) shall be in writing and shall be served on the manufacturer or trader to whom it is issued, and any such direction shall be deemed to be served on such manufacturer or trader if it is so sent by registered post addressed to him at his place of business. In proving such service by post, it shall be sufficient to prove that the document containing the direction was duly addressed and posted.

(3) Any manufacturer or trader who fails to comply with any direction issued under subsection (1) shall be guilty of an offence under this Act.

(4) Any person who removes, alters, obliterates, erases or defaces any label, description or price marked on any article shall be guilty of an offence under this Act.

7. Any person who sells or offers to sell any article above the price marked on the article under section 6 shall be guilty of an offence. Selling or offering to sell above the marked price.

8. (1) The Commissioner may inquire into complaints regarding the manufacture or sale of any article which does not conform to the standards and specifications determined by the Commissioner by notification published in the Gazette. Where any standards and specifications have been prescribed by the Bureau of Ceylon Standards in respect of any article, such standards and specifications shall be deemed to be the standards and specifications determined by the Commissioner for the purposes of this Act. Manufacture or sale of articles below the specified standard.

(2) Any complaint under subsection (1) shall be made to the Commissioner in writing so as to reach him within seven days of such sale.

(3) At any inquiry held into such complaint the Commissioner shall give the manufacturer or trader against whom such complaint is made an opportunity of being heard either in person or by an agent in that behalf.

(4) Where the Commissioner is of opinion, after inquiry, that a manufacture or sale has been made of an article not conforming to the standards or specifications determined or deemed to be determined by the Commissioner, he shall order the manufacturer or trader to pay compensation to the aggrieved party or to replace such article or to refund the amount paid for such article.

(5) An order under subsection (4) shall be made in writing and communicated to such manufacturer or trader by registered post.

Failure to comply with order an offence.

9. Where any manufacturer or trader fails or refuses to comply with an order made under subsection (4) of section 8, such manufacturer or trader shall be guilty of an offence under this Act.

Agreement to provide for maximum price, &c-

10. (1) The Commissioner may enter into such written agreements as he may deem necessary with any manufacturer, trader or association of manufacturers or traders to provide for—

- (a) the maximum price above which any article shall not be sold ;
- (b) the standard and specification of any article manufactured, sold or offered for sale ;
- (c) the maximum quantity of any article to be sold on any day;
- (d) the times during which, and the places at which, such article may be sold ; and
- (e) any other conditions as to the manufacture, marketing, labelling or sale of that article.

(2) Every written agreement entered into between the Commissioner and any manufacturer or trader or any association of manufacturers or traders under subsection (!) shall be binding on every authorized distributor of such manufacturer or trader and every member of such association as though he were a party to such agreement and whether or not he was a member at the time of agreement.

(3) Every manufacturer or trader or any authorized distributor of such manufacturer or trader or association or any member thereof who contravenes any provision of any agreement entered into with the Commissioner under subsection (1) shall be guilty of an offence under this Act.

(4) Every agreement entered into with the Commissioner under subsection (I) shall be registered with the Commissioner and shall contain a schedule giving the name and description of such authorized distributor of such manufacturer or trader or members of such association, as the case may be.

(5) Every agreement entered into with the Commissioner under subsection (1) shall come into force from the date of such agreement, unless such agreement provides that the agreement shall come into force on any subsequent date.

(6) Where the Commissioner thinks fit he may cause any agreement made under this section to be published in the Gazette. Where an agreement is published in the Gazette, the production of a copy of the Gazette in which such agreement is published may be produced in any court and shall until the contrary is proved, be proof of the contents of such agreement-

(7) For the purposes of any prosecution under this section a certificate given by the Commissioner that any person is an authorized distributor of any manufacturer or trader or is a member of any association of traders or manufacturers shall be prima facie proof in a court of law that such person is an authorized distributor or a member of such association.

11. (1) No trader who has in his possession or custody or under his control any article for the purposes of trade shall refuse to sell such article.

Refusal to sell articles to be an offence.

(2) In any prosecution of any trader for the contravention of the provisions of subsection (I), it shall be a sufficient defence for the accused to prove—

- (a) that on the occasion in question he supplied a reasonable quantity of the article, or had not a sufficient quantity in his possession to supply the quantity; or
- (h) that he carried on business in the article as a wholesale trader only, and that the sale of the quantity demanded by the buyer would have been contrary to the normal practice of a wholesale business ; or
- (c) that the sale of the article on that occasion in question would have been contrary to any provisions of any written law or any general or special direction issued to him under section 6.

Denial of possession of any article for purposes of trade or the sale of such article subject to any condition to be an offence.

12. No trader who has in his possession or custody or under his control any article for the purposes of trade shall

- (a) deny the possession of such article ; or
- (h) offer such article for sale subject to a condition requiring the purchase of any other article or the making of any payment in respect of any service or to any other condition other than the condition that the buyer shall pay the price of such article forthwith.

Hoarding of articles by any trader or person to be an offence

13. (I) No trader shall conceal in his place of business or in any other place any article in such quantity as is, in the opinion of the Commissioner, in excess of the normal personal requirement of such trader.

(2) No trader shall have in his possession or custody or under his control in his place of business or in any other place, any article in such quantity as is, in the opinion of the Commissioner, in excess of—

- (a) the quantity required for his personal consumption and of the members of the household; or
- (h) the requirements of the normal trading activity of such trader.

(3) No person other than a trader shall have in his possession or custody or under his control any article in such quantity as is, in the opinion of the Commissioner, in excess of the normal personal requirements of such person.

Sale of article above the controlled price to be an offence.

14. No trader shall sell any article at a price above the maximum retail or wholesale price, as the case may be, fixed in respect of such article by Order made or deemed to be made under section 20 of the National Prices Commission Law or any other written law.

Trader to display price list.

15. Every trader shall exhibit conspicuously in his place of business a notice specifying the maximum retail or wholesale price, as the case may be, of every article available for sale in his place of business.

16. Every trader who sells any article shall on demand, issue to the purchaser thereof a receipt setting out—

- (a) the date of the sale;
- (h) the quantity of such article sold ;
- (c) the price paid for such quantity; and
- (d) the nature of the transaction, that is to say, whether the sale was by wholesale or retail.

Trader to issue receipts to purchasers.

17. (1) Every trader shall provide in a conspicuous place in his place of business a notice board for the display of any notice, direction or warning issued by the Commissioner under this Act.

Trader to furnish notices board.

(2) Every trader shall affix or cause to be affixed on such notice board any notice, direction or warning issued to such trader by the Commissioner under this Act.

(3) Any person who removes, alters, obliterates, erases or defaces such notice, direction or warning other than a person acting under the direction or authority of the Commissioner shall be guilty of an offence.

18. No trader shall, in the course of a trade or business, engage in conduct that is misleading or deceptive.

Misleading or deceptive conduct.

19. Any trader who, in the course of a trade or business, in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services: —

False representations.

- (a) falsely represents that, goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model; or
- (b) falsely represents that goods are new; or
- (c) represents that goods or services have sponsorship, approval, performance, characteristic accessories, uses or benefits they do not have; or

- (d) represents that such trader has a sponsorship approval or affiliation he does not have ; or
- (e) makes false or misleading statements concerning the existence of, or amounts of, price reduction ; or
- (f) makes false or misleading statements concerning the need for any goods, services, replacements or repairs ; or
- (g) makes false or misleading statements concerning the existence or effect of any warranty or guarantee,

shall be guilty of an offence under this Act.

Exclusive dealing.

20. (1) No trader shall, in the course of a trade or business except with the written approval of the National Prices Commission granted in the interest of the national economy, engage in the practice of exclusive dealing.

(2) A trader engages in the practice of exclusive dealing if such trader—

- (a) supplies any goods or services; or
- (b) charges a price for the supply of any goods or services ; or
- (c) gives or allows a discount, allowance, rebate or credit in relation to the supply of any goods or services,

on the condition, or subject to a contract, arrangement or understanding, that the person to whom such trader supplies goods or services—

- (i) will not, or will to a limited extent only, acquire goods or services from a competitor of such trader; or
- (ii) in the case where such trader supplies goods—
 - (aa) will not, or will to a limited extent only, supply any of the goods to particular persons or to persons included in a particular class of persons; or
 - (bb) will not, or will to a limited extent only, in particular places supply any of the goods to other persons; or

(d) requires, as the condition of the supply to a person of goods or services of a kind that he could not lawfully supply but for the issue or grant to the trader of a licence, permit, authority or registration under any written law, that the person acquire all or part of his requirements of other goods or services directly or indirectly from such trader; or

(e) requires, as a condition of the supply to a person of goods or services, that the person acquire all or a part of his requirements of other goods or services directly or indirectly from a second person.

21. (1) A trader shall not, in a trade or business, discriminate between purchasers of goods of like grade and quality in relation to—

Price discrimination.

- (a) the prices charged for the goods; or
- (b) any discounts, allowances, rebates or credits given in relation to the supply of the goods ; or
- (c) the provision of services or facilities in respect of the goods; or
- (d) the making of payments for services or facilities provided in respect of the goods,

if the discrimination is of such magnitude or is of such recurring or systematic character that it is likely to have the effect of substantially lessening competition in a market for goods, being a market in which the trader supplies, or those persons supply, goods.

(2) The provisions of subsection (1) shall not apply in relation to a discrimination if—

- (a) The discrimination makes only reasonable allowance for differences in the cost or likely cost of manufacture, distribution, sale or delivery resulting from the different places to which, methods by which or quantities in which goods are supplied to the purchasers; or

(b) the discrimination is constituted by the doing of an act in good faith to meet a price or benefit offered by a competitor of the supplier.

(3) In any proceeding for the contravention of the provisions of subsection (1), the burden of establishing that that subsection does not apply in relation to a discrimination by reason of subsection (2) is on the party asserting that subsection (1) does not so apply.

(4) A person shall not, in a trade or business—

(a) knowingly induce or attempt to induce a trader to discriminate in a manner prohibited by subsection (1); or

(b) enter into any transaction that to his knowledge would result in his receiving the benefit of a discrimination that is prohibited by that subsection.

(5) In any proceeding against a person for the contravention of subsection (4), it shall be a sufficient defence if that person establishes that he reasonably believed that by reason of subsection (2), the discrimination concerned was not prohibited by subsection (1).

(6) The National Prices Commission may, where it considers it expedient, in the interest of the national economy, exempt any trader from the application of the preceding provisions of this section to such trader.

Warranties in relation to the supply of services.

22. (1) In every contract for the supply by a trader in the course of a business of services to a consumer there is an implied warranty that the services will be rendered with due care and skill and that any materials supplied in connexion with those services will be reasonably fit for the purpose for which they are supplied.

(2) Where a trader supplies services to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the trader any particular purpose for which the services are required

or the result that he desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connexion with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where circumstances show the consumer does not rely, or that it is unreasonable for him to rely, on the trader's skill or judgment.

(3) In this section, services means services by way of—

(a) the construction, maintenance, repair, treatment, processing, cleaning or alteration of goods ; or

(b) the distribution of goods ; or

(c) the transportation of goods,

23. (1) A trader who, either by himself or with any other person, is in a position substantially to control a market for goods or services shall not take advantage of the power in relation to that market that he has by virtue of being in that position—

(a) to eliminate or substantially to damage a competitor in that market or in another market; or

(b) to prevent the entry of a person into that market or into another market; or

(c) to deter or prevent a person from engaging in competitive behaviour in that market or in another market.

(2) The National Prices Commission may, where it considers it expedient in the interest of the national economy, exempt any trader from the application of the preceding provisions of this section to such trader.

(3) For the purposes of this section, reference to a trader being in a position substantially to control a market for goods or services includes a reference to a trader who, by reason of his share of the market,

or his share of the market combined with availability of technical knowledge, raw materials or capital, has power to determine the prices or control the production or distribution, of a substantial part of the goods or services in that market.

expiry of a period of fourteen days from the date of such order, or where an action has been instituted in respect of such order, until the final determination of such action by court.

PART II

SPECIAL POWERS OF COMMISSIONER

Commissioner to exercise special powers under certain circumstances.

24. f1) Notwithstanding anything in Parts I and IV of this Act, the Commissioner may, if he is satisfied after such inquiry as he may deem necessary that any person has contravened any of the provisions of this Act or any direction given thereunder or any Order made or deemed to be made under section 20 of the National Prices Commission Law or any of the provisions of the Weights and Measures Ordinance or the Control of Prices Act, in the case of the first contravention send to such person a warning in writing.

(2) A warning under subsection (1) shall be sent by the Commissioner by registered post.

PART III

SPECIAL POWERS OF MINISTER

Minister to exercise special powers under certain circumstances.

25. (1) Notwithstanding anything in this Act, the Minister may, if he is satisfied after such inquiry as he may deem necessary that any person has contravened any of the provisions of this Act or any Order made or deemed to be made under section 20 of the National Prices Commission Law or any of the provisions of the Weights and Measures Ordinance or the Control of Prices Act, order the forfeiture of all or any of the assets, movable or immovable, whether connected with his trade or business or not, of such person.

(2) Any person aggrieved by an order of forfeiture made under subsection (1), may within fourteen days of such order after giving notice in writing to the Minister that he intends to do so, institute action in the appropriate court in respect of such order.

(3) No order of forfeiture made under subsection (1) shall take effect until the

PART IV

GENERAL

26. The Commissioner shall have the power to call for any returns, balance sheets, accounting documents, inventories and other information whether relating to his business or not, from any manufacturer or trader if such information is deemed necessary by the Commissioner.

Power to call for documents.

27. (1) The Commissioner or Deputy Commissioner or Assistant Commissioner, or any public officer authorized in writing in that behalf by such Commissioner, Deputy Commissioner or Assistant Commissioner, shall, for the purpose of ascertaining whether the provisions of this Act or any regulation made thereunder are being complied with, have the power—

Power of entry, inspection and search.

(a) to enter, inspect and search at all reasonable hours of the day the premises in which any manufacturer or trader is carrying on his business or any other premises;

(b) to break open any door, vault, trunk, package or other place of storage which he may consider reasonably necessary to break open for the purpose of exercising his powers under this section;

(c) to seize any articles found in such premises in contravention of the provisions of section 13 ; and

(d) to inspect and take copies of any records required to be kept by or under this Act or any other law in respect of such business.

(2) Where any articles are seized under paragraph (f) of subsection (1), the Commissioner may, after such inquiry as he may deem necessary, order the forfeiture of such articles.

(3) Any person aggrieved by an order made under subsection (2), may, within fourteen days of such forfeiture, give notice in writing to the Commissioner that he intends to institute action in the appropriate Court against such forfeiture, and accordingly the provisions of section 25 shall, *mutatis mutandis*, apply in respect of such action.

Offences and penalties.

28. (1) Every person who acts in contravention of any of the provisions of this Act or any regulation made thereunder shall be guilty of an offence under this Act. Every person guilty of an offence under this Act shall, on conviction before a Magistrate, be liable—

(a) in the case of a first offence to a fine not exceeding three thousand rupees or to imprisonment of either description for a period not exceeding three months or to both such fine and imprisonment; and

(b) in the case of a subsequent offence to a fine not exceeding seven thousand five hundred rupees and to imprisonment of either description for a period not exceeding six months.

(2) The court which convicts any person of an offence under this Act may order the forfeiture of any article in respect of which the offence was committed.

(3) The court which convicts any person of an offence under this Act may make order that such person shall not carry on the business of selling or offering for sale any article in the course of any trade or business for such period as may be specified in such order.

(4) Any person who contravenes an order of court under subsection (3) shall be guilty of an offence under this Act.

(5) The Commissioner shall publish in such manner as he thinks fit, the name, address and description of every person in respect of whom an order under subsection (3) has been made by court.

Proceedings under this Act to have priority in court.

29. The proceedings in any court in respect of an offence alleged to have been committed by any person under this Act

shall have priority over all other business of that court,

30. Where an offence under this Act is committed by a body of persons then—

Liabilities of certain persons in respect of offences Committed by bodies corporate or unincorporate.

(a) if the body of persons is a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of that body corporate; or

(b) if the body of person is other than a body corporate, every person who at the time of the commission of the offence was a member of that body.

shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature, of his functions and in all the circumstances.

31. Where any offence under this Act is committed by an agent or servant of any manufacturer or trader, such offence shall be deemed to have been committed by such manufacturer or trader unless he proves that such offence was committed without his knowledge.

Principally liable for offences of agents and servants.

32. No suit or proceeding shall be instituted against any officer appointed under this Act for any act which is done in good faith or is purported to be done by him in the performance of his duties or the discharge of his functions under this Act.

Protection of officers

33. Where any person is convicted of any offence under this Act or where any article is seized and ordered to be forfeited under this Act, the Commissioner may pay—

Rewards to certain persons.

(a) to the person who provided the information, leading to such conviction or the seizure and forfeiture of such article ; and

(b) to any person who is concerned in the detection of such offence or effecting the seizure and forfeiture of such article,

such rewards as he may deem reasonable.

Consumer
Protection
Fund.
[§2,37 of
1980.]

33A. (1) A fund to be called the Consumer Protection Fund (hereafter in this section referred to as " the Fund ") is hereby established.

(2) There shall be paid into the Fund—

- (a) such sums of money as may be voted from time to time by Parliament for the purpose of consumer education or any purpose connected therewith or incidental thereto;
- (b) all fines imposed by the court for any offence under this Act;
- (c) fifty *per centum* of the proceeds of the sale of any articles forfeited under this Act; and
- (d) such sums of money as may be made by way of grant or donation to the Fund by any person or body of persons, whether corporate or unincorporate.

(3) There shall be paid out of the Fund such sums of money as the Commissioner may consider necessary—

- (a) for the promotion, assistance and encouragement of consumer organizations and the administration and development of such organizations; and
- (b) for consumer education and the dissemination of information relating thereto, and for any purpose connected with or incidental to the furtherance of such education.

(4) The Commissioner shall be responsible for the administration of the Fund.

(5) The accounts of the Fund shall be audited by the Auditor-General,

Regulations.

34. (1) The Minister may make regulations for giving effect to the principles and provisions of this Act.

(2) Every regulation made by the Minister shall be published in the Gazette and in one Sinhala, one Tamil and one English newspaper, and shall come into operation on the date of such publication or

on such later date as may be specified in such regulation.

(3) Every regulation made by the Minister shall as soon as convenient after its publication be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder. Notification of the date on which a regulation is deemed to be rescinded shall be published in the Gazette and in one Sinhala, one Tamil and one English newspaper.

***37.** In this Act, unless the context otherwise requires— Interpretation.

" article " means any article of food, drink or merchandise as is, in the opinion of the Commissioner, essential to the life of the community and is so specified by the Commissioner by notification published in the Gazette;

" manufacturer " means any person who—

- (a) makes an article ;
- (b) assembles or joins any article whether by chemical process or otherwise; or
- (c) adapts for sale any article ;

" National Prices Commission" means the National Prices Commission established under section 2 of the National Prices Commission Law; and

" trader " means any person carrying on business as—

- (a) an importer of articles for the purposes of sale or supply;
- (b) an exporter of articles in pursuance of a contract of sale or supply, and includes
 - (i) a person who sells or supplies articles wholesale to any other traders; and
 - (ii) a person who sells or supplies articles at retail rates to consumers.

* Sections 35 and 36 are omitted, as the amendments made to the National Prices Commission Law by those sections have been incorporated in that Law,