

PUNJAB CONSUMER PROTECTION RULES, 2009

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TEXT

PUNJAB CONSUMER PROTECTION RULES, 2009

GOVERNMENT OF THE PUNJAB INDUSTRIES DEPARTMENT

Dated Lahore the 22nd May, 2009

NOTIFICATION

No.SO(E)08-35/2009.- In exercise of the powers conferred by section 38 of the Punjab Consumer Protection Act, 2005 (II of 2005), the Government of the Punjab is pleased to make the following rules:-

1. Short title and commencement.— (1) These rules may be cited as the Punjab Consumer Protection Rules 2009.

(2) These shall come into force at once.

2. Definitions. – (1) In these rules:

(a) “Act” means the Punjab Consumer Protection Act, 2005 (II of 2005);

(b) “Council” means the Provincial Consumer Protection Council;

(c) “Court” means the Consumer Court established under the Act;

(d) “defendant” means a person or an entity against whom a claim has been filed under the Act or who has been accused of any contravention of the provisions of the Act;

(e) “District Council” means a District Consumer Protection Council;

(f) “inspector” means an officer appointed or authorized by the Government to perform functions of inspector; and

(g) “rules” mean the Punjab Consumer Protection Rules 2009.

(2) A word or expression used but not defined in the rules shall mean the same as is assigned to it in the Act.

3. Complaint by private persons to the Authority.— (1) A person may file a complaint to the Authority for violation of section 11, 16, 18 and 19 of the Act.

(2) The Authority shall inquire into substance of the complaint and collect such evidence as it deems necessary.

(3) A police officer or any other officer or authority of the Government shall assist the Authority in collection of information or evidence.

(4) If the Authority is satisfied that sufficient material is available to prove any violation of the provision of sections 11, 16, 18 and 19 of the Act, it shall issue

notice to the defendant and afford him an opportunity of hearing before passing an order.

(5) If the notice has been served upon the defendant and he fails to appear before the Authority, the Authority may proceed ex-parte and impose fine on the defendant on the basis of material available on the record.

4. Cases to be inquired into by Authority.– (1) The Authority, on receipt of a complaint or reference from the Council or on its own motion, may hold an inquiry as to defect in a product or services or practices which contravene any of the provisions of the Act.

(2). No prior notice shall be required to be given to a manufacturer or provider of services for the purposes of holding an inquiry, but the Authority may give notice, if it deems appropriate.

(3) In an inquiry, the Authority may follow such procedure as it deem appropriate in the peculiar facts and circumstances of a case.

5. Procedure in case of defective products.– (1) If the Authority is enquiring about the existence of a defective product, it shall examine the following aspects of the product:

- (a) has the manufacturer set some standards with regard to the product;
- (b) does the product adhere to an express warranty; and
- (c) is the product defective due to any other cause.

(2) In determining whether the product adheres to manufacturer's specifications or warranty, the Authority may rely on the statement of an expert analyst or a panel of expert analysts.

(3) In determining whether a product is defective due to any other cause, the Authority shall consider any defect in design or defect because of inadequate warning in accordance with sections 6 or 7 of the Act.

6. Procedure in case of defective services.– (1) If the Authority is enquiring about the existence of a defective ¹[service], it shall examine the following aspects of a ²[service]:

- (a) is the provision of services subject to statutory or professional standards;
- (b) does the services carry an express warranty;
- (c) is the equipment used by the service provider of satisfactory standard and quality; and
- (d) does the service provider possess adequate capacity and qualifications to deliver the services.

(2) In determining whether a service is defective because of lack of adherence to any professional or statutory standards or otherwise, the Authority may rely on the evidence of an expert or a panel of experts.

¹ The word "service" substituted vide Notification No. SO(E)S-35/2009, dated: 19-08-2010.

² Ibid.

7. Proof of manufacture.— (1) If a manufacturer disowns the product or is likely to disown the product or when situation so requires, the Authority may direct an inspector to obtain a sample of the product.

(2) The inspector, when so directed, shall obtain three samples of the product from market in the presence of two persons, place a mark and seal on each sample.

(3) The persons present and the person, from whom a sample is taken, shall sign and put the thumb impression on the samples.

(4) The Authority, in case the cost of the product is high, may require only one sample to be taken.

(5) The inspector shall send the sealed sample or samples to a laboratory or warehouse as directed by the Authority.

(6) The manufacturer or the distributor or the retailer shall provide sample to the inspector and in case of refusal, the inspector may seek the help of police or any other appropriate authority to obtain the sample.

(8) If possible, the inspector shall pay the market price of the sample.

(9) The Authority or Council shall bear the cost of buying, sealing, mailing etc. of a sample and shall pay the fee for examination of the sample.

8. Support to Authority in collection of evidence.— (1) All Government authorities shall provide such support and information to the Authority as it may require.

(2) If the Authority requires certain information from a person, he shall provide the same in writing within a specified period.

(3) The Authority may request the Court for issuance of search warrants for authorizing an inspector, police officer or any other functionary of the Government to enter and search any premises for the purpose of collection of evidence stating in writing the nature of the evidence and the reasons to believe that such evidence is available at the premises.

(4) If the Authority apprehends that the evidence is likely to be destroyed during the course of issuance of search warrants by the Court, it may issue the search warrants stating in writing the reasons for doing so and submit a report to the Court in this regard at the earliest possible opportunity.

(5) The inspector or police officer shall provide a copy of the search warrant issued by the Court or Authority to the person in occupation of the premises or paste the copy of search warrant in a conspicuous place where the person in occupation of the premises is either unavailable or unwilling to accept service.

9. Order of the Authority.— The Authority shall sign the order, date it and may direct that the same shall be communicated to any person free of charge.

10. Appeal against the order of the Authority.— (1) Any person aggrieved from an order of the Authority, passed under section 23(1) of the Act, may, within thirty days of the order, present a memorandum of appeal against the order to the Secretary to the Government, Industries Department, in person or through any other means of communication.

(2) A memorandum of appeal shall be in writing, signed by the appellant and shall set forth concisely the grounds of appeal without any argument or narrative and such grounds shall be numbered consecutively.

(3) A memorandum of appeal shall be accompanied by the certified copy of the order of the Authority appealed against and such of the documents as may be required to support the grounds of appeal.

(4) When the appeal is presented after the expiry of the period of limitation as specified in the Act, memorandum of appeal shall be accompanied by an application that he has sufficient cause for not preferring the appeal within the period of limitation.

(5) The appellate authority may exercise all or any of the powers of the Authority under the Act or the rules.

(6) The appellate authority shall sign and date the order and may direct that the order shall be communicated to any person free of charge.

11. Claims on behalf of the public.— (1) If as a result of the inquiry, the Authority is satisfied that a contravention of the Act has taken place and public interest is affected or likely to be affected, the Authority shall give notice to the manufacturer or provider of service as required under section 28(1) of the Act to remedy the defects and to pay damages where loss has already been caused to any consumer.

(2) If the manufacturer or provider of service is unwilling to remedy the defects or pay damages to an aggrieved person, the Authority may file a claim in the Court on behalf of the public.

12. Place of sitting etc.— (1) The Court shall be located at the headquarters of the District and where the Government decides to establish a Court having jurisdiction over more than one Districts, it shall notify the place of sitting and jurisdiction of the Court.

(2) The Government shall specify the official seal and emblem of the Court.

(3) The Government shall appoint such staff as may be necessary to assist the Court in its day to day work and performance such other functions as are provided under the rules.

13. Form of claim.— (1) A consumer or Authority may file a claim in the Court by submitting an application and a person well conversant with the facts of the claim shall sign and verify the contents of the application on solemn affirmation or on oath.

(2) The application shall contain precise particulars of the claimant, defendant, brief facts giving rise to the cause of action and the relief which the claimant seeks from the Court.

(3) The claimant shall append with the claim, all the documentary evidence in support of his claim including notice under section 28(1) of the Act, proof of delivery of notice and reply of the notice, if any.

(4) An aggrieved person, the Authority or an authorized agent shall submit a claim in the Court, in person or through any means of communication.

(5) The Court shall not entertain any anonymous or pseudonymous claim.

14. Defence etc.– (1) The Court shall follow the procedure contained in section 30 of the Act after the receipt of the claim.

(2) If the defendant admits the allegation made by the claimant, the Court shall decide the claim on the basis of the merit of the case and documents available on the record.

(3) If during the proceedings conducted under section 30, the Court fixes a date for hearing of the parties, the claimant and defendant or their authorized agents shall appear before the Court on such date of hearing or any other date to which hearing is adjourned.

(4) If the claimant or his authorized agent fails to appear before the Court on such day, the Court may dismiss the claim for default, decide it on merit or adjourn it.

(5) If the defendant fails to appear on the day of hearing, the Court may decide the claim ex-parte on the basis of documents available on the record or adjourn it.

(6) The Court may exercise the powers of a civil court under the Code of Civil Procedure 1908 (XX of 1908) for setting aside an ex-parte order or restoration of a claim dismissed in default.

(7) The Court may, on the reasonable grounds at any stage, adjourn the hearing of the claim such but not more than one adjournment shall ordinarily be given and the claim should be decided as far as possible within ³[one hundred and eighty days] from the date of notice received by the defendant.

15. Analysis of the product.– (1) The Court may direct the claimant to provide more than one sample of the product.

(2) If a sample has been sent to a laboratory by the Court, the laboratory shall send a copy of the final report alongwith the method of analysis or test used to the Court, the claimant and the defendant.

(3) If any of the party disputes the correctness of the findings or the method of analysis of the laboratory, it shall submit its objections in writing to the Court within fifteen days of receipt of the report.

16. Proof of manufacture.– (1) The Court may direct an inspector or an officer of the Court to obtain a sample of the product complained against when the defendant disowns the product.

(2) The inspector shall obtain three samples of the product from market in the presence of two persons, place a mark and seal on each sample.

(3) The persons present and the person, from whom a sample is taken, shall sign and put the thumb impression on the samples.

(4) The Court may, if the cost of the product is high, require only one sample to be taken.

(5) The Court may direct that the inspector shall send the samples to a laboratory or warehouse.

³The words "One hundred and eighty days" substituted vide Notification No.SO(E) S-35/2009 dated: 19-08-2010

(6) The manufacturer or the distributor or the retailer shall provide samples to the inspector and in case of refusal, the inspector may seek the help of police or any other appropriate authority to obtain samples.

(7) If possible, the inspector shall pay the market price of the samples.

(8) The claimant shall bear the cost of buying, sealing, mailing samples and laboratory fees.

17. Order of the court.— The presiding officer of the Court shall sign the order, date it and may direct that the same shall be communicated to the parties free of charge.

18. Appeal against the order of the court.— (1) Any person aggrieved from a final order of the Court may, within thirty days of the order, file an appeal in the Lahore High Court in accordance with the Rules of Procedure of the Lahore High Court.

(2) A memorandum of appeal shall be accompanied by the certified copy of the order of the Court appealed against and such of the documents as may be required to support the grounds of appeal.

(3) When the appeal is presented after the expiry of the period of limitation as specified in the Act, memorandum of appeal shall be accompanied by an application that he has sufficient cause for not preferring the appeal within the period of limitation.

(4) The Lahore High Court may exercise all or any of the powers of the Court under the Act or the rules, in respect of the appeal pending before it.

19. Constitution of the Council.— (1) The Consumer Protection Council shall comprise twenty four members, of which eleven shall be official members while thirteen shall be non-official members.

(2) The official members shall be as follows:

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|--------|---|------------------|
| (i) | Minister for Industries, Punjab; | Chairperson |
| (ii) | Chief Secretary, Punjab; | Vice Chairperson |
| (iii) | Secretary to the Government
Home Department; | Member |
| (iv) | Secretary to the Government
Local Government Department; | Member |
| (v) | Secretary to the Government
Industries Department; | Member |
| (vi) | Secretary to the Government
Agriculture Department; | Member |
| (vii) | Secretary to the Government
Health Department; | Member |
| (viii) | Secretary to the Government | Member |

Food Department;

- (ix) Secretary to the Government Member

Labour Department;

- (x) Provincial Police Officer, Punjab; Member

- (xi) Director of the Council. Member/Secretary

(3) The non-official members shall be as follows:

- (i) President, Lahore Chamber of Commerce and Industry;
- (ii) four persons to be nominated by the Government who have worked in the area of consumer protection and industrial standards and who are not public officials or elected representatives;
- (iii) heads of four nonprofit organizations dealing with consumer protection to be nominated by the Government preferably certified by the Pakistan Centre for Philanthropy, Islamabad; and
- (iv) four female social workers to be nominated by the Government.

(4) A non-official member, other than the President Lahore Chamber of Commerce and Industry, shall hold office for a period of three years without any bar on re-appointment.

(5) The Council may co-opt any other person as member including a representative of the ⁴[Pakistan Standard and Quality Control Authority] but such member shall not be entitled to vote in the meeting of the Council.

(6) The Secretary of the Council may, with the approval of the Chairperson or Vice Chairperson, call a meeting of the Council.

(7) Eight members shall constitute the quorum for a meeting of the Council and the Chairperson or Vice Chairperson shall preside a meeting of the Council.

(8) If a casual vacancy is caused by resignation or removal of a non-official member, the Government shall fill the vacancy by fresh appointment within thirty days of the occurring of such a vacancy.

20. Terms and conditions of membership.— (1) A member of the Council shall not take part in any proceedings of the Council if he has any interest which is or which may be in conflict with the interest of the Council.

(2) No person shall be appointed as non-official member if he has been convicted of any offence involving moral turpitude or has been held to be liable in a proceeding under the Act.

(3) No person shall be appointed as a non-official member, or remain in office, if he is or has become physically or mentally incapable of performing his functions.

(4) A non official member may resign by addressing a resignation under his hand to the Government.

⁴The words “Pakistan Standard Quality Control Authority” substituted vide Notification No. SO(E) S-35/2009, dated: 19.08.2010.

(5) The Government may, for the reasons to be recorded in writing, remove a non-official member during his tenure as member.

21. Functions Of The Council.— The Council shall:

- (i) gather such information and data as may be necessary in order to remove defective products and services from trade or commerce and submit reference to the Authority;
- (ii) examine the work being done by the District Councils and ensure that the District Councils are performing functions in accordance with the Act, rules and instructions of the Government;
- (iii) review the reforms proposed by the District Councils, assess the feasibility for implementation of the reforms and suggest improvements;
- (iv) advise the Government and Authority on matters relating to protection of consumers;
- (v) increase awareness about consumer protection issues;
- (vi) issue information booklets on standards of products and services in different areas of Pakistan and some selected areas of the world;
- (vii) establish and manage a laboratory for carrying out tests of the products or equipment of the services; and
- (viii) set guidelines and standards for the laboratories managed, recognized or registered by the Council.

22. Constitution of the district councils.— (1) The Government may, by notification in the official gazette, establish a District Council.

(2) A District Council shall comprise of twenty members, of which nine shall be official members while eleven shall be non-official members.

(3) The official members shall be as follows:

- | | | |
|--------|---|------------------|
| (i) | District Coordination Officer | Chairperson; |
| (ii) | Executive District Officer, Finance
and Planning; | Member |
| (iii) | Executive District Officer, Health; | Member |
| (iv) | Executive District Officer,
Community Development; | Member |
| (v) | Executive District Officer, Revenue; | Member |
| (vi) | District Police Officer/City Police
Officer/Capital City Police Officer; | Member |
| (vii) | District Officer, Agriculture; | Member |
| (viii) | One TMO nominated by the District
Coordination Officer; and | Member |
| (ix) | Assistant Director (Legal) of the | Member/Secretary |

Council.

- (4) The non-official members shall be as follows:
- (i) six prominent citizens nominated by the District Coordination Officer;
 - (ii) head of the local Chamber of Commerce and Industry; and
 - (iii) four female social workers to be nominated by the Executive District Officer (Community Development).
- (5) A non-official member may resign by submitting his resignation to the Chairperson of the District Council.
- (6) If a non-official member fails to attend three consecutive meetings, without obtaining leave of absence from the Chairperson of the District Council, such member shall be deemed to have resigned from the District Council.
- (7) The Secretary of the District Council may, with the approval of the Chairperson, call a meeting of the District Council.
- (8) Six members shall constitute the quorum for a meeting of the District Council and the Chairperson shall preside a meeting of the District Council.
- (9) A member of the District Council shall not take part in any proceedings of the District Council if he has any interest which is or which may be in conflict with the interest of the District Council.
- (10) A non-official member, other than the head of local Chamber of Commerce and Industry, shall hold office for a period of three years and eligible for re-appointment.
- (11) The Government may, on the recommendation of the Chairperson of the District Council and for the reasons to be recorded in writing, remove a non-official member of the District Council during his tenure as member.

23. Functions of District Councils.– The District Councils shall:

- (i) recommend reforms to the Authority and to the Council for furthering the objects and purposes of the Act;
- (ii) create awareness among consumers against the marketing of products which are hazardous to life and property;
- (iii) provide information and access to information regarding products and services available in the district to the consumers;
- (iv) create awareness among public regarding access to products and services, and protection from any unfair, illegal or dangerous practices prevalent in the market;
- (v) assist in the exchange of information, views and recommendations between manufacturers, suppliers, consumers and the Government;
- (vi) perform any other function as directed by the Government or the Council; and
- (vii) assist the Council in removing defective products and services from the market.

24. Registration and categorization of laboratories. – (1) The Council may register a laboratory for conducting test of a product or equipment.

(2) The Council may recognize a laboratory for the purposes of test of products or equipment.

(3) The Council may categorize specific laboratories to carry out any one or more categories of tests based on specialized capacity of the laboratory and its proposed cost for carrying out the analysis.

(4) The Council may, for the reasons to be recorded in writing, de-register or de-recognize a laboratory.

25. Public disclosure.– After pronouncement of the final order by the Court, the Council shall obtain a copy of the order, publish it on its website and provide easy access of information to the consumers relating to products and services.

26. Appointment of inspectors.– (1) The Government may authorize an officer to act as inspector for an area or District.

(2) The Government may appoint any person as inspector for an area or District on such terms and conditions, as it may specify.

Sd/-

SECRETARY TO THE GOVERNMENT OF THE PUNJAB
INDUSTRIES DEPARTMENT