



# Trade Descriptions Act 1968

## 1968 CHAPTER 29

### *Miscellaneous and supplemental*

#### **32 Power to exempt goods sold for export, etc.**

In relation to goods which are intended—

- (a) for despatch to a destination outside the United Kingdom and any designated country within the meaning of section 21(5)(b) of the Weights and Measures Act 1963 or section 15(5)(b) of the Weights and Measures Act (Northern Ireland) 1967 ; or
- (b) for use as stores within the meaning of the Customs and Excise Act 1952 in a ship or aircraft on a voyage or flight to an eventual destination outside the United Kingdom; or
- (c) for use by Her Majesty's forces or by a visiting force within the meaning of any of the provisions of Part I of the Visiting Forces Act 1952 ; or
- (d) for industrial or constructional use within the meaning of the Weights and Measures Act 1963 or the Weights and Measures Act (Northern Ireland) 1967 ;

section 1 of this Act shall apply as if there were omitted from the matters included in section 2(1) of this Act those specified in paragraph (a) thereof; and, if the Board of Trade by order specify any other of those matters for the purposes of this section with respect to any description of goods, the said section 1 shall apply, in relation to goods of that description which are intended for despatch to a destination outside the United Kingdom and such country (if any) as may be specified in the order, as if the matters so specified were also omitted from those included in the said section 2(1).

#### **33 Compensation for loss, etc., of goods seized under s. 28**

- (1) Where, in the exercise of his powers under section 28 of this Act, an officer of a local weights and measures authority or of a Government department seizes and detains any goods and their owner suffers loss by reason thereof or by reason that the goods, during the detention, are lost or damaged or deteriorate, then, unless the owner is

convicted of an offence under this Act committed in relation to the goods, the authority or department shall be liable to compensate him for the loss so suffered.

- (2) Any disputed question as to the right to or the amount of any compensation payable under this section shall be determined by arbitration and, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

### **34 Trade marks containing trade descriptions**

The fact that a trade description is a trade mark, or part of a trade mark, within the meaning of the Trade Marks Act 1938 does not prevent it from being a false trade description when applied to any goods, except where the following conditions are satisfied, that is to say—

- (a) that it could have been lawfully applied to the goods if this Act had not been passed; and
- (b) that on the day this Act is passed the trade mark either is registered under the Trade Marks Act 1938 or is in use to indicate a connection in the course of trade between such goods and the proprietor of the trade mark; and
- (c) that the trade mark as applied is used to indicate such a connection between the goods and the proprietor of the trade mark or a person registered under section 28 of the Trade Marks Act 1938 as a registered user of the trade mark ; and
- (d) that the person who is the proprietor of the trade mark is the same person as, or a successor in title of, the proprietor on the day this Act is passed.

### **35 Saving for civil rights**

A contract for the supply of any goods shall not be void or unenforceable by reason only of a contravention of any provision of this Act.

### **36 Country of origin**

- (1) For the purposes of this Act goods shall be deemed to have been manufactured or produced in the country in which they last underwent a treatment or process resulting in a substantial change.
- (2) The Board of Trade may by order specify—
  - (a) in relation to any description of goods, what treatment or process is to be regarded for the purposes of this section as resulting or not resulting in a substantial change;
  - (b) in relation to any description of goods different parts of which were manufactured or produced in different countries, or of goods assembled in a country different from that in which their parts were manufactured or produced, in which of those countries the goods are to be regarded for the purposes of this Act as having been manufactured or produced.

### **37 Market research experiments**

- (1) In this section " market research experiment" means any activities conducted for the purpose of ascertaining the opinion of persons (in this section referred to as " participants ") of—
  - (a) any goods ; or

- (b) anything in, on or with which the goods are supplied ; or
  - (c) the appearance or any other characteristic of the goods or of any such thing ; or
  - (d) the name or description under which the goods are supplied.
- (2) This section applies to any market research experiment with respect to which the following conditions are satisfied, that is to say.—
- (a) that any participant to whom any goods are supplied in the course of the experiment is informed, at or before the time at which they are supplied to him, that they are supplied for such a purpose as is mentioned in subsection (1) of this section, and
  - (b) that no consideration in money or money's worth is given by a participant for the goods or any goods supplied to him for comparison.
- (3) Neither section 1 nor section 8 of this Act shall apply in relation to goods supplied or offered to be supplied, whether to a participant or any other person, in the course of a market research experiment to which this section applies.

### **38 Orders**

- (1) Any power to make an order under the preceding provisions of this Act shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to vary or revoke such an order by a subsequent order.
- (2) Any order under the preceding provisions of this Act which relates to any agricultural, horticultural or fishery produce, whether processed or not, food, feeding stuffs or ingredients of food or feeding stuffs, fertilisers or any goods used as pesticides or for similar purposes shall be made by the Board of Trade acting jointly with the following Ministers, that is to say, if the order extends to England and Wales, the Minister of Agriculture, Fisheries and Food, and if it extends to Scotland or Northern Ireland, the Secretary of State concerned.
- (3) The following provisions shall apply to the making of an order under section 7, 8, 9, 15 or 36 of this Act, except in the case mentioned in section 10(2) thereof, that is to say—
- (a) before making the order the Board of Trade shall consult with such organisations as appear to them to be representative of interests substantially affected by it and shall publish, in such manner as the Board think appropriate, notice of their intention to make the order and of the place where copies of the proposed order may be obtained ; and
  - (b) the order shall not be made until the expiration of a period of twenty-eight days from the publication of the notice and may then be made with such modifications (if any) as the Board of Trade think appropriate having regard to any representations received by them.

### **39 Interpretation**

- (1) The following provisions shall have effect, in addition to sections 2 to 6 of this Act, for the interpretation in this Act of expressions used therein, that is to say.—
- " advertisement " includes a catalogue, a circular and a price list;
  - " goods " includes ships and aircraft, things attached to land and growing crops ;
  - " premises " includes any place and any stall, vehicle, ship or aircraft; and

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" ship " includes any boat and any other description of vessel used in navigation.

- (2) For the purposes of this Act, a trade description or statement published in any newspaper, book or periodical or in any film or sound or television broadcast shall not be deemed to be a trade description applied or statement made in the course of a trade or business unless it is or forms part of an advertisement.

#### **40 Provisions as to Northern Ireland**

- (1) This Act shall apply to Northern Ireland subject to the following modifications, that is to say—
- (a) section 19(2) shall apply as if for the references to section 104 of the Magistrates' Courts Act 1952 and the trial and laying of an information there were substituted respectively references to section 34 of the Magistrates' Courts Act (Northern Ireland) 1964 and the hearing and determination and making of a complaint;
  - (b) section 26 and subsections (2) to (4) of section 30 shall not apply but it shall be the duty of the Ministry of Commerce for Northern Ireland to enforce the provisions of this Act and of any order made under it (other than the provisions of section 42 of this Act);
  - (c) sections 27 to 29 and 33 shall apply as if for references to a local weights and measures authority and any officer of such an authority there were substituted respectively references to the said Ministry and any of its officers.
- (2) In paragraph (13) of section 4(1) of the Government of Ireland Act 1920 (which excludes, among other things, merchandise marks from the matters with respect to which the Parliament of Northern Ireland has power to make laws) the words " merchandise marks " shall be omitted and shall be deemed never to have been included; but the following provisions of this section shall (in addition to any other limitation) apply with respect to the powers of that Parliament to make laws for purposes similar to those of this Act.
- (3) The Parliament of Northern Ireland shall not have power to make provision requiring any information as to the country of manufacture or production of any goods to be marked on or to accompany the goods or to be included in advertisements except—
- (a) in the case of any agricultural, horticultural or fishery produce, whether processed or not, which for the purposes of this Act is deemed to have been produced or manufactured in Northern Ireland; or
  - (b) if the provision is made for the purpose of preventing or controlling the introduction into Northern Ireland, or the spreading within Northern Ireland, of diseases or pests affecting animals or plants.
- (4) If the Parliament of Northern Ireland enacts any law for purposes similar to those of section 7 or section 15 of this Act, any provision of or made in pursuance of that law which would be inconsistent with any provision made (whether before or after the first-mentioned provision) under either of those sections shall be void so far as it would be so inconsistent.
- (5) The Board of Trade shall for each financial year pay into the Exchequer of Northern Ireland such sum as the Board and the Ministry of Commerce for Northern Ireland may agree to be appropriate as representing the expenses incurred by that Ministry in

enforcing so much of this Act as relates to matters with respect to which the Parliament of Northern Ireland does not have power to make laws.

- (6) Nothing in this Act shall authorise any department of the Government of Northern Ireland to incur any expenses attributable to the provisions of this Act until provision has been made by the Parliament of Northern Ireland for those expenses to be defrayed out of moneys provided by that Parliament.
- (7) This Act, so far as it relates to matters with respect to which the Parliament of Northern Ireland has power to make laws, shall be deemed for the purposes of section 6 of the Government of Ireland Act 1920 to have been passed before the day appointed for the purposes of that section.

#### **41 Consequential amendments and repeals**

- (1) The enactments mentioned in Schedule 1 to this Act shall have effect subject to the amendments specified in that Schedule.
- (2) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

#### **42 Continuation, for three years, of Orders in Council requiring indication of origin**

- (1) Until the end of the period of three years beginning with the commencement of this Act the repeals made by this Act shall not affect—
  - (a) any Order in Council made under section 2 of the Merchandise Marks Act 1926, or the prohibition on the importation of any goods required by such an Order to bear an indication of origin at the time of importation, or
  - (b) the powers conferred by section 9 of that Act on local authorities and their officers with respect to goods to which such an Order applies ;and a person who contravenes the provisions of such an Order shall, subject to the provisions of this Act, be guilty of an offence and liable on summary conviction to a fine not exceeding five pounds, and in the case of a second or subsequent conviction to a fine not exceeding twenty pounds.
- (2) Nothing in this Act shall be taken to affect the meaning of the expression " indication of origin " in any such Order in Council.
- (3) Her Majesty may by Order in Council vary or revoke any Order in Council made under the said section 2.
- (4) Where any requirements with respect to any goods are for the time being imposed by an Order in Council made under the said section 2 and the Board of Trade are satisfied, on the representation of persons appearing to the Board to have a substantial interest in the matter, that the continued application of any of those requirements has caused or is likely to cause injury or hardship to such persons, or any of them, the Board may by statutory instrument direct that the Order, or any particular provisions of the Order, shall cease to apply to those goods or shall apply to such goods subject only to such modifications and conditions as the Board think fit; and where such a direction is in force the Order shall have effect subject to the direction.
- (5) Any direction under this section which relates to goods of any description mentioned in subsection (2) of section 38 of this Act shall be given by the Board of Trade acting jointly as mentioned in that subsection.

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- (6) A direction under this section, if not given for a shorter period or withdrawn earlier, shall cease to be in force at whichever of the following dates is the earlier, that is to say, twelve months after the date on which it was given or the date on which an Order in Council under this section varying the Order with respect to which the direction was given comes into force.
- (7) The Board of Trade shall publish any direction given under this section in such manner as they think appropriate.
- (8) A draft of any Order in Council to be made under this section shall be laid before Parliament.
- (9) The duty of local weights and measures authorities under section 26 of this Act to enforce the provisions of this Act shall not extend to the provisions of this section.

#### **43 Short title and commencement**

- (1) This Act may be cited as the Trade Descriptions Act 1968.
- (2) This Act shall come into force on the expiration of the period of six months beginning with the day on which it is passed.