



# Trade Descriptions Act 1968

## 1968 CHAPTER 29

An Act to replace the Merchandise Marks Acts 1887 to 1953 by fresh provisions prohibiting misdescriptions of goods, services, accommodation and facilities provided in the course of trade; to prohibit false or misleading indications as to the price of goods; to confer power to require information on instructions relating to goods to be marked on or to accompany the goods or to be included in advertisements; to prohibit the unauthorised use of devices or emblems signifying royal awards; to enable the Parliament of Northern Ireland to make laws relating to merchandise marks; and for purposes connected with those matters. [30th May 1968]

### Modifications etc. (not altering text)

- C1** Words of enactment omitted under authority of Statute Law Revision Act 1948 (c. 62), s. 3
- C2** Act modified by S.I. 1977/1140, reg. 12(2)
- C3** Act excluded (E.W.S.) by S.I. 1985/1271, reg. 11 and (N.I.) by S.R. 1978/342, reg. 9(2)  
Act excluded (E.W.S.) by Weights and Measures Act 1985 (c. 72, SIF 131), s. 48(4), Sch. 11 para. 21(2)
- C4** Act restricted by Energy Conservation Act 1981 (c. 17, SIF 44:3), s. 19(2)  
Act restricted by S.R. 1987/407, reg. 10  
Act restricted (6.11.1995) by S.R. 1995/382, reg. 9
- C5** Act extended by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 80(1)
- C6** Act applied (1.1.1995) by S.I. 1994/3142, reg. 18(5)  
Act applied (1.1.1995) by S.I. 1994/3144, reg. 9(11)(15) (as amended (30.10.2005) by S.I. 2005/2759, reg. 2(12))  
Act applied (30.10.2005) by The Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005 (S.I. 2005/2750), reg. 10(5) (with Sch. 6)

### Commencement Information

- I1** Act wholly in force at 30.11.1968 see s. 43(2).

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*Status: Point in time view as at 26/04/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Trade Descriptions Act 1968. (See end of Document for details)*

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### *Prohibition of false trade descriptions*

#### **1 Prohibition of false trade descriptions.**

- (1) Any person who, in the course of a trade or business,—
- (a) applies a false trade description to any goods; or
  - (b) supplies or offers to supply any goods to which a false trade description is applied;
- shall, subject to the provisions of this Act, be guilty of an offence.
- (2) Sections 2 to 6 of this Act shall have effect for the purposes of this section and for the interpretation of expressions used in this section, wherever they occur in this Act.

#### **2 Trade description.**

- (1) A trade description is an indication, direct or indirect, and by whatever means given, of any of the following matters with respect to any goods or parts of goods, that is to say—
- (a) quantity, size or gauge;
  - (b) method of manufacture, production, processing or reconditioning;
  - (c) composition;
  - (d) fitness for purpose, strength, performance, behaviour or accuracy;
  - (e) any physical characteristics not included in the preceding paragraphs;
  - (f) testing by any person and results thereof;
  - (g) approval by any person or conformity with a type approved by any person;
  - (h) place or date of manufacture, production, processing or reconditioning;
    - (i) person by whom manufactured, produced, processed or reconditioned;
  - (j) other history, including previous ownership or use.
- (2) The matters specified in subsection (1) of this section shall be taken—
- (a) in relation to any animal, to include sex, breed or cross, fertility and soundness;
  - (b) in relation to any semen, to include the identity and characteristics of the animal from which it was taken and measure of dilution.
- (3) In this section “quantity” includes length, width, height, area, volume, capacity, weight and number.
- (4) Notwithstanding anything in the preceding provisions of this section, the following shall be deemed not to be trade descriptions, that is to say, any description or mark applied in pursuance of—
- (a) .....<sup>F1</sup>
  - (b) section 2 of the <sup>M1</sup>Agricultural Produce (Grading and Marking) Act 1928 (as amended by the <sup>M2</sup>Agricultural Produce (Grading and Marking) Amendment Act 1931) or any corresponding enactment of the Parliament of Northern Ireland;
  - (c) the <sup>M3</sup>Plant Varieties and Seeds Act 1964;
  - (d) the <sup>M4</sup>Agriculture and Horticulture Act 1964 [<sup>F2</sup>or any Community grading rules within the meaning of Part III of that Act];
  - (e) the <sup>M5</sup>Seeds Act (Northern Ireland) 1965;

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- (f) the <sup>M6</sup>Horticulture Act (Northern Ireland) 1966;  
[<sup>F3</sup>(g) The Consumer Protection Act 1987;]  
[<sup>F4</sup>(h) the Plant Varieties Act 1997;]  
[<sup>F5</sup>any statement made in respect of, or mark applied to, any material in pursuance of Part IV of the <sup>M7</sup>Agriculture Act 1970, any name or expression to which a meaning has been assigned under section 70 of that Act when applied to any material in the circumstances specified in that section] . . . <sup>F6</sup> any mark prescribed by a system of classification compiled under section 5 of the <sup>M8</sup>Agriculture Act 1967 [<sup>F7</sup>and any designation, mark or description applied in pursuance of a scheme brought into force under section 6(1) or an order made under section 25(1) of the Agriculture Act 1970]
- (5) Notwithstanding anything in the preceding provisions of this section,  
[<sup>F8</sup>(a)] where provision is made under [<sup>F9</sup>the Food Safety Act 1990] or the [<sup>F10</sup>Food Safety (Northern Ireland) Order 1991][<sup>F11</sup>or the Consumer Protection Act 1987] prohibiting the application of a description except to goods in the case of which the requirements specified in that provision are complied with, that description, when applied to such goods, shall be deemed not to be a trade description.  
[<sup>F12</sup>(b)] where by virtue of any provision made under Part V of the Medicines Act 1968 (or made under any provisions of the said Part V as applied by an order made under section 104 or section 105 of that Act) anything which, in accordance with this Act, constitutes the application of a trade description to goods is subject to any requirements or restrictions imposed by that provision, any particular description specified in that provision, when applied to goods in circumstances to which those requirements or restrictions are applicable, shall be deemed not to be a trade description.]

#### Textual Amendments

- F1** S. 2(4)(a) repealed by [European Communities Act 1972 \(c. 68\)](#), s. 4, **Sch. 3 Pt. III**
- F2** Words inserted by [European Communities Act 1972 \(c. 68\)](#), s. 4, **Sch. 4 para. 4(2)**
- F3** S. 2(4)(g) inserted by [Consumer Safety Act 1978 \(c. 38\)](#), s. 7(8) and as substituted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), s. 48(1), **Sch. 4 para. 2(1)(a)**
- F4** S. 2(4)(h) inserted (8.5.1998) by 1997 c. 66, s. 51(4); S.I. 1998/1028, **art.2**.
- F5** Words substituted (1.1.1974) by [Agriculture Act 1970 \(c. 40\)](#), s. 87(3)
- F6** Word repealed by [Agriculture Act 1970 \(c. 40\)](#), s. 6(4), **Sch. 5 Pt. V**
- F7** Words added by [Agriculture Act 1970 \(c. 40\)](#), s. 6(4)
- F8** Word "(a)" inserted by [Medicines Act 1968 \(c. 67, SIF 84\)](#), s. 135(1), **Sch. 5 para. 16**
- F9** Words "the Food Safety Act 1990" substituted (E.W.S.) by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\)](#), s. 59(1), **Sch. 3 para. 6**
- F10** Words in s. 2(5)(a) substituted (N.I.) (21.5.1991) by S.I. 1991/762 (N.I. 7), art. 51(1), **Sch. 2 para.8; S.R. 1991/175, art. 2(1)**
- F11** Words substituted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), s. 48(1), **Sch. 4 para. 2(1)(b)** for words inserted by [Consumer Safety Act 1978 \(c.38, SIF 109:1\)](#), s. 7(8)
- F12** Para. (b) inserted by [Medicines Act 1968 \(c. 67, SIF 84\)](#), s. 135(1), **Sch. 5 para. 16**

#### Modifications etc. (not altering text)

- C7** S. 2(5) amended (14.2.1989) by [Medicines Act 1968 \(c. 67\)](#), s. 135(1), **Sch. 5 para. 16**

#### Marginal Citations

- M1** 1928 c. 19.  
**M2** 1931 c. 40.

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<b>M3</b>	1964 c. 14.
<b>M4</b>	1964 c. 28.
<b>M5</b>	1965 c. 22 (N.I.)
<b>M6</b>	1966 c. 15 (N.I.)
<b>M7</b>	1970 c. 40
<b>M8</b>	1967 c. 22.

### 3 False trade description.

- (1) A false trade description is a trade description which is false to a material degree.
- (2) A trade description which, though not false, is misleading, that is to say, likely to be taken for such an indication of any of the matters specified in section 2 of this Act as would be false to a material degree, shall be deemed to be a false trade description.
- (3) Anything which, though not a trade description, is likely to be taken for an indication of any of those matters and, as such an indication, would be false to a material degree, shall be deemed to be a false trade description.
- (4) A false indication, or anything likely to be taken as an indication which would be false, that any goods comply with a standard specified or recognised by any person or implied by the approval of any person shall be deemed to be a false trade description, if there is no such person or no standard so specified, recognised or implied.

#### Modifications etc. (not altering text)

**C8** S. 3(1) amended (1.1.1975) by [Hallmarking Act 1973 \(c. 43\)](#), s. 1(4)

### 4 Applying a trade description to goods.

- (1) A person applies a trade description to goods if he—
  - (a) affixes or annexes it to or in any manner marks it on or incorporates it with—
    - (i) the goods themselves, or
    - (ii) anything in, on or with which the goods are supplied; or
  - (b) places the goods in, on or with anything which the trade description has been affixed or annexed to, marked on or incorporated with, or places any such thing with the goods; or
  - (c) uses the trade description in any manner likely to be taken as referring to the goods.
- (2) An oral statement may amount to the use of a trade description.
- (3) Where goods are supplied in pursuance of a request in which a trade description is used and the circumstances are such as to make it reasonable to infer that the goods are supplied as goods corresponding to that trade description, the person supplying the goods shall be deemed to have applied that trade description to the goods.

#### Modifications etc. (not altering text)

**C9** S. 4 extended (1.1.1975) by [Hallmarking Act 1973 \(c. 43\)](#), s. 1(7) (b)

*Status: Point in time view as at 26/04/2005.*

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## 5 Trade descriptions used in advertisements.

- (1) The following provisions of this section shall have effect where in an advertisement a trade description is used in relation to any class of goods.
- (2) The trade description shall be taken as referring to all goods of the class, whether or not in existence at the time the advertisement is published—
  - (a) for the purpose of determining whether an offence has been committed under paragraph (a) of section 1(1) of this Act; and
  - (b) where goods of the class are supplied or offered to be supplied by a person publishing or displaying the advertisement, also for the purpose of determining whether an offence has been committed under paragraph (b) of the said section 1(1).
- (3) In determining for the purposes of this section whether any goods are of a class to which a trade description used in an advertisement relates regard shall be had not only to the form and content of the advertisement but also to the time, place, manner and frequency of its publication and all other matters making it likely or unlikely that a person to whom the goods are supplied would think of the goods as belonging to the class in relation to which the trade description is used in the advertisement.

### Modifications etc. (not altering text)

C10 S. 5(3) applied (1.1.1975) by [Hallmarking Act 1973 \(c. 43\), s. 1\(8\)](#)

## 6 Offer to supply.

A person exposing goods for supply or having goods in his possession for supply shall be deemed to offer to supply them.

*Power to define terms and to require display, etc. of information*

## 7 Definition orders.

Where it appears to the Board of Trade—

- (a) that it would be in the interest of persons to whom any goods are supplied; or
- (b) that it would be in the interest of persons by whom any goods are exported and would not be contrary to the interest of persons to whom such goods are supplied in the United Kingdom;

that any expressions used in relation to the goods should be understood as having definite meanings, the Board may by order assign such meanings either—

- (i) to those expressions when used in the course of a trade or business as, or as part of, a trade description applied to the goods; or
- (ii) to those expressions when so used in such circumstances as may be specified in the order;

and where such a meaning is so assigned to an expression it shall be deemed for the purposes of this Act to have that meaning when used as mentioned in paragraph (i) or, as the case may be, paragraph (ii) of this section.

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## **8 Marking orders.**

- (1) Where it appears to the Board of Trade necessary or expedient in the interest of persons to whom any goods are supplied that the goods should be marked with or accompanied by any information (whether or not amounting to or including a trade description) or instruction relating to the goods, the Board may, subject to the provisions of this Act, by order impose requirements for securing that the goods are so marked or accompanied, and regulate or prohibit the supply of goods with respect to which the requirements are not complied with; and the requirements may extend to the form and manner in which the information or instruction is to be given.
- (2) Where an order under this section is in force with respect to goods of any description, any person who, in the course of any trade or business, supplies or offers to supply goods of that description in contravention of the order shall, subject to the provisions of this Act, be guilty of an offence.
- (3) An order under this section may make different provision for different circumstances and may, in the case of goods supplied in circumstances where the information or instruction required by the order would not be conveyed until after delivery, require the whole or part thereof to be also displayed near the goods.

## **9 Information etc. to be given in advertisements.**

- (1) Where it appears to the Board of Trade necessary or expedient in the interest of persons to whom any goods are to be supplied that any description of advertisements of the goods should contain or refer to any information (whether or not amounting to or including a trade description) relating to the goods the Board may, subject to the provisions of this Act, by order impose requirements as to the inclusion of that information, or of an indication of the means by which it may be obtained, in such description of advertisements of the goods as may be specified in the order.
- (2) An order under this section may specify the form and manner in which any such information or indication is to be included in advertisements of any description and may make different provision for different circumstances.
- (3) Where an advertisement of any goods to be supplied in the course of any trade or business fails to comply with any requirement imposed under this section, any person who publishes the advertisement shall, subject to the provisions of this Act, be guilty of an offence.

## **10 Provisions supplementary to sections 8 and 9.**

- (1) A requirement imposed by an order under section 8 or section 9 of this Act in relation to any goods shall not be confined to goods manufactured or produced in any one country or any one of a number of countries or to goods manufactured or produced outside any one or more countries, unless—
  - (a) it is imposed with respect to a description of goods in the case of which the Board of Trade are satisfied that the interest of persons in the United Kingdom to whom goods of that description are supplied will be sufficiently protected if the requirement is so confined; and
  - (b) the Board of Trade are satisfied that the order is compatible with the international obligations of the United Kingdom.

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- (2) Where any requirements with respect to any goods are for the time being imposed by such an order 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 greater hardship would be caused to such persons if the requirements continued to apply than is justified by the interest of persons to whom such goods are supplied, the power of the Board to relax or discontinue the requirements by a further order may be exercised without the consultation and notice required by section 38(3) of this Act.

*Misstatements other than false trade descriptions*

11 ..... F13

**Textual Amendments**

F13 S. 11 repealed by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), s. 48(3), [Sch. 5](#)

**12 False representations as to royal approval or award, etc.**

- (1) If any person, in the course of any trade or business, gives, by whatever means, any false indication, direct or indirect, that any goods or services supplied by him or any methods adopted by him are or are of a kind supplied to or approved by Her Majesty or any member of the Royal Family, he shall, subject to the provisions of this Act, be guilty of an offence.
- (2) If any person, in the course of any trade or business, uses, without the authority of Her Majesty, any device or emblem signifying the Queen's Award to Industry or anything so nearly resembling such a device or emblem as to be likely to deceive, he shall, subject to the provisions of this Act, be guilty of an offence.

**13 False representations as to supply of goods or services.**

If any person, in the course of any trade or business, gives, by whatever means, any false indication, direct or indirect, that any goods or services supplied by him are of a kind supplied to any person he shall, subject to the provisions of this Act, be guilty of an offence.

**14 False or misleading statements as to services etc.**

- (1) It shall be an offence for any person in the course of any trade or business—
- (a) to make a statement which he knows to be false; or
  - (b) recklessly to make a statement which is false;
- as to any of the following matters, that is to say,—
- (i) the provision in the course of any trade or business of any services, accommodation or facilities;
  - (ii) the nature of any services, accommodation or facilities provided in the course of any trade or business;
  - (iii) the time at which, manner in which or persons by whom any services, accommodation or facilities are so provided;

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- (iv) the examination, approval or evaluation by any person of any services, accommodation or facilities so provided; or
  - (v) the location or amenities of any accommodation so provided.
- (2) For the purposes of this section—
- (a) anything (whether or not a statement as to any of the matters specified in the preceding subsection) likely to be taken for such a statement as to any of those matters as would be false shall be deemed to be a false statement as to that matter; and
  - (b) a statement made regardless of whether it is true or false shall be deemed to be made recklessly, whether or not the person making it had reasons for believing that it might be false.
- (3) In relation to any services consisting of or including the application of any treatment or process or the carrying out of any repair, the matters specified in subsection (1) of this section shall be taken to include the effect of the treatment, process or repair.
- (4) In this section “false” means false to a material degree and “services” does not include anything done under a contract of service.

## **15 Orders defining terms for purposes of section 14.**

Where it appears to the Board of Trade that it would be in the interest of persons for whom any services, accommodation or facilities are provided in the course of any trade or business that any expressions used with respect thereto should be understood as having definite meanings, the Board may by order assign such meanings to those expressions when used as, or as part of, such statements as are mentioned in section 14 of this Act with respect to those services, accommodation or facilities; and where such a meaning is so assigned to an expression it shall be deemed for the purposes of this Act to have that meaning when so used.

### *Prohibition of importation of certain goods*

## **16 Prohibition of importation of goods bearing false indication of origin.**

Where a false trade description is applied to any goods outside the United Kingdom and the false indication, or one of the false indications, given, or likely to be taken as given, thereby is an indication of the place of manufacture, production, processing or reconditioning of the goods or any part thereof, the goods shall not be imported into the United Kingdom.

## **17 Restriction on importation of goods bearing infringing trade marks.**

In the <sup>M9</sup>Trade Marks Act 1938 the following section shall be inserted after section 64:

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- (1) The person who is registered as the proprietor or registered user of a trade mark in respect of any goods may give notice in writing to the Commissioners of Customs and Excise (in this section referred to as the Commissioners)—
  - (a) that he is the proprietor or registered user of that trade mark, and



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- (b) that such goods bearing the trade mark are expected to arrive in the United Kingdom at a time and place and by a consignment specified in the notice, and
  - (c) that the use within the United Kingdom of the trade mark in relation to the goods would infringe the proprietor's exclusive right to that use, and
  - (d) that he requests the Commissioners to treat the goods as prohibited goods.
- (2) Where a notice has been given under this section in respect of any goods bearing a trade mark and has not been withdrawn and the requirements of any regulations made under this section are complied with, then, subject to the following provisions of this section, the importation into the United Kingdom of the goods shall, if the condition of paragraph (c) of the preceding subsection is satisfied, be deemed to be prohibited unless the importation is for private and domestic use of the person importing the goods.
- (3) The Commissioners may make regulations prescribing the form in which notices are to be given under this section, and requiring a person giving such a notice, either at the time of giving the notice or at the time when the goods in question are imported, or at both those times, to furnish the Commissioners with such evidence, and to comply with such other conditions (if any), as may be specified in the regulations, and any such regulations may include such incidental and supplementary provisions as the Commissioners consider expedient for the purposes of this section.
- (4) Without prejudice to the generality of the preceding subsection, regulations made under that subsection may include provision for requiring a person who has given a notice under subsection (1) of this section, or a notice purporting to be a notice under that subsection,—
- (a) to pay such fees in respect of the notice as may be prescribed by the regulations;
  - (b) to give to the Commissioners such security as may be so prescribed, in respect of any liability or expense which they may incur in consequence of the detention of any goods to which the notice relates, or in consequence of any thing done in relation to goods so detained;
  - (c) whether any such security is given or not, to keep the Commissioners indemnified against any such liability or expense as is mentioned in the preceding paragraph.
- (5) For the purposes of section 11 of the Customs and Excise Act 1952 (which relates to the disposal of duties) any fees paid in pursuance of regulations made under this section shall be treated as money collected on account of customs.
- (6) Regulations made under subsection (3) of this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

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**Modifications etc. (not altering text)**

- C11** The text of s. 17 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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### Marginal Citations

**M9** 1938 c. 22

### *Provisions as to offences*

## 18 Penalty for offences.

A person guilty of an offence under this Act for which no other penalty is specified shall be liable—

- (a) on summary conviction, to a fine not exceeding four hundred pounds; and
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

### Modifications etc. (not altering text)

**C12** Ss. 18, 19 extended with modifications by S.I. 1986/26, **reg. 11(1)** and S.I. 1988/1586, **reg. 4(1)**

## 19 Time limit for prosecutions.

- (1) No prosecution for an offence under this Act shall be commenced after the expiration of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.
- (2) Notwithstanding anything in [<sup>F14</sup>section 127(1) of the <sup>M10</sup>Magistrates' Courts Act 1980], a magistrates' court may try an information for an offence under this Act if the information was laid at any time within twelve months from the commission of the offence.
- (3) Notwithstanding anything in section 23 of the <sup>M11</sup>Summary Jurisdiction (Scotland) Act 1954 (limitation of time for proceedings in statutory offences) summary proceedings in Scotland for an offence under this section may be commenced at any time within twelve months from the time when the offence was committed, and subsection (2) of the said section 23 shall apply for the purposes of this subsection as it applies for the purposes of that section.
- (4) Subsections (2) and (3) of this section do not apply where—
  - (a) the offence was committed by the making of an oral statement; or
  - (b) the offence was one of supplying goods to which a false trade description is applied, and the trade description was applied by an oral statement; or
  - (c) the offence was one where a false trade description is deemed to have been applied to goods by virtue of section 4(3) of this Act and the goods were supplied in pursuance of an oral request.

### Textual Amendments

**F14** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154, **Sch. 7 para. 74**

### Modifications etc. (not altering text)

**C13** Ss. 18, 19 extended with modifications by S.I. 1986/26, **reg. 11(1)** and S.I. 1988/1586, **reg. 4(1)**

**C14** S. 19 applied (with modifications) (23.3.1996) by S.I. 1995/2489, **reg. 10(1)**.

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#### **Marginal Citations**

**M10** 1980 c. 43.

**M11** 1954 c. 48.

## **20 Offences by corporations.**

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent and 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.
- (2) In this section “director”, in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of that body corporate.

#### **Modifications etc. (not altering text)**

- C15** S. 20 extended with modifications by S.I. 1986/26, **reg. 11(1)** and S.I. 1988/1586, **reg. 4(1)**  
S. 20 applied (with modifications) (23.3.1996) by S.I. 1995/2489, **reg. 10(1)**.

## **21 Accessories to offences committed abroad.**

- (1) Any person who, in the United Kingdom, assists in or induces the commission in any other country of an act in respect of goods which, if the act were committed in the United Kingdom, would be an offence under section 1 of this Act shall be guilty of an offence, except as provided by subsection (2) of this section, but only if either—
  - (a) the false trade description concerned is an indication (or anything likely to be taken as an indication) that the goods or any part thereof were manufactured, produced, processed or reconditioned in the United Kingdom; or
  - (b) the false trade description concerned—
    - (i) consists of or comprises an expression (or anything likely to be taken as an expression) to which a meaning is assigned by an order made by virtue of section 7(b) of this Act, and
    - (ii) where that meaning is so assigned only in circumstances specified in the order, the trade description is used in those circumstances.
- (2) A person shall not be guilty of an offence under subsection (1) of this section if, by virtue of section 32 of this Act, the act, though committed in the United Kingdom, would not be an offence under section 1 of this Act had the goods been intended for despatch to the other country.
- (3) Any person who, in the United Kingdom, assists in or induces the commission outside the United Kingdom of an act which, if committed in the United Kingdom, would be an offence under section 12 of this Act shall be guilty of an offence.

*Status: Point in time view as at 26/04/2005.*

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## 22 Restrictions on institution of proceedings and admission of evidence.

(1) Where any act or omission constitutes both an offence under this Act and an offence under any provision contained in or having effect by virtue of Part IV of the <sup>F15</sup>Weights and Measures Act 1985] or <sup>F16</sup>Part V of the Weights and Measures(Northern Ireland) Order 1981]—

- (a) proceedings for the offence shall not be instituted under this Act, except by virtue of section 23 thereof, without the service of such a notice as is required by <sup>F17</sup>subsection (3) of section 83 of the said Act of 1985] or, as the case may be, <sup>F18</sup>paragraph (3) of Article 46 of the said Order of 1981], nor after the expiration of the period mentioned in paragraph (c) of that subsection; and
- (b) <sup>F19</sup>sections 35, 36 and 37(1) and (2) of the said Act of 1985] or, as the case may be, <sup>F20</sup>of Article 24 of the said Order of 1981], shall, with the necessary modifications, apply as if the offence under this Act were an offence under Part IV of that Act <sup>F20</sup>or as the case may be, Part V of that Order] or any instrument made thereunder.

(2) Where any act or omission constitutes both an offence under this Act and an offence under the food and drugs laws, evidence on behalf of the prosecution concerning any sample procured for analysis shall not be admissible in proceedings for the offence under this Act unless the relevant provisions of those laws have been complied with . . .  
<sup>F21</sup>.

<sup>F22</sup>(2A) In subsection (2) of this section—

“the food and drugs laws” means the Food Safety Act 1990, the <sup>M12</sup>Medicines Act 1968 and the <sup>F23</sup>Food Safety (Northern Ireland) Order 1991] and any instrument made thereunder;

“the relevant provisions” means—

- (i) in relation to the said Act of 1990, section 31 and regulations made thereunder;
- (ii) in relation to the said Act of 1968, so much of Schedule 3 to that Act as is applicable to the circumstances in which the sample was procured; and
- (iii) in relation to the said Order, <sup>F24</sup>Article 31 and regulations made thereunder]

or any provisions replacing any of those provisions by virtue of section 17 of the said Act of 1990, paragraph 27 of Schedule 3 to the said Act of 1968 or <sup>F24</sup>Article 16].]

(3) The Board of Trade may by order provide that in proceedings for an offence under this Act in relation to such goods as may be specified in the order (other than proceedings for an offence falling within the preceding provisions of this section) evidence on behalf of the prosecution concerning any sample procured for analysis shall not be admissible unless the sample has been dealt with in such manner as may be specified in the order.

### Textual Amendments

**F15** Words substituted (E.W.S.) by [Weights and Measures Act 1985 \(c. 72, SIF 131\)](#), ss. 96(1), 97, Sch. 11 para. 21(2), [Sch. 12 para. 3\(a\)](#)

**F16** Words substituted by [S.I. 1981/231 \(N.I. 10\)](#), [Sch. 10 para. 2\(a\)](#)

**F17** In sub-para. (a) for “subsection (2) of section 51 of the said Act of 1963” there is substituted (E.W.S.) “subsection (3) of section 83 of the said Act of 1985” by [Weights and Measures Act 1985 \(c. 72, SIF 131\)](#), ss. 96(1), 97, Sch. 11 para. 21(2), [Sch. 12 para. 3\(b\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Trade Descriptions Act 1968. (See end of Document for details)*

- F18** In para. (a) for “subsection (2) of section 33 of the said Act of 1967” there is substituted “paragraph (3) of Article 46 of the said Order of 1981” and after “that subsection” there is inserted “or, as the case may be, that paragraph” by S.I. 1981/231 (N.I. 10), **Sch. 10 para. 2(b)**
- F19** In sub-para. (b) for “subsections (2), (3) and (5) to (7) of section 26 of the said Act of 1963” there is substituted (E.W.S.) “sections 35, 36 and 37(1) and (2) of the said Act of 1985” by **Weights and Measures Act 1985 (c. 72, SIF 131)**, ss. 96(1), 97, **Sch. 11 para. 21(2)**, **Sch. 12 para. 3(c)**
- F20** In para. (b) for “of section 20 of the said Act of 1967” there is substituted “of Article 24 of the said Order of 1981” and after “that Act” there is inserted “or as the case may be, Part V of that Order.” by S.I. 1981/231 (N.I. 10), **Sch. 10 para. 2(c)**
- F21** Para. beginning “In this subsection” repealed by **Food Safety Act 1990 (c. 16, SIF 53:1, 2)**, s. 59(1)(4), **Sch. 3 para. 7**, **Sch. 5** and also expressed to be repealed (N.I.) (21.5.1991) by S.I. 1991/762 (N.I. 7), art. 51(4), **Sch.4**; S.R. 1991/175, **art. 2(1)**.
- F22** S. 22(2A) inserted by **Food Safety Act 1990 (c. 16, SIF 53:1, 2)**, s. 59(1), **Sch. 3 para. 7**
- F23** Words in definition “the food and drugs laws” in s. 22(2A) substituted (N.I.) (21.5.1991) by S.I. 1991/762 (N.I. 7), art. 51(1), **Sch.2 para. 9(a)**; S.R. 1991/175, **art. 2(1)**.
- F24** Words in definition “the relevant provisions” in s. 22(2A) substituted (N.I.) (21.5.1991) by S.I. 1991/762 (N.I. 7), arts. 1(2), 51(1), **Sch. 2 para. 9(b)**; S.R. 1991/175, **art. 2(1)**.

#### Marginal Citations

**M12** 1968 c. 67 (84)

## 23 Offences due to fault of other person.

Where the commission by any person of an offence under this Act is due to the act or default of some other person that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

#### Modifications etc. (not altering text)

- C16** S. 23 extended by **Prices Act 1974 (c. 24, SIF 99:6)**, s. 7, **Sch. para. 5(3)** and extended with modifications by S.I. 1986/26, **reg. 11(1)**  
S. 23 applied (with modifications) (23.3.1996) by S.I. 1995/2489, **reg. 10(1)**.

### Defences

## 24 Defence of mistake, accident, etc.

- (1) In any proceedings for an offence under this Act it shall, subject to subsection (2) of this section, be a defence for the person charged to prove—
- that the commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control; and
  - that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.
- (2) If in any case the defence provided by the last foregoing subsection involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a

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notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

- (3) In any proceedings for an offence under this Act of supplying or offering to supply goods to which a false trade description is applied it shall be a defence for the person charged to prove that he did not know, and could not with reasonable diligence have ascertained, that the goods did not conform to the description or that the description had been applied to the goods.

**Modifications etc. (not altering text)**

- C17** S. 24 extended with modifications by S.I. 1986/26, **reg. 11(1)** and by S.I. 1988/1586, **reg. 4(1)**  
S. 24 applied (with modifications) (23.3.1996) by S.I. 1995/2489, **reg. 10(1)**.  
**C18** S. 24(1)(2) extended by Prices Act 1974 (c. 24, SIF 99:6), s. 7, **Sch. para. 5(3)**

**25 Innocent publication of advertisement.**

In proceedings for an offence under this Act committed by the publication of an advertisement 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 advertisements and that he received the advertisement 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 this Act.

**Modifications etc. (not altering text)**

- C19** S. 25 extended with modifications by S.I. 1986/26, **reg. 11(1)**

*Enforcement*

**26 Enforcing authorities.**

- (1) It shall be the duty of every local weights and measures authority [<sup>F25</sup>as defined in [<sup>F26</sup>section 69(3) of the Weights and Measures Act <sup>M13</sup>1985]] to enforce within their area the provisions of this Act and of any order made under this Act; . . . <sup>F27</sup>
- (2) Every local weights and measures authority shall, whenever the Board of Trade so direct, make to the Board a report on the exercise of their functions under this Act in such form and containing such particulars as the Board may direct.
- <sup>F28</sup>(3) . . . . .
- (5) Nothing in this section shall be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

**Textual Amendments**

- F25** Words inserted (S.) by Local Government (Scotland) Act 1973 (c. 65, SIF 81:2), s. 214(2), **Sch. 27 Pt. II para. 174(a)**
- F26** Words substituted by virtue of Weights and Measures Act 1985 (c. 72, SIF 131), s. 96(1), **Sch. 11 para. 3**

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- F27** Words repealed by [Local Government \(Scotland\) Act 1973](#) (c. 65, SIF 81:2), s. 214(2), Sch. 27 Pt. II para. 174(a), Sch. 29 and [Weights and Measures Act 1985](#) (c. 72, SIF 131), ss. 96(1), 98, Sch. 11 para. 21(2), **Sch. 13 Pt. I**
- F28** S. 26(3)(4) repealed by [Local Government, Planning and Land Act 1980](#) (c. 65, SIF 81:2), ss. 1, 194, **Sch. 4 para. 10** and Sch. 34 Pt. IV

**Modifications etc. (not altering text)**

- C20** S. 26 extended (1.1.1975) by [Hallmarking Act 1973](#) (c. 43), **s. 9(1)**  
S. 26 extended with modifications by S.I. 1986/26, **reg. 11(2)** and by S.I. 1988/1586, **reg. 4(2)**  
S. 26 applied (with modifications) (23.3.1996) by S.I. 1995/2489, **reg. 10(1)**.  
S. 26 restricted (23.3.1996) by S.I. 1995/2489, **reg. 9**.
- C21** S. 26(2) extended by [Control of Pollution Act 1974](#) (c. 40, SIF 46:4), **s. 75(5)**
- C22** S. 26(2)(3) extended (27.8.1993) by 1993 c. 11, **ss. 30(4)(5), 32, 68(2)**.

**Marginal Citations**

- M13** [1985 c.72](#) (**131**).

**27 Power to make test purchases.**

A local weights and measures authority shall have power to make, or to authorise any of their officers to make on their behalf, such purchases of goods, and to authorise any of their officers to secure the provision of such services, accommodation or facilities, as may appear expedient for the purpose of determining whether or not the provisions of this Act and any order made thereunder are being complied with.

**Modifications etc. (not altering text)**

- C23** S. 27 extended (1.1.1975) by [Hallmarking Act 1973](#) (c. 43), **s. 9(3)**  
Ss. 27, 28 extended by [Control of Pollution Act 1974](#) (c. 40, SIF 46:4), **s. 75(6)(8)**  
Ss. 27, 28 extended (with modifications) by S.I. 1986/26, **reg. 11(2)**  
Ss. 27, 28 extended (with modifications) by S.I. 1988/1586, **reg. 4(2)**  
S. 27 extended by [1988 c. 48, s. 107A\(2\)](#) (as inserted (6.4.2007) by 1994 c. 33, ss. 165(2), 172(2); S.I. 2007/621, **art. 2**)  
S. 27 extended by [1988 c. 48, s. 198A\(2\)](#) (as inserted (6.4.2007) by 1994 c. 33, ss. 165(3), 172(2); S.I. 2007/621, **art. 2**)
- C24** S. 27 applied (with modifications) (N.I.) (1.1.1975) by [Hallmarking Act 1973](#) (c. 43), **s. 9(7)**  
Ss. 27, 28 applied (with modifications) by [Trade Marks Act 1938](#) (c. 22, SIF 67A), **s. 58D(2)** (as inserted by [Copyright, Designs and Patents Act 1988](#) (c. 48, SIF 67), **s. 300**)  
S. 27 applied (with modifications) (27.8.1993) by 1993 c. 11, **ss. 30(5)(6)(7), 32, 68(2)**  
S. 27 applied (with modifications) (31.10.1994) by 1994 c. 26, **s. 93(2)(3)(5)**; S.I. 1994/2250, **art. 2**  
S. 27 applied (with modifications) (23.3.1996) by S.I. 1995/2489, **reg. 10(1)**  
S. 27 applied by [Olympic Symbol etc. \(Protection\) Act 1995](#) (c. 32), s. 8A(2)-(4) (as added (2.4.2007) by [London Olympic Games and Paralympic Games Act 2006](#) (c. 12), ss. 32, 40(2), **Sch. 3 para. 12(1)** (with s. 40(5))); S.I. 2007/1064, **art. 2**
- C25** S. 27 restricted (23.3.1996) by S.I. 1995/2489, **reg. 9**

**28 Power to enter premises and inspect and seize goods and documents.**

- (1) A duly authorised officer of a local weights and measures authority or of a Government department may, at all reasonable hours and on production, if required, of his credentials, exercise the following powers, that is to say,—

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- (a) he may, for the purpose of ascertaining whether any offence under this Act has been committed, inspect any goods and enter any premises other than premises used only as a dwelling;
  - (b) if he has reasonable cause to suspect that an offence under this Act has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on a trade or business or employed in connection with a trade or business to produce any books or documents relating to the trade or business and may take copies of, or of any entry in, any such book or document;
  - (c) if he has reasonable cause to believe that an offence under this Act has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
  - (d) he may seize and detain any goods or documents which he has reason to believe may be required as evidence in proceedings for an offence under this Act;
  - (e) he may, for the purpose of exercising his powers under this subsection to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of this Act and of any order made thereunder are duly observed, require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, he may do so himself.
- (2) An officer seizing any goods or documents in the exercise of his powers under this section shall inform the person from whom they are seized and, in the case of goods seized from a vending machine, the person whose name and address are stated on the machine as being the proprietor's or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.
- (3) If a justice of the peace, on sworn information in writing—
- (a) is satisfied that there is reasonable ground to believe either—
    - (i) that any goods, books or documents which a duly authorised officer has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under this Act: or
    - (ii) that any offence under this Act has been, is being or is about to be committed on any premises; and
  - (b) is also satisfied either—
    - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or
    - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise an officer of a local weights and measures authority or of a Government department to enter the premises, if need be by force.

In the application of this subsection to Scotland, “justice of the peace” shall be construed as including a sheriff and a magistrate.



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- (4) An officer entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under the preceding subsection he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.
- (5) <sup>F29</sup> .....
- (5A) <sup>F29</sup> .....
- (6) If any person who is not a duly authorised officer of a local weights and measures authority or of a Government department purports to act as such under this section he shall be guilty of an offence.
- (7) Nothing in this section shall be taken to compel the production by a solicitor of a document containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such document which is in his possession.

#### Textual Amendments

- F29** S. 28(5)(5A) repealed (20.6.2003) by 2002 c. 40, ss. 247(a), 278(2), 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch.

#### Modifications etc. (not altering text)

- C26** S. 28 extended (1.1.1975) by **Hallmarking Act 1973 (c. 43), s. 9(3)**  
Ss. 27, 28 extended by **Control of Pollution Act 1974 (c. 40, SIF 46:4), s. 75(6)(8)**  
Ss. 27, 28 extended (with modifications) by **S.I. 1986/26, reg. 11(2)**  
Ss. 27, 28 extended (with modifications) by **S.I. 1988/1586, reg. 4(2)**  
S. 28 extended by **1988 c. 48, ss. 107A(2), 198A(2)** (as inserted (6.4.2007) by 1994 c. 33, ss. 165(2)(3), 172(2)); **S.I. 2007/621, art. 2**
- C27** S. 28 restricted (23.3.1996) by **S.I. 1995/2489, reg. 9**
- C28** S. 28 applied (with modifications) (N.I.) (1.1.1975) by **Hallmarking Act 1973 (c. 43), s. 9(7)**  
Ss. 27, 28 applied (with modifications) by **Trade Marks Act 1938 (c. 22, SIF 67A), s. 58D(2)** (as inserted by **Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 300**)  
S. 28 applied (with modifications) (27.8.1993) by 1993 c. 11, **ss. 30(5)(6)(7), 32, 68(2)**  
S. 28 applied (with modifications) (31.10.1994) by 1994 c. 26, **s. 93(2)(3)(5)**; **S.I. 1994/2250, art. 2**  
S. 28 applied (with modifications) (23.3.1996) by **S.I. 1995/2489, reg. 10(1)**  
S. 28 applied by **Olympic Symbol etc. (Protection) Act 1995 (c. 32), s. 8A(2)-(4)** (as added (2.4.2007) by **London Olympic Games and Paralympic Games Act 2006 (c. 12), ss. 32, 40(2), Sch. 3 para. 12(1)** (with s. 40(5)); **S.I. 2007/1064, art. 2**
- C29** S. 28 applied by **London Local Authorities Act 2007 (c. ii), ss. 75(12)** (the amendment coming into operation on the appointed day in accordance with ss. 1(5), 3 of the amending Act)
- C30** S. 28(1)(c)(d): powers of seizure extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. 1 para. 9; **S.I. 2003/708, art. 2(a)(c)(j)**
- C31** S. 28(5A): disclosure powers extended (14.12.2001) by 2001 c. 24, ss. 17, 127, **Sch. 4 Pt. 1 para. 5**

## 29 Obstruction of authorised officers.

- (1) Any person who—
- (a) wilfully obstructs an officer of a local weights and measures authority or of a Government department acting in pursuance of this Act; or

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- (b) wilfully fails to comply with any requirement properly made to him by such an officer under section 28 of this Act; or
- (c) without reasonable cause fails to give such an officer so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Act.

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F30</sup>level 3 on the standard scale].

- (2) If any person, in giving any such information as is mentioned in the preceding subsection, makes any statement which he knows to be false, he shall be guilty of an offence.
- (3) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

#### Textual Amendments

**F30** Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38, 46** and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F, 289G** and (N.I.) S.I. 1984/703 (N.I. 3), **arts. 5, 6**

#### Modifications etc. (not altering text)

- C32** S. 29 extended (1.1.1975) by **Hallmarking Act 1973 (c. 43), s. 9(3)**  
 S. 29 extended by **Control of Pollution Act 1974 (c. 40, SIF 46:4), s. 75(6)(8)**  
 S. 29 extended (with modifications) by S.I. 1986/26, **reg. 11(2)**  
 S. 29 extended (with modifications) by S.I. 1988/1586, **reg. 4(2)**  
 S. 29 extended by 1988 c. 48, **ss. 107A(2), 198A(2)** (as inserted (6.4.2007) by 1994 c. 33, **ss. 165(2)(3), 172(2)**); S.I. 2007/621, **art. 2**
- C33** S. 29 applied (with modifications) (N.I.) (1.1.1975) by **Hallmarking Act 1973 (c. 43), s. 9(7)**  
 S. 29 applied (with modifications) by **Trade Marks Act 1938 (c. 22, SIF 67A), s. 58D(2)** (as inserted by **Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 300**)  
 S. 29 applied (with modifications) (E.W.S.) by **Education Reform Act 1988 (c. 40, SIF 41:1, 2), s. 215(7)-(9)**  
 S. 29 applied (with modifications) by S.I. 1988/1989 (N.I. 22), **art. 4(6)(7)**  
 S. 29 applied (with modifications) (27.8.1993) by 1993 c. 11, **ss. 30(5)(6)(7), 32, 68(2)**  
 S. 29 applied (with modifications) (31.10.1994) by 1994 c. 26, **s. 93(2)(3)(5)**; S.I. 1994/2250, **art. 2**  
 S. 29 applied (3.2.1995) by 1984 c. 39, **s. 16A(4A)** (as inserted (3.2.1995) by 1994 c. 33, **ss. 91(2)(c)**); S.I. 1995/127, **art. 2(1), Sch. 1**  
 S. 29 applied (with modifications) (23.3.1996) by S.I. 1995/2489, **reg. 10(1)**  
 S. 29 applied by **Olympic Symbol etc. (Protection) Act 1995 (c. 32), s. 8A(2)-(4)** (as added (2.4.2007) by **London Olympic Games and Paralympic Games Act 2006 (c. 12), ss. 32, 40(2), Sch. 3 para. 12(1)** (with s. 40(5)); S.I. 2007/1064, **art. 2**
- C34** S. 29 restricted (23.3.1996) by S.I. 1995/2489, **reg. 9**

### 30 Notice of test and intended prosecution.

- (1) Where any goods seized or purchased by an officer in pursuance of this Act are submitted to a test, then—
  - (a) if the goods were seized, the officer shall inform the person mentioned in section 28(2) of this Act of the result of the test;

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- (b) if the goods were purchased and the test leads to the institution of proceedings for an offence under this Act, the officer shall inform the person from whom the goods were purchased, or, in the case of goods sold through a vending machine, the person mentioned in section 28(2) of this Act, of the result of the test;

and shall, where as a result of the test proceedings for an offence under this Act are instituted against any person, allow him to have the goods tested on his behalf if it is reasonably practicable to do so.

<sup>F31</sup>(2) .....

**Textual Amendments**

**F31** S. 30(2)-(4) repealed by [Fair Trading Act 1973 \(c. 41\)](#), **Sch. 13**

**Modifications etc. (not altering text)**

**C35** S. 30 extended (1.1.1975) by [Hallmarking Act 1973 \(c. 43\)](#), **s. 9(3)**

**C36** S. 30 extended by [Control of Pollution Act 1974 \(c. 40, SIF 46:4\)](#), **s. 75(6)(8)**

**C37** S. 30 applied (with modifications) (27.8.1993) by 1993 c. 11, **ss. 30(5)(6)(7)**, 32, 68(2).

**C38** S. 30 applied (1.4.2003) by 2001 c. 16, **ss. 70, 138(2)**, Sch. 2 Pt. 1 para. 1; S.I. 2003/708, **art. 2(k)**

**C39** S. 30(1) extended with modifications by S.I. 1986/26, **reg. 11(2)** and by S.I. 1988/1586, **reg. 4(2)**

S. 30(1) applied (with modifications) (23.3.1996) by S.I. 1995/2489, **reg. 10(1)**

S. 30(1) restricted (23.3.1996) by S.I. 1995/2489, **reg. 9**

**31 Evidence by certificate.**

- (1) The Board of Trade may by regulations provide that certificates issued by such persons as may be specified by the regulations in relation to such matters as may be so specified shall, subject to the provisions of this section, be received in evidence of those matters in any proceedings under this Act.
- (2) Such a certificate shall not be received in evidence—
  - (a) unless the party against whom it is to be given in evidence has been served with a copy thereof not less than seven days before the hearing; or
  - (b) if that party has, not less than three days before the hearing, served on the other party a notice requiring the attendance of the person issuing the certificate.
- (3) In any proceedings under this Act in Scotland, a certificate received in evidence by virtue of this section or, where the attendance of a person issuing a certificate is required under subsection (2)(b) of this section, the evidence of that person, shall be sufficient evidence of the matters stated in the certificate.
- (4) For the purposes of this section any document purporting to be such a certificate as is mentioned in this section shall be deemed to be such a certificate unless the contrary is shown.
- (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Modifications etc. (not altering text)**

**C40** S. 31 extended (1.1.1975) by [Hallmarking Act 1973 \(c. 43\)](#), **s. 9(3)**

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- C41** S. 31(2)–(4) power to apply given (S.) by [Control of Pollution Act 1974 \(c. 40, SIF 46:4\)](#), **s. 75(7)(b)**
- C42** S. 31(2)–(4): power to apply conferred on s. 31(2)–(4) (27.8.1993) by 1993 c. 11, **ss. 30(6), 32, 68(2)**. S. 31(2)–(4) applied (1.10.1994) by S.I. 1994/2295, **reg. 10(1)**.

*Miscellaneous and supplemental.*

**32 Power to exempt goods sold for export, etc. E+W+S**

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 [<sup>F32</sup>section 24(2)(b) of the [Weights and Measures Act 1985](#)] or section 15(5)(b) of the <sup>M14</sup>[Weights and Measures Act \(Northern Ireland\) 1967](#); or
- (b) for use as stores within the meaning of the [<sup>F33</sup>[Customs and Excise Management Act 1979](#)] 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 <sup>M15</sup>[Visiting Forces Act 1952](#); or
- [<sup>F34</sup>(d) for industrial use within the meaning of the [Weights and Measures Act 1985](#) or for constructional use;]

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).

[<sup>F35</sup>(2) In this section “constructional use”, in relation to any goods, means the use of those goods in constructional work (or, if the goods are explosives within the meaning of the [<sup>F36</sup>[Manufacture and Storage of Explosives Regulations 2005](#)]<sup>F36</sup>, in mining, quarrying or demolition work) in the course of the carrying on of a business;]

**Extent Information**

- E1** This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

**Textual Amendments**

- F32** Words in s. 32(a) substituted (E.W.S.) by [Weights and Measures Act 1985 \(c. 72, SIF 131\)](#), ss. 96(1), 97, **Sch. 12 para. 4(1)(a)** (with [Sch. 11 para. 21\(2\)](#))
- F33** Words substituted by [Customs and Excise Management Act 1979 \(c. 2, SIF 40:1\)](#), s. 177(1), **Sch. 4 para. 12** Table Pt. I
- F34** S. 32(d) substituted (E.W.S.) by [Weights and Measures Act 1985 \(c. 72, SIF 131\)](#), ss. 96(1), 97, **Sch. 12 para. 4(1)(b)** (with [Sch. 11 para. 21\(2\)](#))
- F35** S. 32(2) is inserted (E.W.S.) by [Weights and Measures Act 1985 \(c. 72, SIF 131\)](#), ss. 96(1), 97, **Sch. 12 para. 4(2)** (with [Sch. 11 para. 21\(2\)](#))
- F36** Words in s. 32(2) substituted (26.4.2005 with application as mentioned in reg. 3 of the amending S.I.) by [The Manufacture and Storage of Explosives Regulations 2005 \(S.I. 2005/1082\)](#), regs. 1, 28(1), **Sch. 5 para. 11**

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*Changes to legislation: There are currently no known outstanding effects for the Trade Descriptions Act 1968. (See end of Document for details)*

#### Marginal Citations

**M14** 1967 c. 6 (N.I.).

**M15** 1952 c. 67.

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

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 <sup>M20</sup>Weights and Measures Act 1963 or section 15(5)(b) of the <sup>M14</sup>Weights and Measures Act (Northern Ireland) 1967; or
- (b) for use as stores within the meaning of the [<sup>F33</sup>Customs and Excise Management Act 1979] 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 <sup>M15</sup>Visiting Forces Act 1952; or
- (d) for industrial or constructional use within the meaning of the <sup>M21</sup>Weights and Measures Act 1963 or the <sup>M22</sup>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).

#### Extent Information

**E2** This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only

#### Textual Amendments

**F33** Words substituted by [Customs and Excise Management Act 1979 \(c. 2, SIF 40:1\)](#), s. 177(1), [Sch. 4 para. 12](#) Table Pt. 1

#### Marginal Citations

**M14** 1967 c. 6 (N.I.).

**M15** 1952 c. 67.

**M20** 1963 c. 31.

**M21** 1963 c. 31.

**M22** 1967 c. 6 (N.I.)

### 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

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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.

#### Modifications etc. (not altering text)

- C43** S. 33 extended (1.1.1975) by **Hallmarking Act 1973 (c. 43), s. 9(3)**  
 S. 33 extended by **Control of Pollution Act 1974 (c. 40, SIF 46:4), s. 75(6)(8)**  
 S. 33 extended by **S.I. 1986/26, reg. 11(3)**  
 S. 33 extended by **S.I. 1988/1586, reg. 4(3)**  
 S. 33 extended by **1988 c. 48, s. 107A(2)** (as inserted (6.4.2007) by **1994 c. 33, ss. 165(2), 172(2)**); **S.I. 2007/621, art. 2**  
 S. 33 extended by **1988 c. 48, s. 198A(2)** (as inserted (6.4.2007) by **1994 c. 33, ss. 165(3), 172(2)**); **S.I. 2007/621, art. 2**
- C44** S. 33 applied (with modifications) (N.I.) (1.1.1975) by **Hallmarking Act 1973 (c. 43), s. 9(7)**  
 S. 33 applied (with modifications) by **Trade Marks Act 1938 (c. 22, SIF 67A), s. 58D(2)** (as inserted by **Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 300**)  
 S. 33 applied (with modifications) (27.8.1993) by **1993 c. 11, ss. 30(5)(6)(7), 32, 68(2)**  
 S. 33 applied (with modifications) (31.10.1994) by **1994 c. 26, s. 93(2)(3)(5)**; **S.I. 1994/2250, art. 2**  
 S. 33 applied (3.2.1995) by **1984 c. 39, s. 16A(4A)** (as inserted (3.2.1995) by **1994 c. 33, ss. 91(2)(c)**; **S.I. 1995/127, art. 2(1), Sch. 1**)  
 S. 33 applied (with modifications) (23.3.1996) by **S.I. 1995/2489, reg. 10(1)**  
 S. 33 applied by **Olympic Symbol etc. (Protection) Act 1995 (c. 32), s. 8A(2)-(4)** (as added (2.4.2007) by **London Olympic Games and Paralympic Games Act 2006 (c. 12), ss. 32, 40(2), Sch. 3 para. 12(1)** (with s. 40(5))); **S.I. 2007/1064, art. 2**

## 34 Trade marks containing trade descriptions.

The fact that a trade description is a trade mark, or part of a trade mark, <sup>F37</sup> . . . 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 [<sup>F38</sup>, in the case of a registered trade mark, a person licensed to use it]; 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.

#### Textual Amendments

- F37** Words in s. 34 omitted (31.10.1994) by **1994 c. 26, s. 106(1), Sch. 4 para. 4(a)**; **S.I. 1994/2550, art.2.**  
**F38** Words in s. 34(c) substituted (31.10.1994) by **1994 c. 26, s. 106(1), Sch. 4 para. 4(b)**; **S.I. 1994/2550, art.2.**

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### **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 <sup>F39</sup> . . .fertilisers or any goods used as pesticides or for similar purposes shall be made

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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.

- [<sup>F40</sup>(2A) 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 the ingredients of food or feeding stuffs 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 Secretary of State concerned with health and if it extends to Scotland or Northern Ireland, the Secretary of State concerned.
- (2B) Before making an order to which subsection (2) or (2A) of this section applies the Board of Trade shall consult the Food Standards Agency.]
- (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.

#### Textual Amendments

**F39** Words in s. 38(2) repealed (1.4.2000) by 1999 c. 28, s. 40(1)(4), Sch. 5, para. 4(2), Sch. 6 (with ss. 38, 40(2)); S.I. 2000/1066, art. 2

**F40** S. 38(2A)(2B) inserted (1.4.2000) by 1999 c. 28, s. 40(1), Sch. 5, para. 4(3) (with ss. 38, 40(2)); S.I. 2000/1066, art. 2

#### Modifications etc. (not altering text)

**C45** S. 38(2): Functions transferred (W.) (1.7.1999) from Minister of the Crown to Welsh Assembly by S.I. 1999/672, arts. 1(1), 2, Sch. 1

### 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
  - “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 [<sup>F41</sup> or in any programme included in any programme service (within the meaning of the Broadcasting Act 1990) other than a Sound or televisions broadcasting service] shall



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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.

**Textual Amendments**

**F41** Words substituted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 203(1), [Sch. 20 para. 11](#)

**Modifications etc. (not altering text)**

**C46** [S. 39\(2\)](#) applied (1.1.1975) by [Hallmarking Act 1973 \(c. 43\)](#), [s. 1\(9\)](#)

**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 [<sup>F42</sup>section 127(1) of the Magistrates' Courts Act 1980]and the trial and laying of an information there were substituted respectively references to [<sup>F43</sup>Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981]and the hearing and determination and making of a complaint [<sup>F44</sup>and as if for the word “under” there were substituted the words “under section 29(1) of”];
- (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)—(4) . . . <sup>F45</sup>

(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) . . . . . <sup>F45</sup>

**Textual Amendments**

**F42** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, [Sch. 7 para. 74](#)

**F43** Words substituted by [S.I. 1981/1675 \(N.I. 26\)](#), [Sch. 6 Pt. I para. 13](#)

**F44** Words added (N.I.) by [S.I. 1980/704 \(N.I. 6\)](#), [Sch. 1 para. 43](#)

**F45** [S. 40\(2\)—\(4\)\(7\)](#) repealed by [Northern Ireland Constitution Act 1973 \(c. 36\)](#), [Sch. 6 Pt. I](#)

**Modifications etc. (not altering text)**

**C47** [S. 40\(b\)\(c\)](#) extended by [Control of Pollution Act 1974 \(c. 40, SIF 46:4\)](#), [s. 75\(8\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Trade Descriptions Act 1968. (See end of Document for details)*

**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) ..... F46

**Textual Amendments**

F46 S. 41(2) repealed by [Statute Law \(Repeals\) Act 1975 \(c. 10\)](#), s. 1(1), [Sch. Pt. XIII](#)

**Modifications etc. (not altering text)**

C48 The text of S. 41(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**42** ..... F47

**Textual Amendments**

F47 S. 42 repealed by [Statute Law \(Repeals\) Act 1975 \(c. 10\)](#) s. 1(1) [Sch. Pt. XIII](#)

**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.

*Status: Point in time view as at 26/04/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Trade Descriptions Act 1968. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 41(1).

#### CONSEQUENTIAL AMENDMENTS

- 1 In section 1 of the <sup>M16</sup>Anglo-Portuguese Commercial Treaty Act 1914 for the words “the <sup>M17</sup>Merchandise Marks Act 1887” there shall be substituted the words “ the Trades Descriptions Act 1968 ”.

**Modifications etc. (not altering text)**

**C49** The text of Sch. 1 paras. 1—3 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

**M16** 1914 c. 1 (5 & 6 Geo. 5.)

**M17** 1887 c. 28.

- 2 In section 1(1) of the <sup>M18</sup>Anglo-Portuguese Treaty Act 1916 for the words “the Merchandise Marks Act 1887” there shall be substituted the words “ the Trade Description Act 1968 ”.

**Modifications etc. (not altering text)**

**C50** The text of Sch. 1 paras. 1—3 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

**M18** 1916 C. 39

- 3 In section 4(2) of the <sup>M19</sup>Agricultural Produce (Grading and Marking) Act 1928, after the words “indication of origin” there shall be inserted the words “ or an order under section 8 of the Trade Descriptions Act 1968 is in force imposing requirements for securing that such eggs are marked with or accompanied by such an indication ”.

**Modifications etc. (not altering text)**

**C51** The text of Sch. 1 paras. 1—3 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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*Changes to legislation: There are currently no known outstanding effects for the Trade Descriptions Act 1968. (See end of Document for details)*

**Marginal Citations**

**M19** 1928 c. 19.

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F48

**Textual Amendments**

**F48** Sch. 1 para. 4 repealed by Road Traffic Act 1972 (c. 20), **Sch. 9 Pt. I**

**F49F49** SCHEDULE 2

**Textual Amendments**

**F49** Sch. 2 repealed by Statute Law (Repeals) Act 1975 (c. 10), s. 1(1), **Sch. Pt. XIII**

F49

**Status:**

Point in time view as at 26/04/2005.

**Changes to legislation:**

There are currently no known outstanding effects for the Trade Descriptions Act 1968.