



# 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 [<sup>F1</sup>section 21(5)(b) of the <sup>M1</sup>Weights and Measures Act 1963][<sup>F1</sup>section 24(2)(b) of the Weights and Measures Act 1985] or section 15(5)(b) of the <sup>M2</sup>Weights and Measures Act (Northern Ireland) 1967; or
- (b) for use as stores within the meaning of the [<sup>F2</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>M3</sup>Visiting Forces Act 1952; or
- [<sup>F3</sup>(d) for industrial or constructional use within the meaning of the <sup>M4</sup>Weights and Measures Act 1963 or the <sup>M5</sup>Weights and Measures Act (Northern Ireland) 1967;]
- [<sup>F3</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>F4</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 Explosives Acts 1875 and 1923, in mining, quarrying or demolition work) in the course of the carrying on of a business;]

*Status: Point in time view as at 01/02/1991.*

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

### Textual Amendments

- F1** Words beginning "section 24(2)(b)" substituted (E.W.S.) for words beginning "section 21(5)(b)" by [Weights and Measures Act 1985 \(c. 72, SIF 131\)](#), ss. 96(1), 97, Sch. 11 para. 21(2), **Sch. 12 para. 4(1)(a)**
- F2** Words substituted by [Customs and Excise Management Act 1979 \(c. 2, SIF 40:1\)](#), s. 177(1), **Sch. 4 para. 12** Table Pt. I
- F3** [S. 32\(d\)](#) beginning "for industrial use within" substituted (E.W.S.) for s. 32(d) beginning "for industrial or constructional use" by [Weights and Measures Act 1985 \(c. 72, SIF 131\)](#), ss. 96(1), 97, Sch. 11 para. 21(2), **Sch. 12 para. 4(1)(b)**
- F4** [S. 32\(2\)](#) is inserted (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. 4(2)**

### Marginal Citations

- M1** 1963 c. 31.
- M2** 1967 c. 6 (N.I.).
- M3** 1952 c. 67.
- M4** 1963 c. 31.
- M5** 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 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)

- C1** [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**
- C2** [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)**

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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, within the meaning of the <sup>M6</sup>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.

#### Marginal Citations

M6 [1938 c. 22.](#)

### 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.

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### **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.

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

C3 S. 38(2): functions transferred (1.7.1999) by virtue of S.I. 1999/672, art. 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>F5</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 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**

F5 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), Sch. 20 para. 11

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

C4 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>F6</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>F7</sup>Article 19(1) of the Magistrates’ Courts (Northern Ireland) Order 1981]and the hearing and determination and making of a complaint [<sup>F8</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>F9</sup>

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(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) ..... F9

**Textual Amendments**

**F6** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, **Sch. 7 para. 74**

**F7** Words substituted by [S.I. 1981/1675 \(N.I. 26\)](#), **Sch. 6 Pt. I para. 13**

**F8** Words added (N.I.) by [S.I. 1980/704 \(N.I. 6\)](#), **Sch. 1 para. 43**

**F9** [S. 40\(2\)—\(4\)\(7\)](#) repealed by [Northern Ireland Constitution Act 1973 \(c. 36\)](#), **Sch. 6 Pt. I**

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

**C5** [S. 40\(b\)\(c\)](#) extended by [Control of Pollution Act 1974 \(c. 40, SIF 46:4\)](#), **s. 75(8)**

**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) ..... F10

**Textual Amendments**

**F10** [S. 41\(2\)](#) repealed by [Statute Law \(Repeals\) Act 1975 \(c. 10\)](#), s. 1(1), **Sch. Pt. XIII**

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

**C6** 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** ..... F11

**Textual Amendments**

**F11** [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.

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- (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 01/02/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Trade Descriptions Act 1968, Cross Heading: Miscellaneous and supplemental..