

To be returned to
HMSO PC12C1
for Controller's Library
Run No. **B. S. H.**
Bin No. **03. 22. 06.**
Box No.
Year. **1968.**



Trade Descriptions Act 1968

CHAPTER 29

ARRANGEMENT OF SECTIONS

Prohibition of false trade descriptions

Section

1. Prohibition of false trade descriptions.
2. Trade description.
3. False trade description.
4. Applying a trade description to goods.
5. Trade descriptions used in advertisements.
6. Offer to supply.

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

7. Definition orders.
8. Marking orders.
9. Information, etc. to be given in advertisements.
10. Provisions supplementary to sections 8 and 9.

Misstatements other than false trade descriptions

11. False or misleading indications as to price of goods.
12. False representations as to royal approval or award, etc.
13. False representations as to supply of goods or services.
14. False or misleading statements as to services, etc.
15. Orders defining terms for purposes of section 14.

Prohibition of importation of certain goods

16. Prohibition of importation of goods bearing false indication of origin.
17. Restriction on importation of goods bearing infringing trade marks.

Provisions as to offences

Section

18. Penalty for offences.
19. Time limit for prosecutions.
20. Offences by corporations.
21. Accessories to offences committed abroad.
22. Restrictions on institution of proceedings and admission of evidence.

Defences

23. Offences due to fault of other person.
24. Defence of mistake, accident, etc.
25. Innocent publication of advertisement.

Enforcement

26. Enforcing authorities.
27. Power to make test purchases.
28. Power to enter premises and inspect and seize goods and documents.
29. Obstruction of authorised officers.
30. Notice of test and intended prosecution.
31. Evidence by certificate.

Miscellaneous and Supplemental

32. Power to exempt goods sold for export, etc.
33. Compensation for loss, etc., of goods seized under s. 28.
34. Trade marks containing trade descriptions.
35. Saving for civil rights.
36. Country of origin.
37. Market research experiments.
38. Orders.
39. Interpretation.
40. Provisions as to Northern Ireland.
41. Consequential amendments and repeals.
42. Continuation, for three years, of Orders in Council requiring indication of origin.
43. Short title and commencement.

SCHEDULES:

Schedule 1—Consequential amendments.

Schedule 2—Repeals.

ELIZABETH II



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 or 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]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Prohibition of false trade descriptions

- 1.—(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 ;

Prohibition of false trade descriptions.

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.

Trade
description.

2.—(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 re-conditioning ;
- (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—

- 1920 c. 54. (a) the Seeds Act 1920 ;
- 1928 c. 19. (b) section 2 of the Agricultural Produce (Grading and Marking) Act 1928 (as amended by the Agricultural Produce (Grading and Marking) Amendment Act 1931) or any corresponding enactment of the Parliament of Northern Ireland ;
- 1931 c. 40.
- 1964 c. 14. (c) the Plant Varieties and Seeds Act 1964 ;
- 1964 c. 28. (d) the Agriculture and Horticulture Act 1964 ;
- 1965 c. 22. (e) the Seeds Act (Northern Ireland) 1965 ;
- (N.I.)
- 1966 c. 15. (f) the Horticulture Act (Northern Ireland) 1966 ;
- (N.I.)

1926 c. 45. any description applied in pursuance of the Fertilisers and Feeding Stuffs Act 1926 to an article included in the first column of Schedule 1 to that Act, and any mark prescribed by a system of classification compiled under section 5 of the Agriculture Act 1967.

1967 c. 22.

(5) Notwithstanding anything in the preceding provisions of this section, where provision is made under the Food and Drugs Act 1955, the Food and Drugs (Scotland) Act 1956 or the Food and Drugs Act (Northern Ireland) 1958 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. 1955 c. 16 (4 & 5 Eliz. 2). 1956 c. 30. 1958 c. 27 (N.I.).

3.—(1) A false trade description is a trade description which is false to a material degree. False trade description.

(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.

4.—(1) A person applies a trade description to goods if he— Applying a trade description to goods.

(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.

Trade descriptions used in advertisements.

5.—(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.

Offer to supply.

6. 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

Definition orders.

7. 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.

8.—(1) Where it appears to the Board of Trade necessary ^{Marking orders.} 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.—(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. ^{Information, etc. to be given in advertisements.}

(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.

Provisions supplementary to sections 8 and 9.

10.—(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.

(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

False or misleading indications as to price of goods.

11.—(1) If any person offering to supply goods of any description gives, by whatever means, any false indication to the effect that the price at which the goods are offered is equal to or less than—

- (a) a recommended price; or
- (b) the price at which the goods or goods of the same description were previously offered by him;

or is less than such a price by a specified amount, he shall, subject to the provisions of this Act, be guilty of an offence.

(2) If any person offering to supply any goods gives, by whatever means, any indication likely to be taken as an indication that the goods are being offered at a price less than that at which they are in fact being offered he shall, subject to the provisions of this Act, be guilty of an offence.

(3) For the purposes of this section—

- (a) an indication that goods were previously offered at a higher price or at a particular price—
 - (i) shall be treated as an indication that they were so offered by the person giving the indication, unless it is expressly stated that they were so offered by

others and it is not expressed or implied that they were, or might have been, so offered also by that person; and

(ii) shall be treated, unless the contrary is expressed, as an indication that they were so offered within the preceding six months for a continuous period of not less than twenty-eight days;

(b) an indication as to a recommended price—

(i) shall be treated, unless the contrary is expressed, as an indication that it is a price recommended by the manufacturer or producer; and

(ii) shall be treated, unless the contrary is expressed, as an indication that it is a price recommended generally for supply by retail in the area where the goods are offered;

(c) anything likely to be taken as an indication as to a recommended price or as to the price at which goods were previously offered shall be treated as such an indication; and

(d) a person advertising goods as available for supply shall be taken as offering to supply them.

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

(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. 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. False representations as to supply of goods or services.

14.—(1) It shall be an offence for any person in the course of any trade or business— False or misleading statements as to services, etc.

(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 ;
 - (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.

Orders defining terms for purposes of section 14.

15. 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

Prohibition of importation of goods bearing false indication of origin.

16. 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. In the Trade Marks Act 1938 the following section shall be inserted after section 64 :—

Restriction on importation of goods bearing infringing trade marks. 1938 c. 22.

“ 64A.—(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
- (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 the 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 anything 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.

1952 c. 44.

(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 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.”

Provisions as to offences

Penalty for offences.

18. 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.

Time limit for prosecutions.

19.—(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.

1952 c. 55.

(2) Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952, 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.

1954 c. 48.

(3) Notwithstanding anything in section 23 of the 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.

20.—(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. Offences by corporations.

(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.

21.—(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— Accessories to offences committed abroad.

- (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.

Restrictions
on institution
of proceedings
and
admission
of evidence.

1963 c. 31.

1967 c. 6

(N.I.).

22.—(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 Weights and Measures Act 1963 or Part IV of the Weights and Measures Act (Northern Ireland) 1967—

- (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 subsection (2) of section 51 of the said Act of 1963 or, as the case may be, subsection (2) of section 33 of the said Act of 1967, nor after the expiration of the period mentioned in paragraph (c) of that subsection; and
- (b) subsections (2), (3) and (5) to (7) of section 26 of the said Act of 1963 or, as the case may be, of section 20 of the said Act of 1967, shall, with the necessary modifications, apply as if the offence under this Act were an offence under Part IV of that Act 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.

In this subsection “the food and drugs laws” means the Food and Drugs Act 1955, the Food and Drugs (Scotland) Act 1956, the Food and Drugs Act (Northern Ireland) 1958 and any instrument made thereunder and “the relevant provisions” means—

1955 c. 16

(4 & 5 Eliz. 2).

1956 c. 30.

1958 c. 27

(N.I.).

- (a) in relation to the said Act of 1955, sections 93 and 97 and Part I of Schedule 7;
- (b) in relation to the said Act of 1956, sections 30 and 33; and
- (c) in relation to the said Act of 1958, sections 35 and 38; or any provision replacing any of the said provisions by virtue of section 123 of the said Act of 1955, section 56 of the said Act of 1956, or section 68 of the said Act of 1958.

(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.

23. 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. Offences due to fault of other person.

Defences

24.—(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— Defence of mistake, accident, etc.

(a) 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

(b) 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 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.

25. 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. Innocent publication of advertisement.

*Enforcement*Enforcing
authorities.

1963 c. 31.

26.—(1) It shall be the duty of every local weights and measures authority to enforce within their area the provisions of this Act and of any order made under this Act; and section 37 of the Weights and Measures Act 1963 (power of local authorities to combine) shall apply with respect to the functions of such authorities under this Act as it applies with respect to their functions under that Act.

(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.

(3) Where a complaint is made to the Board of Trade that all or any of the functions conferred by this Act on a local weights and measures authority are not being properly discharged in any area, or the Board are of opinion that an investigation should be made as to whether those functions are being properly discharged in any area, the Board may cause a local inquiry to be held, and—

1933 c. 51.

(a) in relation to such an inquiry in England or Wales, subsections (2) to (5) of section 290 of the Local Government Act 1933 (evidence and costs at local inquiries), but subsection (4) (costs of department) only in a case where the Board so direct, shall apply as if the inquiry were held in pursuance of subsection (1) of that section;

1947 c. 43.

(b) in relation to such an inquiry held in Scotland, subsections (2) to (9) of section 355 of the Local Government (Scotland) Act 1947 (provisions as to local inquiries) shall apply as if the inquiry were held in pursuance of subsection (1) of that section.

(4) The person appointed to hold an inquiry under the preceding subsection shall report the results thereof in writing to the Board of Trade, who shall publish the report together with such observations, if any, as they think fit to make thereon.

(5) Nothing in this section shall be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

Power to
make test
purchases.

27. 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.

28.—(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,—

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

- (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.

(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) If any person discloses to any person—

(a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of this section ; or

(b) any information obtained by him in pursuance of this Act ;

he shall be guilty of an offence unless the disclosure was made in or for the purpose of the performance by him or any other person of functions under this Act.

(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.

29.—(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
- (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,

Obstruction of authorised officers.

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty pounds.

(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.

30.—(1) Where any goods seized or purchased by an officer in pursuance of this Act are submitted to a test, then—

Notice of test and intended prosecution.

- (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 ;
- (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.

(2) No proceedings for an offence under this Act, other than an offence under section 28(5) or 29, shall be instituted by a local weights and measures authority unless they have given to the Board of Trade notice of the intended proceedings and either a period of twenty-eight days has elapsed since the giving of the notice or the Board of Trade have before the end of that period issued a certificate under this section.

(3) A notice under subsection (2) of this section must be accompanied by a summary of the facts on which the charges are to be founded.

(4) A certificate of the Board of Trade that a notice under subsection (2) of this section was given on a date specified in the certificate and was accompanied by the summary required

under subsection (3) of this section shall be conclusive evidence that the notice was given on that date and was accompanied by such a summary; and any document purporting to be such a certificate and to be signed on behalf of the Board shall be deemed such a certificate, unless the contrary is shown.

Evidence by
certificate.

31.—(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.

Miscellaneous and supplemental

32. In relation to goods which are intended—

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

Power to
exempt goods
sold for
export, etc.
1963 c. 31.
1967 c. 6 (N.I.).

1952 c. 44.

1952 c. 67.

1967 c. 6 (N.I.).

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

33.—(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.

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

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

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

Trade marks containing trade descriptions. 1938 c. 22.

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

35. 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.

Saving for civil rights.

Country of origin.

36.—(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.

Market research experiments.

37.—(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.

Orders.

38.—(1) Any power to make an order under the preceding provisions of this Act shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a

resolution of either House of Parliament, and includes power to vary or revoke such an order by a subsequent order.

(2) Any order under the preceding provisions of this Act which relates to any agricultural, horticultural or fishery produce, whether processed or not, food, feeding stuffs or ingredients of food or feeding stuffs, fertilisers or any goods used as pesticides or for similar purposes shall be made by the Board of Trade acting jointly with the following Ministers, that is to say, if the order extends to England and Wales, the Minister of Agriculture, Fisheries and Food, and if it extends to Scotland or Northern Ireland, the Secretary of State concerned.

(3) The following provisions shall apply to the making of an order under section 7, 8, 9, 15 or 36 of this Act, except in the case mentioned in section 10(2) thereof, that is to say—

- (a) before making the order the Board of Trade shall consult with such organisations as appear to them to be representative of interests substantially affected by it and shall publish, in such manner as the Board think appropriate, notice of their intention to make the order and of the place where copies of the proposed order may be obtained ; and
- (b) the order shall not be made until the expiration of a period of twenty-eight days from the publication of the notice and may then be made with such modifications (if any) as the Board of Trade think appropriate having regard to any representations received by them.

39.—(1) The following provisions shall have effect, in addition **Interpretation.** 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 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.

Provisions as
to Northern
Ireland.

40.—(1) This Act shall apply to Northern Ireland subject to the following modifications, that is to say—

1952 c. 55.

(a) section 19(2) shall apply as if for the references to section 104 of the Magistrates' Courts Act 1952 and the trial and laying of an information there were substituted respectively references to section 34 of the Magistrates' Courts Act (Northern Ireland) 1964 and the hearing and determination and making of a complaint;

1964 c. 21
(N.I.).

(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.

1920 c. 67.

(2) In paragraph (13) of section 4(1) of the Government of Ireland Act 1920 (which excludes, among other things, merchandise marks from the matters with respect to which the Parliament of Northern Ireland has power to make laws) the words "merchandise marks" shall be omitted and shall be deemed never to have been included; but the following provisions of this section shall (in addition to any other limitation) apply with respect to the powers of that Parliament to make laws for purposes similar to those of this Act.

(3) The Parliament of Northern Ireland shall not have power to make provision requiring any information as to the country of manufacture or production of any goods to be marked on or to accompany the goods or to be included in advertisements except—

(a) in the case of any agricultural, horticultural or fishery produce, whether processed or not, which for the purposes of this Act is deemed to have been produced or manufactured in Northern Ireland; or

(b) if the provision is made for the purpose of preventing or controlling the introduction into Northern Ireland, or the spreading within Northern Ireland, of diseases or pests affecting animals or plants.

(4) If the Parliament of Northern Ireland enacts any law for purposes similar to those of section 7 or section 15 of this Act, any provision of or made in pursuance of that law which would

be inconsistent with any provision made (whether before or after the first-mentioned provision) under either of those sections shall be void so far as it would be so inconsistent.

(5) The Board of Trade shall for each financial year pay into the Exchequer of Northern Ireland such sum as the Board and the Ministry of Commerce for Northern Ireland may agree to be appropriate as representing the expenses incurred by that Ministry in enforcing so much of this Act as relates to matters with respect to which the Parliament of Northern Ireland does not have power to make laws.

(6) Nothing in this Act shall authorise any department of the Government of Northern Ireland to incur any expenses attributable to the provisions of this Act until provision has been made by the Parliament of Northern Ireland for those expenses to be defrayed out of moneys provided by that Parliament.

(7) This Act, so far as it relates to matters with respect to which the Parliament of Northern Ireland has power to make laws, shall be deemed for the purposes of section 6 of the Government of Ireland Act 1920 to have been passed before the day appointed for the purposes of that section. 1920 c. 67.

41.—(1) The enactments mentioned in Schedule 1 to this Act shall have effect subject to the amendments specified in that Schedule. Consequential amendments and repeals.

(2) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

42.—(1) Until the end of the period of three years beginning with the commencement of this Act the repeals made by this Act shall not affect— Continuation, for three years, of Orders in Council requiring indication of origin. 1926 c. 53.

(a) any Order in Council made under section 2 of the Merchandise Marks Act 1926, or the prohibition on the importation of any goods required by such an Order to bear an indication of origin at the time of importation, or

(b) the powers conferred by section 9 of that Act on local authorities and their officers with respect to goods to which such an Order applies ;

and a person who contravenes the provisions of such an Order shall, subject to the provisions of this Act, be guilty of an offence and liable on summary conviction to a fine not exceeding five pounds, and in the case of a second or subsequent conviction to a fine not exceeding twenty pounds.

(2) Nothing in this Act shall be taken to affect the meaning of the expression "indication of origin" in any such Order in Council.

(3) Her Majesty may by Order in Council vary or revoke any Order in Council made under the said section 2.

(4) Where any requirements with respect to any goods are for the time being imposed by an Order in Council made under the said section 2 and the Board of Trade are satisfied, on the representation of persons appearing to the Board to have a substantial interest in the matter, that the continued application of any of those requirements has caused or is likely to cause injury or hardship to such persons, or any of them, the Board may by statutory instrument direct that the Order, or any particular provisions of the Order, shall cease to apply to those goods or shall apply to such goods subject only to such modifications and conditions as the Board think fit; and where such a direction is in force the Order shall have effect subject to the direction.

(5) Any direction under this section which relates to goods of any description mentioned in subsection (2) of section 38 of this Act shall be given by the Board of Trade acting jointly as mentioned in that subsection.

(6) A direction under this section, if not given for a shorter period or withdrawn earlier, shall cease to be in force at whichever of the following dates is the earlier, that is to say, twelve months after the date on which it was given or the date on which an Order in Council under this section varying the Order with respect to which the direction was given comes into force.

(7) The Board of Trade shall publish any direction given under this section in such manner as they think appropriate.

(8) A draft of any Order in Council to be made under this section shall be laid before Parliament.

(9) The duty of local weights and measures authorities under section 26 of this Act to enforce the provisions of this Act shall not extend to the provisions of this section.

Short title and commencement.

43.—(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.

SCHEDULES

SCHEDULE 1

Section 41(1).

CONSEQUENTIAL AMENDMENTS

1. In section 1 of the Anglo-Portuguese Commercial Treaty Act 1914 c. 1 (5 & 6 1914 for the words "the Merchandise Marks Act 1887" there shall Geo. 5). be substituted the words "the Trade Descriptions Act 1968". 1887 c. 28.

2. In section 1(1) of the Anglo-Portuguese Commercial Treaty Act 1916 c. 39. 1916 for the words "the Merchandise Marks Act 1887" there shall be substituted the words "the Trade Descriptions Act 1968".

3. In section 4(2) of the Agricultural Produce (Grading and 1928 c. 19. 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".

4.—(1) In section 47(1) of the Road Traffic Act 1962 for the words 1962 c. 59. from "and the use" to the end of the subsection there shall be substituted the words "and any markings so designated shall be deemed for the purposes of the Trade Descriptions Act 1968 to be a trade description, whether or not the markings fall within the definition of that expression in section 2 of that Act".

(2) In subsection (2) of that section for the words from "offence" to "1887" there shall be substituted the words "offence under the Trade Descriptions Act 1968".

SCHEDULE 2

Section 41(2).

REPEALS

Chapter	Short Title	Extent of Repeal
50 & 51 Vict. c. 28.	The Merchandise Marks Act 1887.	The whole Act.
54 Vict. c. 15.	The Merchandise Marks Act 1891.	The whole Act.
57 & 58 Vict. c. 19.	The Merchandise Marks (Prosecutions) Act 1894.	The whole Act.
3 Edw. 7. c. 31.	The Board of Agriculture and Fisheries Act 1903.	Section 1(8).
9 Edw. 7. c. 21.	The Irish Handloom Weavers Act 1909.	The whole Act.
1 & 2 Geo. 5. c. 31.	The Merchandise Marks Act 1911.	The whole Act.
10 & 11 Geo. 5. c. 67.	The Government of Ireland Act 1920.	In section 4, in paragraph (13), the words "merchandise marks".
16 & 17 Geo. 5. c. 53.	The Merchandise Marks Act 1926.	The whole Act.

SCH. 2

Chapter	Short Title	Extent of Repeal
1 & 2 Geo. 6. c. 29.	The Patents &c. (International Conventions) Act 1938.	Section 10, and in section 12, subsection (6).
1 & 2 Eliz. 2. c. 48.	The Merchandise Marks Act 1953.	The whole Act.
10 & 11 Eliz. 2. c. 59.	The Road Traffic Act 1962.	Section 47(3).
1964 c. 14.	The Plant Varieties and Seeds Act 1964.	Section 31(2).
1964 c. 28.	The Agriculture and Horticulture Act 1964.	Section 22(2).
1965 c. 22 (N.I.).	The Seeds Act (Northern Ireland) 1965.	Section 15(2).

PRINTED IN ENGLAND BY HARRY PITCHFORTH
 Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament
 LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

2s. 3d. net

(370231)

SBN 10 542968 6

£4 85 net