



# Trade Descriptions Act 1968

## 1968 CHAPTER 29

### *Enforcement*

#### **26 Enforcing authorities**

- (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—
  - (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;
  - (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.

**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.

**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.—
  - (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 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
  - (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 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 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;
- (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.

### **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.