



# Olympic Symbol etc. (Protection) Act 1995

## 1995 CHAPTER 32

*Forfeiture of counterfeit goods, etc.*

### **11 Forfeiture: England and Wales or Northern Ireland.**

- (1) Section 97 of the <sup>M1</sup>Trade Marks Act 1994 (which makes provision about the forfeiture of certain goods, material or articles which come into the possession of any person in connection with the investigation or prosecution of a relevant offence) shall also have effect with the following modifications.
- (2) In subsection (1) (which describes the goods, material or articles concerned)—
  - (a) in paragraph (a), for “sign identical to or likely to be mistaken for a registered trade mark” there shall be substituted “ representation within paragraph (a) or (b) of section 3(1) of the Olympic Symbol etc. (Protection) Act 1995 ”, and
  - (b) in paragraphs (b) and (c), for “sign” there shall be substituted “ representation ”.
- (3) In subsection (7)(a) (power of court to direct release instead of destruction on condition that offending sign erased etc.) for “sign” there shall be substituted “ representation ”.
- (4) In subsection (8) (which defines “relevant offence”) for “section 92 above (unauthorised use of trade mark etc. in relation to goods)” there shall be substituted “ section 8 of the Olympic Symbol etc. (Protection) Act 1995 ”.

#### **Marginal Citations**

**M1** 1994 c. 26.

### **12 Forfeiture: Scotland.**

- (1) Section 98 of the Trade Marks Act 1994 (which makes provision about the forfeiture of certain goods, material or articles on application by the procurator-fiscal or where

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a person is convicted of a relevant offence) shall also have effect with the following modifications.

- (2) In subsection (1) (which describes the goods, material or articles concerned)—
  - (a) in paragraph (a), for “sign identical to or likely to be mistaken for a registered trade mark” there shall be substituted “ representation within paragraph (a) or (b) of section 3(1) of the Olympic Symbol etc. (Protection) Act 1995 ”, and
  - (b) in paragraphs (b) and (c), for “sign” there shall be substituted “ representation ”.
- (3) In subsection (13) (power of court to direct release instead of destruction on condition that offending sign erased etc.) for “sign” there shall be substituted “ representation ”.
- (4) In subsection (14), in the definition of “relevant offence”, for “section 92 (unauthorised use of trade mark, &c. in relation to goods)” there shall be substituted “ section 8 of the Olympic Symbol etc. (Protection) Act 1995 ”.

#### [<sup>F1</sup>12A Detention by Revenue and Customs

- (1) The proprietor may give notice in writing to the Commissioners for Her Majesty's Revenue and Customs—
  - (a) stating that at a time and place specified in the notice, goods which are infringing goods, material or articles are expected to arrive in the United Kingdom—
    - (i) from outside the European Economic Area, or
    - (ii) from within the Area but not having been entered for free circulation,
  - (b) specifying the nature of the controlled representation by reference to which the goods are infringing goods, material or articles, and
  - (c) requesting the Commissioners to detain the goods.
- (2) The Commissioners may detain goods to which a notice under subsection (1) relates.
- (3) But the Commissioners may not detain goods—
  - (a) imported by a person for his private and domestic use, or
  - (b) to which section 89(3) of the Trade Marks Act 1994 applies (Council Regulation ( EC ) No. 1383/2003 ).
- (4) If the Commissioners detain goods to which a notice under subsection (1) applies they shall as soon as is reasonably practicable—
  - (a) give written notice of the detention and the grounds for it to the person in whose name the goods were presented or declared to customs, and
  - (b) give the proprietor notice that the goods have been detained, specifying in respect of the goods such information as is available to the Commissioners about—
    - (i) the nature of the goods,
    - (ii) their number,
    - (iii) the place where they were manufactured,
    - (iv) the place from which they were sent,
    - (v) the name and address of the person by whom they were sent,
    - (vi) the name and address of the person mentioned in paragraph (a),
    - (vii) the name and address of the person to whom they were to be delivered, and

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- (viii) the name and address of the person who holds them during detention.
- (5) The Commissioners may provide samples of detained goods to the proprietor on request, in which case he—
- (a) may use the samples only for the purpose of determining whether they are infringing goods, material or articles,
  - (b) must return the samples to the Commissioners as soon as is reasonably practicable, and
  - (c) must inform the Commissioners as soon as is reasonably practicable whether the goods are infringing goods, material or articles.
- (6) The Commissioners may permit the proprietor on request to inspect detained goods (in which case he must inform the Commissioners as soon as is reasonably practicable whether the goods are infringing goods, material or articles).
- (7) The Commissioners shall release goods detained in pursuance of a notice under subsection (1) if—
- (a) the Commissioners think that initiating process in proceedings under section 6 in respect of the goods has not been served during the period of 10 working days, in the case of non-perishable goods, or 3 working days, in the case of perishable goods, beginning with the date on which the notice under subsection (4)(b) was received,
  - (b) the Commissioners think that proceedings under section 6 in respect of the goods have been withdrawn, have lapsed or have terminated without an order being made in respect of the goods by virtue of section 7, or
  - (c) the Commissioners are informed by the proprietor that the goods are not infringing goods, material or articles.
- (8) The Commissioners may detain goods which they think, having regard to the nature of the goods and to information provided by the proprietor, may be infringing goods, material or articles; and if the Commissioners detain goods under this subsection—
- (a) they shall as soon as is reasonably practicable invite the proprietor to give the Commissioners a notice that the goods are infringing goods, material or articles,
  - (b) they shall, when giving an invitation under paragraph (a), give in respect of the goods such information as is available to them about—
    - (i) the nature of the goods,
    - (ii) their number,
    - (iii) the place where they were manufactured,
    - (iv) the place from which they were sent,
    - (v) the name and address of the person by whom they were sent,
    - (vi) the name and address of the person in whose name the goods were presented or declared to customs,
    - (vii) the name and address of the person to whom they were to be delivered, and
    - (viii) the name and address of the person who holds them during detention,
  - (c) they may provide samples of the goods to the proprietor on request in which case he —
    - (i) may use the samples only for the purpose of determining whether they are infringing goods, material or articles,

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- (ii) must return the samples to the Commissioners as soon as is reasonably practicable, and
- (iii) must inform the Commissioners as soon as reasonably practicable whether the goods are infringing goods, material or articles,
- (d) they may permit the proprietor on request to inspect the goods (in which case he must inform the Commissioners as soon as reasonably practicable whether the goods are infringing goods, material or articles),
- (e) if no notice is given in accordance with paragraph (a) within the period of 3 working days beginning with the date on which the invitation under that paragraph is received, the Commissioners shall release the goods, and
- (f) if a notice is given in accordance with paragraph (a), the Commissioners shall proceed as if it were a notice given under subsection (1) above (and as if the goods were detained in pursuance of that notice), but—
  - (i) subsections (4)(b), (5) and (6) shall not have effect, and
  - (ii) subsection (7) shall have effect as if the reference to the notice under subsection (4)(b) were a reference to information under paragraph (b) above.

#### Textual Amendments

- F1** S. 12A, 12B inserted (with effect in accordance with s. 40(7) of the amending Act) by [London Olympic Games and Paralympic Games Act 2006 \(c. 12\), s. 40\(2\), Sch. 3 para. 14](#) (with s. 40(5)); S.I. 2007/1064, art. 2(c)

#### 12B Section 12A: supplementary

- (1) Section 90 of the Trade Marks Act 1994 (c. 26) (regulations as to form of notice, &c.) shall have effect in relation to a notice under subsection 12A(1) or (8)(a) above as in relation to a notice under section 89(1).
- (2) A person who is or was an officer or employee of the proprietor, or who acts or acted on the proprietor's behalf, commits an offence if he discloses information provided in accordance with section 12A(4)(b) or 12A(8)(b) other than—
  - (a) for the purpose of, or with a view to the institution of, proceedings under section 6,
  - (b) for the purpose of complying with an enactment,
  - (c) in pursuance of an order of a court,
  - (d) in a form which ensures that the identity of no person to whom the information relates is specified or can be deduced,
  - (e) with the consent of each person to whom the information relates, or
  - (f) with the consent of the Commissioners for Her Majesty's Revenue and Customs;

and sections 19(3), (4), (7) and 55(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (defences and penalties) shall have effect in relation to this subsection.
- (3) Section 139(1), (2), (3), (4), (7) and (8) of the Customs and Excise Management Act 1979 (detention of goods: constables, &c.) shall apply in relation to goods liable to detention in accordance with section 12A above as in relation to things liable to forfeiture—

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- (a) with the substitution of a reference to this Act for a reference to the customs and excise Acts, and
  - (b) with any other necessary modifications.
- (4) Section 144 of that Act (protection of officers) shall apply in relation to the detention of goods in accordance with section 12A above—
- (a) with the substitution of a reference to proceedings under section 6 above for the reference in section 144(1) to proceedings for condemnation, and
  - (b) with any other necessary modifications.
- (5) In section 12A “working day” means a day that is not a Saturday, a Sunday or a bank holiday (within the meaning of section 1 of the Banking and Financial Dealings Act 1971 (c. 80)). ]

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