

SCHEDULES

SCHEDULE 3

Section 32

OLYMPIC SYMBOL PROTECTION

Introduction

1 The Olympic Symbol etc. (Protection) Act 1995 (c. 32) shall be amended as follows.

Olympics association right: proprietor

2 After section 1(2) (proprietor of Olympics association right) insert—

“(2A) An order under subsection (2) above—

- (a) may appoint more than one person;
- (b) may make different appointments for different purposes;
- (c) may make provision for joint or concurrent exercise of rights;
- (d) may apply (with or without modifications) or make provision similar to a provision of section 23 of the Trade Marks Act 1994 (c. 26) (co-ownership).”

Words similar to protected words

3 (1) At the end of section 3(1)(b) (infringement: similar symbols and mottos) add “or a word so similar to a protected word as to be likely to create in the public mind an association with the Olympic Games or the Olympic movement”.

(2) In the application of section 4(11) to (14) (infringement: protection for existing use) to the Olympics association right as it has effect by virtue of sub-paragraph (1) above, a reference to the commencement of the Act shall be treated as a reference to the commencement of that sub-paragraph.

Olympics association right: limitations

4 For section 4(1) to (10) (infringement of Olympics association right: limitations) substitute—

“(1) A person does not infringe the Olympics association right (despite section 3) by the use of a controlled representation—

- (a) in publishing or broadcasting a report of a sporting or other event forming part of the Olympic Games,
- (b) in publishing or broadcasting information about the Olympic Games,
- (c) as an incidental inclusion in a literary work, dramatic work, artistic work, sound recording, film or broadcast, within the meaning of Part I of the Copyright, Designs and Patents Act 1988 (c. 48) (copyright), or

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- (d) as an inclusion in an advertisement for a publication or broadcast of a kind described in paragraph (a) or (b).
- (2) But the exceptions in subsection (1)(a) and (b) do not apply to advertising material which is published or broadcast at the same time as, or in connection with, a report or information.
- (3) A person does not infringe the Olympics association right by using a controlled representation in a context which is not likely to suggest an association between a person, product or service and the Olympic Games or the Olympic movement; and for the purpose of this subsection—
- (a) the concept of an association between a person, product or service and the Olympic Games or the Olympic movement includes, in particular—
 - (i) any kind of contractual relationship,
 - (ii) any kind of commercial relationship,
 - (iii) any kind of corporate or structural connection, and
 - (iv) the provision by a person of financial or other support for or in connection with the Olympic Games or the Olympic movement, but
 - (b) a person does not suggest an association with the Olympic Games or the Olympic movement only by making a statement which—
 - (i) accords with honest practices in industrial or commercial matters, and
 - (ii) does not make promotional or other commercial use of a protected word by incorporating it in a context to which the Olympic Games and the Olympic movement are substantively irrelevant.
- (4) The Secretary of State may by order specify what is to be or not to be treated for the purposes of subsection (3) as an association between a person, product or service and the Olympic Games or the Olympic movement; and an order under this subsection—
- (a) may include incidental, consequential or transitional provision (which may include provision amending subsection (3)(a) or (b)),
 - (b) shall be made by statutory instrument, and
 - (c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) A person does not infringe the Olympics association right by using a controlled representation in relation to goods if—
- (a) they were put on the market in the European Economic Area by the proprietor or with his consent,
 - (b) the representation was used in relation to the goods when they were put on the market, and
 - (c) the proprietor does not oppose further dealings in the goods for legitimate reasons (including, in particular, that the condition of the goods has been changed or impaired after they were put on the market).”

5 At the end of section 5 (Olympics association right: power to prescribe further limitations) add—

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“(4) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

The Paralympics

6 After section 5 insert—

“The Paralympics association right

5A Creation

- (1) There shall be a right, to be known as the Paralympics association right.
- (2) The provisions of this Act shall apply in relation to the Paralympics association right as they apply to the Olympics association right; and for that purpose—
 - (a) a reference to the Olympic Games shall be treated as a reference to the Paralympic Games,
 - (b) a reference to the Olympic motto shall be treated as a reference to the Paralympic motto,
 - (c) a reference to the Olympic movement shall be treated as a reference to the Paralympic movement,
 - (d) a reference to the Olympic symbol shall be treated as a reference to the Paralympic symbol, and
 - (e) a reference to the commencement of this Act is a reference to the commencement of this section.”

7 In section 18(1) (interpretation) after the definition of “Olympic symbol” insert—

““the Paralympic Games” means the events known by that name and organised by the International Paralympic Committee;

“Paralympic motto” means the motto of the International Paralympic Committee — “Spirit in Motion”;

“Paralympic symbol” means the symbol of the International Paralympic Committee which the Secretary of State shall set out in an order made by statutory instrument (which shall be laid before Parliament after being made).”

8 For section 18(2) (protected words) substitute—

- “(2) For the purposes of this Act—
- (a) each of the following is a protected word in relation to the Olympics association right—
 - (i) Olympiad,
 - (ii) Olympiads,
 - (iii) Olympian,
 - (iv) Olympians,
 - (v) Olympic, and
 - (vi) Olympics, and

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- (b) each of the following is a protected word in relation to the Paralympics association right—
- (i) Paralympiad,
 - (ii) Paralympiads,
 - (iii) Paralympian,
 - (iv) Paralympians,
 - (v) Paralympic, and
 - (vi) Paralympics.”

9 At the end of section 18 add—

“(5) The Secretary of State may by order amend this section to reflect a change of motto or symbol of the International Olympic Committee or the International Paralympic Committee.

(6) An order under subsection (5)—

- (a) may include incidental, consequential or transitional provision (which may include provision similar to section 4(11) to (14) above),
- (b) shall be made by statutory instrument, and
- (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Infringement

10 In section 7(3)(a) (orders in relation to infringing goods: “infringing material”) for “, or for advertising goods or services,” substitute “, for advertising goods or services or by being displayed,”.

Penalties

11 (1) In respect of an offence under section 8 (infringement marketing of goods) committed during the period specified in sub-paragraph (2), the reference in section 8(5)(a) (maximum fine on summary conviction) to the statutory maximum shall be taken as a reference to £20,000.

(2) The period referred to in sub-paragraph (1)—

- (a) begins at the end of the period of two months beginning with the date on which this Act receives Royal Assent, and
- (b) ends with 31st December 2012.

Enforcement

12 (1) After section 8 add—

“8A Enforcement by trading standards authority

- (1) A local weights and measures authority may enforce within their area the provisions of section 8.
- (2) The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of that section as in relation to the enforcement of that Act—

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- (a) section 27 (power to make test purchases),
 - (b) section 28 (power to enter premises and inspect and seize goods and documents),
 - (c) section 29 (obstruction of authorised officers), and
 - (d) section 33 (compensation for loss, &c of goods seized).
 - (3) Subsection (1) above does not apply in relation to the enforcement of section 8 in Northern Ireland; but—
 - (a) the Department of Enterprise, Trade and Investment may enforce that section in Northern Ireland, and
 - (b) for that purpose the provisions of the Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.
 - (4) Nothing in this section shall be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.”
 - (2) The London Organising Committee may—
 - (a) make arrangements with a local weights and measures authority for the exercise of the authority’s power under section 8 of the Olympic Symbol etc. (Protection) Act 1995 (as inserted by sub-paragraph (1));
 - (b) may make payments to a local weights and measures authority in respect of expenses incurred in the exercise of that power.
- 13 After section 8A (inserted by paragraph 12 above) insert—

“8B Arrest

- (1) After paragraph 21 of Schedule 1A to the Police and Criminal Evidence Act 1984 (arrestable offences) add—

“Olympic Symbol etc. (Protection) Act 1995

21A An offence under section 8 of the Olympic Symbol etc. (Protection) Act 1995 (offences in relation to goods).”

- (2) A constable in Scotland may arrest without warrant a person who the constable reasonably believes is committing or has committed an offence under section 8 of the Olympic Symbol etc. (Protection) Act 1995.
- (3) Subsection (2) is without prejudice to any power of arrest which is otherwise exercisable by a constable in Scotland.”

- 14 After section 12 (forfeiture) insert—

“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—

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- (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
 - (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—

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- (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,
 - (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

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- (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.

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—
- (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)).”