

1988 No. 1771

TRADE DESCRIPTIONS

**The Trade Descriptions (Place of Production) (Marking)
Order 1988**

<i>Made - - - -</i>	<i>17th October 1988</i>
<i>Laid before Parliament</i>	<i>19th October 1988</i>
<i>Coming into force</i>	<i>31st December 1988</i>

Whereas the Secretary of State for Trade and Industry has, in accordance with section 38(3)(a) of the Trade Descriptions Act 1968(a), consulted with such organisations as appear to him to be representative of interests substantially affected by this Order:

And whereas the Secretary of State for Trade and Industry, in accordance with the same section, published on 29 July 1988 notice of his intention to make the Order and of the place where copies of the proposed Order might be obtained:

And whereas by virtue of section 38(3)(b) of that Act the Order is made with such modifications of the proposed Order as the Secretary of State for Trade and Industry thinks appropriate having regard to representations received by him;

Now, therefore, the Secretary of State for Trade and Industry, jointly with the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for Northern Ireland, in exercise of the powers conferred by section 8 of that Act (and now vested in the Secretary of State(b)) and section 38(2) of that Act and of all other powers enabling them in that behalf, hereby make the following Order:—

1.—(1) This Order may be cited as the Trade Descriptions (Place of Production) (Marking) Order 1988 and shall come into force on 31st December 1988.

(2) This Order does not apply to—

- (a) agricultural, horticultural or fishery produce, whether processed or not;
- (b) food, feeding stuffs or ingredients of food or feeding stuffs;
- (c) fertilisers;
- (d) any article or substance to which any regulations made under section 85 or 86 of the Medicines Act 1968(c) apply.

2.—(1) Subject to article 3 below, where goods are presented in such a way as to indicate that they were manufactured or produced elsewhere than is the case, they shall be marked with or accompanied by a clear, legible and conspicuous statement as to the place where they were manufactured or produced and, where a statement of such place is likely to create the impression that the goods were manufactured or produced in a country other than that in which they were manufactured or produced, the statement shall include a statement of the country where they were manufactured or produced.

(a) 1968 c.29.
(b) S.I. 1970/1537.
(c) 1968 c.67.

(2) In determining for the purposes of this Order whether goods are presented in such a way as to give the indication referred to in paragraph (1) above, regard shall be had to all the circumstances and, without prejudice to the generality of that, to the matters set out in the Schedule to this Order.

3.—(1) The fact that goods are marked with or accompanied by a statement or indication for the purpose of complying with any Community obligation or—

- (i) by virtue of any authority given pursuant to any power conferred, or
- (ii) for the purpose of complying with any requirement imposed,

by or under any enactment

shall not cause the requirement in article 2(1) to apply.

(2) The fact that

(i) a particular language is used on or in relation to goods, or

(ii) a trade mark (within the meaning of the Trade Marks Act 1938) is so used,

or both those facts, shall not necessarily and without regard to all the other circumstances and matters mentioned in article 2(2) above cause the requirement in article 2(1) above to apply.

5th October 1988

Eric Forth
Parliamentary Under-Secretary of State,
Department of Trade and Industry

9th October 1988

John MacGregor
Ministry of Agriculture, Fisheries and
Food

12th October 1988

Tom King
Northern Ireland Office

17th October 1988

Malcolm Rifkind
Scottish Office

Matters to which regard shall be had for the purposes of article 2(2).

Any of the following, (which have a special association with a particular place), appearing on or accompanying goods, that is to say

names, images, emblems, flags, devices, references to or representations of things (including buildings, structures and geographical features) or to or of persons (whether living, dead or fictional).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order requires goods, when supplied or exposed or offered for supply in the course of a trade or business, and presented in a way which gives a misleading indication as to where they were manufactured or produced, to be marked with or accompanied by a corrective statement of their origin. Section 36(1) of the Trade Descriptions Act 1968 (which provides that goods are deemed to have been manufactured or produced in the country in which they last underwent a treatment or process resulting in a substantial change) applies for the purposes of the Order. Breach of the Order is a criminal offence under section 8(2) of that Act.

In determining whether the way in which goods are presented gives a misleading indication as to the place of manufacture or production, regard is to be had to the totality of their presentation, including the use of representations which carry a special association with a particular place. The use of a particular language or a trade mark does not necessarily attract the requirement to mark goods as to their origin. Whether such use does so or not depends on all the circumstances.

The requirement does not apply where goods are already subject to marking requirements imposed by or under any other enactment or EC obligation. In particular, the requirement does not apply to certain medicinal products, nor to agricultural, horticultural and fishery produce, food, feeding stuffs, ingredients of food and feeding stuffs and fertilisers.