



## PROFITEERING ACT, 1919.

### To Members of the Local Committees and Appeal Tribunal.

This Circular sets out fully the constitution, powers, and procedure of the Committee, and the matters with which the Committees will have to deal. For the purpose of easy reference the Circular is divided into paragraphs.

(1) **THE SCOPE OF THE ACT.**—The Act only applies to any article or class of articles to which it is applied by Order of the Lieutenant-Governor, such article or class of articles being declared by the Order to be one or one of a kind in common use by the public or to be material, machinery, or accessories used in the production of such articles.

The Act does not apply to any articles which are from time to time declared to be controlled, nor to the sale of any article for export from the Isle of Man, nor to the sale of articles by public auction or competitive tender, nor does the Act apply to any sale or other transaction which took place before the passing of the Act.

It is intended that Orders shall be made from time to time by the Lieutenant-Governor applying the Act to the articles or class of articles set out in such Orders, and that copies of the Orders shall be supplied to the Local Committees.

(2) **DISQUALIFICATION OF TRADE COMPETITORS.**—The Act and Regulations provide that no member of the Local Committee shall sit or adjudicate in any case or complaint in which he is a Trade Competitor of the person against whom the complaint under investigation has been lodged.

The necessity for this provision will be clear to all the members of the Local Committee, and it is essential that this provision should be rigorously enforced, otherwise the decision of the Committee may be nullified.

The Regulations further provide that no member of the Local Committee shall sit or adjudicate on any complaint in which he is in any way personally interested.

(3) **EXPENSES OF THE LOCAL COMMITTEES AND APPEAL TRIBUNAL.**—The expenses of any Local Committee or Appeal Tribunal established under the Act shall be defrayed by the Treasurer of the Isle of Man out of funds voted by Tynwald.

In view of the impossibility of foreshadowing what extent of work will devolve on the Local Committees and Appeal Tribunal it is not proposed at present to remunerate Officers serving under the Act, and only actual out-of-pocket expenses incurred in connection with the work of the Local Committee or Appeal Tribunal should be claimed. Claims for such expenses should be made to the Treasurer of the Isle of Man.

(4) **PROCEDURE.**—The Regulations provide that the complaints shall be made to the Local Committee in writing within four days of the date of the sale or transaction which is the subject of the complaint. The Local Committee will dismiss all complaints which are not lodged within the time specified in the Regulations. On the hearing of the complaint the Local Committee are entitled subject to any special provision in the Regulations to regulate their own procedure.

(5) **EVIDENCE.**—Subject to any special directions contained in the Regulations it will be for the Local Committee to determine what evidence shall be taken to elucidate the facts of the complaint under consideration. The complainant and respondent to the complaint have the right of being heard by the Committee in all cases, and may appear by themselves or by Counsel, or other person appointed by them for the purpose,

The Regulations entitle the Local Committee to summon any person to appear before the Committee, and to furnish such information and produce such documents as the Committee may require. In the event of any person failing to comply with any Order of the Local Committee (which would include an Order summoning him to appear before the Committee), he will be liable on summary conviction to a fine not exceeding Fifty Pounds, or to imprisonment for a term not exceeding one month, or to both such imprisonment and fine.

The Committee will only call before them persons whose evidence is relevant to the complaint which is the subject of investigation, and the Committee should only take proceedings in a Court of Summary Jurisdiction for failure to comply with a summons to appear before the Committee when it is clearly established that the failure to appear has been occasioned as a result of wilful defiance, e.g., refusal to comply with one or more orders of the Committee after due warning of the penalty involved.

(6) PRODUCTION OF DOCUMENTS.—In accordance with the Regulations the Local Committee are entitled to call for the production of such documents as may be required by the Committee for the purpose of investigating, hearing or determining any complaint or complaints.

Local Committees will note particularly the provisions of Regulation 9 to the effect that all complaints to a Local Committee are to be heard in public unless in any particular case, due regard being given to the interests of the parties and to all the circumstances of the case, the Local Committee direct that the complaint or any part of the proceedings thereon shall be heard in private. The power to direct proceedings to be heard in private should be exercised in any case where an application for the purpose is made by any person or where any person is required to produce confidential books or documents and any books or documents produced or information given in the course of proceedings held in private must be treated as confidential unless the person giving or producing the same otherwise agrees, or in cases where the information and documents are required for the purpose of legal proceedings.

A supply of forms for summoning witnesses to appear before the Local Committee and calling for the production of documents will be forwarded to the Clerks to the Local Committees.

(7) FALSE STATEMENTS.—In accordance with the provisions of Section 1 (4) of the Act, if any person on any investigation or complaint shall knowingly or recklessly furnish information or make any representation which is false in any material particular, he will be liable on summary conviction to a fine not exceeding Fifty Pounds, or to imprisonment for a term not exceeding three months, or to both such imprisonment and fine.

Proceedings should only be taken under Section 1 (4) of the Act in cases in which the Local Committee or Appeal Tribunal, as the case may be, are satisfied that the information given or representations made were given or made with the wilful intention of misleading the Committee or Tribunal or recklessly without belief in their truth.

(8) JURISDICTION OF THE COMMITTEE ON THE HEARING OF THE COMPLAINT.—On the hearing of the complaint the Local Committee, after giving the parties an opportunity of being heard may either dismiss the complaint, or may, if they are satisfied that the profit made or sought on the retail sale of the article which is the subject of the complaint was, in view of all the circumstances, unreasonable, declare the price which would yield a reasonable profit, and require the seller to repay to the complainant any amount paid by the complainant in excess of such reasonable price.

In addition to making the Order referred to above the Local Committee may take proceedings against the seller in a Court of Summary Jurisdiction, and if, on such proceedings, the Court is satisfied that the price charged or sought was such as to yield a profit which is in view of all the circumstances unreasonable, the seller will be liable on summary conviction before a High-Bailiff or two Justices to a fine not exceeding Two Hundred Pounds, or to imprisonment for a term not exceeding three months, or to both such imprisonment and fine.

The Local Committee should only take proceedings in a Court of Summary Jurisdiction in cases in which the Local Committee are satisfied, after due consideration, that the circumstances are such as to justify proceedings being taken, and that there is a reasonable prospect of such proceedings being successful. In deciding whether proceedings should be taken in any particular case the Local Committee should have regard to all the circumstances of the case. In accordance with the provisions of the Act any fines imposed by a Court of Summary Jurisdiction on proceedings initiated at the instance of the Local Committee are to be paid into the General Revenue of the Isle of Man. It must, however, be borne in mind that in the event of any proceedings initiated by the Local Committee being unsuccessful it is in the power of the Court to make an order for the costs of such proceedings against the Local Committee.

(9) APPEALS.—An Appeal Tribunal for the Island has been established, to which appeals may be made by the seller from any order or decision of the Local Committee other than a decision to take proceedings before a Court of Summary Jurisdiction.

An appeal from the decision of the Local Committee to the Appeal Tribunal must be made not later than three clear days after the decision in writing of the Local Committee shall have been delivered to the parties to the complaint, or within such extended time as for good reasons shown the Local Committee may allow. A form is prescribed for making the appeal, copies of which may be obtained from the Clerks to the Local Committees.

(10) ALLEGED PROFITTEERING BY WHOLESALE TRADERS TO BE REFERRED TO THE LIEUTENANT-GOVERNOR.—If upon the investigation, or determination of any complaint it shall appear to the Local Committee or Appeal Tribunal that the price charged or sought about which the complaint was made is in view of all the circumstances unreasonable, but that the unreasonable price so charged or sought was due to the price charged by the wholesale trader the Local Committee or Appeal Tribunal should dismiss the complaint or allow the appeal as the case may be, and should refer the case to the Lieutenant-Governor.

(11) RESTRICTION OF TRADE TO BE AVOIDED. — Local Committees and Appeal Tribunals should bear in mind that it is not the intention of the Lieutenant-Governor to take any action which will hamper or restrict legitimate commercial enterprise or which will prevent any person or company from making a reasonable profit on their business transactions.

Local Committees and Appeal Tribunals should have regard to this when exercising the powers conferred upon them by the Lieutenant-Governor.

(12) PROCEEDINGS OF A COMMITTEE OR TRIBUNAL ARE PRIVILEGED.—The Act provides that any investigation by a Committee or Tribunal appointed under the Act shall for the purposes of the law relating to libel and slander be deemed to be proceedings before a Court exercising judicial authority.

(13) PUBLICITY.—In order that the establishment of the Local Committee may be brought to the notice of members of the public it is desirable that notification of the establishment of a Local Committee, and of the action to be taken to bring complaints to the notice of the Committee should be advertised or published in the local press circulating in the district of each Local Committee.

(14) REPORT OF CASES DECIDED BY EACH LOCAL COMMITTEE AND APPEAL TRIBUNAL.—Each Local Committee and Appeal Tribunal should render a report to the Government Secretary, Government Office, on the first Monday in each month, giving particulars of each complaint or appeal heard and determined by the Local Committee or Appeal Tribunal, as the case may be, during the preceding month, together with the decision thereon. The report should also contain particulars of any proceedings taken before a Court of Summary Jurisdiction, and the decision of the Court on such proceedings.

By Order,

B. E. SARGAUNT,  
Government Secretary.

Government Office,  
Isle of Man,  
19th January, 1920.