

The Hoarding and Profiteering Prevention Ordinance, 2000

JAMMU & KASHMIR

India

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Act 19 of 2000

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The Hoarding and Profiteering Prevention Ordinance, 2000(Ordinance No. 19 of 2000)[Promulgated by His Highness under section 5 of the Jammu and Kashmir Constitution Act, 1996 and published in Government Gazette dated 23rd Chet, 2000 (Extraordinary).] [In this connection please also see the Essential Commodities Act, 1955 (Central Act 10 of 1955).]An Ordinance to provide for the prevention of hoarding and profiteering.Preamble. - Whereas an emergency has arisen which makes it necessary to provide for the prevention of hoarding and profiteering;Now, therefore, under section 5 of the Jammu and Kashmir Constitution Act, 1996, We are pleased to make and promulgate the following Ordinance:-

1. Short title, extent and commencement.

(1)This Ordinance may be called the Hoarding and Profiteering Prevention Ordinance, 2000.(2)It extends to the whole of the State.(3)It shall come into force at once.(4)It shall cease to be law from such date [the Government] [Substituted by Act X of 2010 for 'His Highness'.] may, by order, declare to be the end of the emergency which was the occasion of its promulgation.

2. Interpretation.

- In this Ordinance, unless, there is anything repugnant in the subject or context,-(a)"article" includes any article or thing, except foodgrains, which has not, by notification in the Government Gazette, been declared by the Government to be an article or thing to which this Ordinance does not apply;(b)"dealer" means a person carrying on the business of selling any article whether wholesale or retail;(c)["Controller General" means the Minister for Supplies and includes any other officer authorised by the said Minister for the purposes of this Ordinance ; [Clauses (c) and (d) of section 2 substituted by Ordinance X of 2005.](d)"Controller" means the Controllers of Supplies and District Controllers appointed for the purposes of this Ordinance by the Government;](e)"Producer"

includes a manufacturer ;(f)an article shall be deemed to be in the possession of a person-(i)when it is held on behalf of that person by another person [or when held by that person on behalf of another person] [Added by Ordinance VII of 2003.];(ii)notwithstanding that it is mortgaged to another person ;(g)[the expression "offer for sale" shall be deemed to include a reference to an intimation by a person of the price proposed by him for a sale of an article, made by the publication of a price list, by exposing the article for sale in association with a mark indicating price, by the furnishing of a quotation, or otherwise, howsoever.] [Clause (g) of section 2 inserted by Ordinance VI of 2001.]

3. Fixing of maximum quantities which may be held or sold and maximum prices.

(1)The Controller General may, by notification in the Government Gazette, fix in respect of any article-(a)the maximum quantity which may at any one time be possessed by a dealer or producer;(b)the maximum quantity which may in any one transaction be sold to any person;(c)the maximum price or rate which may be charged by dealer or producer.(2)The quantities and prices or rates fixed in respect of any article under this section may be different in different localities [or for different classes of dealers or producers.] [Added by Ordinance VI of 2001.](3)[Where any article is sold, offered for sale, or otherwise disposed of in contravention of sub-section (1), by a dealer or producer through any person employed by him or acting on his behalf, such person and also, unless they prove that they exercised due diligence to prevent such contravention, the dealer or producer, as the case may be, and any person having charge on behalf of the dealer or producer of the place where the contravention occurred, shall be liable to the punishment provided by sub-section (1) of section 13, whether or not they were present when the contravention occurred.] [Sub-section (3) of section 3 added by Ordinance VII of 2003.]

4. Restrictions on possession and sale by dealers and producers where maximum is fixed under section 3.

(1)No dealer or producer shall-(a)have in his possession at any one time a quantity of any article exceeding the maximum fixed by notification under clause (a) of sub-section (1) of section 3 ; or(b)sell or offer for sale to any person in any one transaction a quantity of any article exceeding the maximum fixed by notification under clause (b) of sub-section (1) of section 3 ; or(c)sell or offer for sale [or otherwise dispose of] [Inserted by Ordinance VI of 2001.] to any person any article for a price or at a rate exceeding the maximum fixed by notification under clause (c) of sub-section (1) of section 3.(2)[Where a dealer or producer disposes of an article by having it sold by auction on his behalf, the auctioneer as well as the dealer or producer shall be liable to the punishment provided by sub-section (1) of section 13, if in any such sale there is a contravention of clause (c) of sub-section (1).] [Sub-section (2) of section 4 inserted by Ordinance VI of 2001.]

5. Restrictions on possession by dealers or producers where no maximum is fixed under section 3.

- Where no maximum has been fixed by notification under clause (a) of sub-section (1) of section 3-(a)[no dealer shall have in his possession at any one time a quantity of any article in which he deals exceeding- [Clauses (a), (b) and (c) of section 5 substituted by Ordinance VII of 2003 for original clauses (a)and (b).](i)if he was in business in the year 1939, one quarter of the total quantity of that article held by him in the course of that year, or(ii)if he was not in business in that year, the total quantity of that article sold by him in the course of any period of four consecutive months after that year, or(iii)in either case, such greater quantity as the Controller General or other officer empowered in this behalf by the Government may, by general or special order, specify ;(b)no producer shall have in his possession at any one time a quantity of any article which he produces exceeding-(i)if he was in business in at least one of the years 1940, 1941, and 1942, one quarter of his total production of that article during that one of the said three years in which his production of the article was greatest, or(ii)if he was not in business in at least one of the said three years, the total quantity of that article produced by him in the course of any period of four consecutive months after the year 1942, or(iii)in either case, such greater quantity as the Controller General or other officer empowered in this behalf by the Government may, by general or special order, specify ;(c)no producer shall have in his possession at any one time a quantity of any article used by him as raw material in his business exceeding the quantity thereof sufficient for the production of the maximum quantity which he may have in his possession under clause (b) of the article for the production of which it is required as raw material.]

6. Restriction on price where no maximum is fixed under section 3.

(1)Where no maximum has been fixed by notification under clause (c) of sub-section (1) of section 3, no dealer or producer shall sell or offer for sale, or otherwise dispose of an article for a consideration which is unreasonable.(2)[For the purposes of this section a consideration is unreasonable if, whether it is exclusively in money or not,-(a)the purchaser is, as a condition of sale, required to purchase at the same time any other article ;(b)where the sale is by a dealer, the consideration exceeds the amount represented by the addition allowed by the normal trade practice in force on the 31st day of August, 1939, to-(i)the landed cost of the article, in the case of an article imported from outside India or, where the article is delivered to the consignee elsewhere than at a port, that cost increased by any charges incurred for freight and octroi or other duties before delivery, or(ii)the price at which producer sold the article in the case of article produced in [India excluding the Jammu and Kashmir State] increased by any charges incurred for freight, customs, octroi or other duties before delivery, or(iii)the price at which the producer sold the article, in the case of an article which is not imported;(c)where the sale is by a producer, the consideration exceeds the amount represented by the addition allowed by the normal trade practice in force on the 1st day of August, 1939, to the cost of production [of the article, such cost of production being deemed to be exclusive of the amount, if any, by which the price paid by the producer for any component part of the article exceeded- [Inserted by Ordinance VII of 2003.](i)the maximum price fixed for the component part under section 3 and in force at the time of its purchase by the purchaser; or(ii)where no maximum price has been so fixed for the component part, the amount represented by the addition allowed by normal trade practice in force on the 31st day of August, 1939, to the cost of production of the component part:]Provided that where the addition allowed by such normal trade practice exceeds or is alleged to exceed 20 per cent, the dealer or producer, as the case may be, shall report the fact to

the Controller General who may either sanction such addition or, for reasons to be recorded in writing, order its variation; [and the dealer or producer, as the case may be, shall be deemed to sell for a consideration which is unreasonable, if such report has not been made or if after such report has been made and the Controller General has varied such addition, the price charged exceeds the limits approved by the Controller General under this proviso] [Substituted by Ordinance VII of 2003 for certain words.](3)The Controller General may make or cause to be made a certificate stating the landed cost of any imported article dealt in by a dealer, and shall, on request made by any dealer, grant or cause to be granted to that dealer a certificate stating the landed cost of any such imported article.] [Sub-section (2) and (3) of section 6 substituted by Ordinance VI of 2001.][(3-a) For the purposes of this section, the landed cost of any imported article shall, save as hereinafter provided, be the cost thereof to the importer, that is to say, the sum of-(i)the price of article charged by the exporter in the country of origin;(ii)freight, marine and war risk insurance and other charges, incurred in respect of the article up to the time when it is delivered to the transit sheds at the port of entry ;(iii)the amount of duties payable on the importation of the article :Provided that if, in the opinion of the Controller General, there is substantial disparity-(a)between the landed cost so determined of the article and the landed cost of any other similar article ; or(b)between the consideration for the sale of the article computed on the basis of its landed cost so determined and the minimum price fixed under the Ordinance at which any other similar article, whether imported or not, may be sold,the Controller General may, in making a certificate referred to in subsection (3) in respect of the article, take such disparity into consideration to fix the landed cost of the article at such amount as he thinks equitable.] [Sub-section (3-a) to section 6 inserted by Ordinance VII of 2003.](4)[Where a dealer or a producer disposes of an article by having it sold by auction on his behalf, the auctioneer as well as the dealer or producer shall be liable to the penalty provided by sub-section (1) of section 13, if in any such sale, there is a contravention of sub-section (1).] [Sub-section (4) to section 6 substituted by Ordinance VII of 2003.](5)[Where any article is sold, offered for sale, or otherwise disposed of in contravention of sub-section (1), by a dealer or producer through any person employed by him or acting on his behalf, such person and also, unless they prove that they exercised due diligence to prevent such contravention, the dealer or producer, as the case may be, and any person having the charge on behalf of the dealer or producer of the place where such contravention occurred, shall be liable to punishment provided by sub-section (1) of section 13, whether or not they were present when the contravention occurred.] [Sub-section (5) to section 6 added by Ordinance VII of 2003.]

7. General limitation on quantity to be passes, at one time.

(1)No person shall have in his possession at any one time a greater quantity of any article to which this section applies than the quantity necessary for the reasonable needs of himself and his family for a period of three months or such longer period as may, for special reasons in his particular circumstances, be considered a reasonable period for which to make provisions.[Provided that the Controller General may by order specify any article or articles which any person may have in his possession at any one time in a quantity not greater than the quantity necessary for the reasonable needs of himself and his family for a period not exceeding six months.] [Proviso to section 7(1) added by Ordinance XI of 2001.](2)For the purposes of sub-section (1), the expression "reasonable needs" includes the fulfilment of social or religious or other customary obligations.(3)Nothing in

this section shall apply to a dealer or producer in respect of any article sold by or produced by him.(4)This section shall apply only to such articles as the Controller General may, by order published in the Government Gazette, specify for the purpose.

8. Duty to declare possession of excess stocks.

- Any person having in his possession a quantity of any article exceeding that permitted by or under this Ordinance shall forthwith report the fact to the Controller General and shall take such action as to the storage, distribution or disposal of the excess quantity as the Controller General may direct.

9. Refusal to sell.

- No dealer or producer shall, unless previously authorised to do so by the Controller General, without sufficient cause, refuse to sell to any person any article within the limits, [if any] [Inserted by Ordinance VII of 2003.], as to quantity imposed by this Ordinance.Explanation. - The possibility or expectation of obtaining a higher price for an article at a later date shall not be deemed to be a sufficient cause for the purposes of this section.

9A. [Power of Controller General to order or prohibit sale. [Section 9-A substituted by Ordinance VII of 2003, (Section 9-A was originally inserted by Ordinance VI of 2001).]

- The Controller General may, be order in writing, direct any dealer or producer-(a)to sell to any specified person any-specified article or articles in such quantity within the limit, if any, as to quantity imposed by this Ordinance, as may be specified in the order;(b)not to sell, except to such person as the Controller General may, in the order or otherwise, specify, any specified article or classes of articles for such period not exceeding twentyone days, as may be specified in the order.]

10. Memorandum of sale to be given.

- [(1) Every dealer or producer selling any article to any person, whether a dealer or consumer or otherwise, shall give to the purchaser at or before the time of delivery of the article a memorandum containing the particulars of the transaction prescribed under sub-section (2):Provided that where the total amount of the purchases at the transaction is less than ten rupees it shall be obligatory to give such memorandum only if the purchaser so requires.] [Section 10(1) substituted by Ordinance VI of 2001.](2)The Controller General may, by notification in the Government Gazette, prescribe the particulars to be contained in any such [memorandum, and different particulars may be so prescribed in respect of different classes of transaction] [Substituted by Ordinance VI of 2001 for 'cash memorandum'.](3)The Government may, by notification in the Government Gazette, exempt specific areas, classes of dealers or producers, or commodities from the operation of this section.

11. Marking of prices and exhibiting price list.

(1)The Controller General may direct any dealer or producer to mark articles exposed or intended for sale with the sale prices or to exhibit on his premises a price list of articles held by him for sale, and may further give directions as to the manner in which any such direction as aforesaid is to be carried out.[(1-A) The Controller General may, by order published in the Government Gazette, issue a direction under sub-section (1) generally to all dealers in, or producers of, a particular article or particular articles.] [Sub-section (1-A) of section 11 inserted by Ordinance VI of 2001.](2)No dealer shall destroy, efface or alter [or cause to be destroyed, effaced or altered] [Inserted by Ordinance VII of 2003.] any label or mark affixed to an article and indicating the price marked by a producer.

12. Powers of Controller General or Inspectors.

(1)[The Controller General or a Controller or any officer not below the rank of an Inspector of the Control Department, authorised by the Controller General, may] [Substituted by Ordinance X of 2005 for 'The Controller General or an Inspector may'.]-(a)direct a dealer or producer to maintain records of all sale and purchase transactions [in such manner as he may require] [Inserted by Ordinance X of 2005.];(b)direct a dealer or producer to furnish any information he may require as to the business carried on by such dealer or producer;(c)direct a dealer or producer to furnish any information possessed by such dealer or producer as to the business carried on by any other person ;(d)inspect or cause to be inspected any books or other documents belonging to or under the control of any dealer or producer;(e)enter and search or authorise any person not below the status of a gazetted officer to enter and search any premises ;(f)seize or authorise the seizure of any article in respect of which he suspects that an offence under this Ordinance has been, [is being, or is about to be] [Inserted by Ordinance VII of 2003.], committed, and thereafter take or authorise the taking of all measures necessary for securing the production of the article in a Court.(2)The Controller General may, by order published in the Government Gazette, issue to all dealers or producers of a specified class a direction such as is referred to in clause (a) or clause (b) of sub-section (1).(3)[The Controller General and such Inspectors or other officers as may be empowered by the Government in this behalf, shall, within the respective areas for which they are appointed, have power to investigate all offences punishable under this Ordinance, and in conducting any such investigation shall, within the said areas, have all the powers, duties, privileges and liabilities of an officer-in-charge of a Police Station under the Code of Criminal Procedure, 1989, (Act XXIII of 1989) when investigating a cognizable offence within the limits of his station.] [Sub-section (3) of section 12 substituted by Ordinance VII of 2003.]

13. Penalties.

(1)Whoever contravenes any of the provisions of this Ordinance shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.(2)Whoever fails to comply with any direction made under authority conferred by this Ordinance shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.(3)[A Court convicting any person of an offence punishable under this Ordinance may order any article, in respect of which the offence was committed, to be forfeited to [the Government.] [Sub-section (3) of

section 13 substituted by Ordinance VI of 2001.]

**13A. [Right of buyer to avoid prohibited transactions or to recover excess.
[Section 13-A added by Ordinance VI of 2001.]**

(1)Where any person has been convicted of the offence specified in sub-section (1) of section 6, then-(a)if the prosecution was in respect of a sale, the buyer at that sale, and(b)if the prosecution was in respect of a sale or an offer to sell, or a disposal otherwise than by sale, the buyer under any sale of similar articles effected at the same or a higher price in the course of that business in contravention of the provisions of sub-section (1) of section 6,before the date of the conviction may at his option-(i)either treat the sale as void, and recover from the seller, as money received by him for the use of the buyer, any amount paid by the buyer as consideration therefor; or(ii)affirm the sale but recover as aforesaid to the extent of any loss sustained by him by reason of the contravention, regard being had to any consideration received or to be received by him for a resale of the articles :Provided that the buyer shall not be entitled to exercise the right conferred by clause (i), if any rights acquired by a third party would be prejudicial thereby, or after the lapse of any unreasonable time from the date of the sale, or unless he tenders the articles to the seller in substantially the same state as that in which they were when the property passed to the buyer.(2)Any sum recoverable under this section shall be recoverable with interest thereon at the rate of 5 per cent per annum from the date when it was paid.(3)No person may exercise any right conferred by this section who is himself liable to punishment as an abettor of the contravention in question.](4)[Notwithstanding anything to the contrary in clause (a) of sub-section (1) of section 32 of the Code of Criminal Procedure, 1989 (XXIII of 1989), a [Judicial Magistrate] [Inserted by Ordinance VII of 2003.] of the first class, specially empowered by the Government in this behalf, may impose a sentence of fine exceeding one thousand rupees for any officers punishable under this Ordinance.]

14. [Procedure. [Section 14 substituted by Ordinance III of 2007.]

- No prosecution for any offence punishable under this Ordinance shall be instituted except with the previous sanction-of the Controller, if the offence is investigated by the Control Department :of the Superintendent of Police, if investigated by the police.]

14A. [Summary trial. [Section 14A substituted by Ordinance VII of 2003.]

(1)Notwithstanding anything contained in section 260 of the Code of Criminal Procedure, 1989 (XXIII of 1989), a [Judicial Magistrate] empowered to act under that section may try any offence punishable under this Ordinance in a summary way under the provisions of Chapter XXII of the said Code, and shall so try any such offence unless he is of opinion that in the event of the offence being proved a sentence which he is empowered under that Chapter to impose would be insufficient.(2)Notwithstanding anything contained in section 362 of the said Code, a Magistrate trying an offence, punishable under this Ordinance, shall not record the evidence or frame a charge unless he is of opinion that, in the event of the offence being proved, a sentence against which, in

accordance with the provisions of sections 404 and 411 of the said Code, no appeal lies, would be insufficient: Provided that, where at any subsequent stage of a trial, commenced in accordance with this sub-section, it appears to the Magistrate that in the event of the offence being proved such sentence as aforesaid would be insufficient, he shall recall any witness who may have been examined and proceed to rehear the case in the manner provided in the said section 362 for a case in which an appeal lies. (3) Notwithstanding anything contained in section 526 of the said Code, no decision of a Court to try any offence punishable under this Ordinance otherwise than in the summary manner provided by this section shall be valid ground on which to make an application under that section.]

14B. [Special rules of evidence. [Section 14B and 14C inserted by Ordinance VI of 2001.]

(1) In any prosecution for a contravention of the provisions of section 5, the burden of proving that the quantity of any article in the possession of any accused person was not in excess as of the limits specified in that section shall be on the accused person. (2) In any prosecution for a contravention of the provisions of section 6, when the sale of or offer to sell or disposal of the article in question and the price at which it was made have been proved, then, if it is also proved that such price exceeded by more than 20 per cent the amount specified in sub-clause (i), (ii) or (iii) of clause (b) of sub-section (2) of section 6 or in clause (c) of that sub-section, as the case may be, it shall lie on the accused person to prove that the sale price charged was within the limits approved [x x x] under the proviso to the said sub-section. (3) [For the purposes of section 6, a certificate signed by or under authority from the Government or the Controller General or an officer authorised in such behalf under section 14-D as to the landed cost of any article, shall be conclusive proof of that landed cost, and shall not be called in question on the ground that the said landed cost was not determined in conformity with the provisions of sub-section (3-a) of section 6.] [Sub-section (3) substituted by Ordinance VII of 2003. (For earlier amendment see Ordinance VI of 2001).]

14C. Offences by Corporations.

- If the person contravening any provision of this Ordinance is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.]

14D. [General powers of Government. [Section 14D inserted by Ordinance VII of 2003.]

- The Government may-(a) exercise all the powers of the Controller General under this Ordinance; (b) authorise any officer to exercise all or any of the powers of the Controller General under sections 6, 7 and 9-A and sub-section (1) of section 11.]

15. [Certain officers to be deemed public servants. [Section 15 substituted by Ordinance VII of 2003.]

- [The Controller General and the Controllers so appointed] under this Ordinance and any officer authorised by the Government for any purpose under clause (b) of section 14-D shall, for the purpose of section 5, 8, 9 or 12, be deemed to be public servant within the meaning of section 21 of the Ranbir Penal Code, 1989 (XII of 1989)].

16. Bar of legal proceedings.

- No suit, prosecution or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Ordinance.

17. Saving of other laws.

- The provisions of this Ordinance shall be in addition to and not in derogation of any other law for the time being in force regulating the keeping, storage, distribution, disposal, or price of articles.

18. [Exception of certain articles. [Section 18 inserted by Ordinance VI of 2001.]

- The provisions of this Ordinance shall not apply-(a)to the possession or sale of any article intended for export from the State by a person holding an export licence for the export of that article ;(b)to the possession or sale of any article by a person discharging a contract entered into with the Government of India or the Government of [a Part A State or States of Ajmer, Coorg or Delhi] or with the Government where the possession or sale is in pursuance of that contract.]