
STATUTORY INSTRUMENTS

1976 No. 1899

RESALE PRICES

The Restrictive Practices Court (Resale Prices) Rules 1976

<i>Made</i>	- - - -	<i>10th November 1976</i>
		<i>22nd November</i>
<i>Laid before Parliament</i>		<i>1976</i>
<i>Coming into Operation</i>		<i>15th December 1976</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 9(1) and (2) of the Restrictive Practices Court Act 1976 and section 21(1) and (2) of the Resale Prices Act 1976, hereby makes the following Rules:—

Introductory

1. These Rules may be cited as the Restrictive Practices Court (Resale Prices) Rules 1976 and shall come into operation on 15th December 1976.

2.—(1) The Interpretation Act 1889 shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(2) In these Rules, unless the context otherwise requires—

“the Act” means the Resale Prices Act 1976;

“final hearing” includes a hearing under rule 43(3) of the principal Rules;

“judge” means a judge of the Court sitting in the part of the United Kingdom in which the proceedings were instituted or, as the case may be, to which they have been transferred;

“the principal Rules” means the Restrictive Practices Court Rules 1976(1) and any rules amending or replacing those Rules;

“the proper officer of the Court” means the Clerk of the Court or other proper officer at the central office of the Court or at the office of the Court in Scotland or Northern Ireland, as the case may be;

“representation order” means an order made under rule 9(b) or having effect as if made under that rule;

“supplier” and “retailer”, in relation to any class of goods, include trade associations consisting of or including suppliers and retailers respectively of that class of goods;

expressions used in these Rules which are used in the Act have the same meaning in these Rules as in the Act.

Applications under section 16(1)

3. An applicant who wishes to obtain leave to apply under section 16(1) of the Act for an order in respect of goods of any class must apply for leave by notice issued out of the central office of the Court, or the office of the Court in Scotland or Northern Ireland.

4. A notice under rule 3 shall be accompanied by a copy of the intended application, which shall state the class of goods to which it relates and the provisions of section 14(2) of the Act on which the applicant intends to rely, and shall be supported by evidence on affidavit of the facts alleged by the applicant to justify the making of an order under section 16(1) of the Act; and copies of the notice, the intended application, and every affidavit shall be served on the Director not less than six weeks before the date fixed by the Court for the hearing of the application for leave, and the Director shall be entitled to be heard thereon.

5. If leave is granted, the applicant shall, not later than 14 days thereafter, cause to be published in the London Gazette, the Edinburgh Gazette and the Belfast Gazette, and in at least one daily newspaper circulating throughout the United Kingdom, a notice of the application, which shall include a statement setting out the effect of rule 6.

6. Any supplier or retailer of goods of a class to which the application relates, and any trade association representing employees in the distributive trades, who wishes to be represented before the Court on the hearing of the application must notify the applicant and the Director in writing within 28 days after the publication of the notice—

- (a) stating the nature of his interest;
- (b) stating whether he supports or opposes the maintenance of minimum resale prices in respect of all or any of the goods to which the application relates;
- (c) giving the name of his solicitor (if any); and
- (d) giving an address in the United Kingdom at which documents may be served on him.

Preliminary application for directions

7. Not later than 28 days after the expiration of the time limited for notifying an interest under rule 6, the applicant shall—

- (a) apply to the Court to fix a date for the hearing of a preliminary application for directions;
- (b) give not less than 28 days' notice of the date so fixed to the Director as well as to every supplier, retailer and trade association who has notified an interest;
- (c) include with his notice a list containing the names and addresses of the persons to whom the notice is given and particulars of the interest notified and other information supplied by each person other than the Director; and
- (d) file a copy of the list with the proper officer of the Court.

8. Any person to whom notice of the preliminary application for directions is given who intends to apply for a representation order or for any directions under rule 9 shall give to the Director and to all other persons to whom notice of the preliminary application was given not less than 14 days' notice of his intention, specifying the directions for which he intends to ask, together with a copy of any affidavit on which he intends to rely, and shall file a copy of the notice and of any such affidavit with the proper officer of the Court.

9. On the hearing of the preliminary application for directions the Court—

- (a) shall determine which (if any) of the suppliers, retailers and trade associations from whom notification has been received under rule 6 have such an interest as to entitle them to be represented before the Court in the proceedings;
- (b) may order that some or all of the suppliers, retailers or trade associations who are before the Court be represented by such representative respondent as the Court may direct;
- (c) may order that the application be amended by including therein or excluding therefrom any goods, or be divided into and treated as two or more separate applications each relating to such classes of goods as the Court may direct;
- (d) may give directions as to the delivery of a statement of case by the applicant and by any supplier, retailer or trade association; and
- (e) may give such consequential directions as it thinks fit.

Service of application

10. Subject to rule 11, the applicant shall serve a copy of the application on the Director and on every supplier, retailer and trade association entitled to take part in the proceedings by virtue of directions given under rule 9(a); and the Director and every supplier, retailer and trade association on whom a copy of the application is served shall be a respondent to the application.

11. Where on the hearing of the preliminary application for directions the Court makes a representation order, then, unless the Court otherwise directs—

- (a) a copy of the application and of the representation order shall be served on the Director and on each representative respondent;
- (b) a copy of the application shall also be served on any supplier, retailer and trade association entitled to take part in the proceedings by virtue of directions given under rule 9(a) to whom the representation order does not extend; and
- (c) the applicant shall cause to be published in such trade journal or other newspaper as the Court may direct short particulars of the application and of the representation order;

but (subject to rule 14) no other supplier, retailer or trade association shall be served with the application or made a respondent.

Entry of appearance

12. Every respondent who wishes to be heard in the proceedings shall, within 14 days after service on him of a copy of the application, enter an appearance in the office of the Court out of which notice of the application was issued by delivering to the proper officer of the Court two copies of a memorandum stating that the respondent wishes to be heard in the proceedings and containing the name of his solicitor (if any) and an address in the United Kingdom at which documents may be served on him; and the proper officer shall thereupon send one copy of the memorandum, sealed with the seal of the Court, to the Director.

Subsequent proceedings on application

13. Rules 10 to 44 (except rule 33) of the principal Rules shall apply to all subsequent proceedings on the application as they apply to proceedings instituted by a notice of reference under the principal Rules, with the necessary modifications, and in particular as if—

- (a) references to an agreement were references to the class of goods to which the application relates; and
- (b) references to section 10(1) or 19(1) of the Restrictive Trade Practices Act 1976 were references to section 14 of the Act.

14. An application for the making of a representation order (where no such order was made on the hearing of the preliminary application for directions) or for the revocation or modification of a representation order (whenever made) may be made at any time before the final hearing—

- (a) by the applicant under section 16(1) of the Act; or
- (b) by the Director; or
- (c) by any respondent or any member of a class represented by a representative respondent,

and on the hearing of the application the Court may make any order which it could have made under rule 9(b) or, as the case may require, may revoke or modify the representation order, and shall give all such consequential directions as it considers necessary.

15.—(1) Where the applicant or a respondent is a trade association consisting of or including suppliers or retailers, as the case may be, the Director may apply for an order for discovery under rule 28(1) of the principal Rules or for an order for an investigation under rule 29 of those Rules against any member of the association who supplies or retails any goods to which the application relates under arrangements for maintaining minimum prices on resale; and on the hearing of the application for directions mentioned in rule 22 of the principal Rules the Court may give directions for discovery of documents by any such member or for an investigation of the cost incurred by him in producing, supplying or retailing any goods or in applying any process of manufacture to goods.

(2) In the application of this rule to proceedings in Scotland, for the reference to rule 28(1) of the principal Rules there shall be substituted a reference to rule 28(2) of those Rules, and for any reference to discovery of documents there shall be substituted a reference to recovery of documents under a commission and diligence.

Settlement of issues

16. On the hearing of the application for directions mentioned in rule 22 of the principal Rules or at any time thereafter, the Court may, either on the application of any party or of its own motion, give such directions as it thinks fit as to the formulation by the parties of the issues of fact and law which fall to be determined by the Court at the final hearing.

17. The Court shall settle the issues formulated by the parties in accordance with the directions given under rule 16 and the issues so settled (or as amended in pursuance of rule 18) shall, unless the Court otherwise directs, be those to be determined at the final hearing.

18. Any party may apply to the Court for amendment of the issues as settled by the Court and shall, except where the application is made at the final hearing, give all other parties not less than seven days' notice of the date fixed for the hearing of the application and of the amendments for which he asks, and the Court may on such application make such amendment of the issues as it thinks just.

Applications under section 17(1)

19. An applicant who wishes to obtain leave to apply for an order under section 17(1)(a) or (b) of the Act must apply for leave by notice issued out of the office of the Court in that part of the United Kingdom in which the previous proceedings relating to the class of goods which are the subject of the application took place.

20.—(1) A notice under rule 19 shall be accompanied by a copy of the intended application and be supported by evidence on affidavit of the material change in the relevant circumstances on which the applicant relies.

(2) Unless the Court otherwise directs, a copy of the notice and of every affidavit shall be served on every party who appeared on the hearing of the previous proceedings not less than six weeks before the date fixed by the Court for the hearing of the application for leave.

(3) Every person on whom notice of the application for leave is served shall be entitled to be heard on that application.

21. If leave is granted, the Court shall give such directions as it thinks fit as to—

- (a) the delivery of a statement of case by the applicant and of an answer by the parties to the previous proceedings on whom notice was served under rule 20; and
- (b) the inclusion in or exclusion from the application of any goods;

and, subject to any such directions, the provisions of these Rules relating to an application under section 16(1) of the Act shall apply with the necessary modifications to all further proceedings on the application as if the Court had given any directions which it has power to give under rule 9.

Costs

22.—(1) Where it appears to the Court that any party has been guilty of unreasonable delay, or of improper, vexatious, prolix or unnecessary steps in any proceedings under Part II of the Act or of other unreasonable conduct (including, but without prejudice to the generality of the foregoing, a refusal to make any admission or agreement as to the conduct of the proceedings which he ought reasonably to have made), the Court may make an order for costs against him.

(2) Where an order is made under paragraph (1) the Court may direct that the party against whom the order is made shall pay to any other party—

- (a) a lump sum by way of costs; or
- (b) such costs or such proportion of the costs as may be just.

(3) Where the Court gives a direction under paragraph (2)(b) it may—

- (a) itself assess the sum to be paid; or
- (b) direct that it be assessed by the proper officer of the Court; or
- (c) direct that the proper officer of the Court refer the costs to be taxed or assessed by a Master of the Supreme Court (Taxing Office) or by the Auditor of the Court of Session in Scotland or by the Taxing Master of the Supreme Court of Northern Ireland.

(4) Where a direction is given under paragraph (3)(b) or (c), any party aggrieved by the taxation or assessment may appeal to a judge within seven days of the taxation or assessment on giving notice to all parties concerned and to the officer who made the taxation or assessment; and the judge may dispose of the appeal himself, or refer it in whole or in part to a Court consisting of a presiding judge and at least two other members, and, in either event, rule 32(4) of the principal Rules shall apply to the hearing of the appeal.

23. Where the Court makes an order for the payment of costs by the Director under the powers conferred on it by section 21(4) of the Act, the provisions of rule 22(3) and (4) shall apply with the necessary modifications.

Supplementary

24. Rules 59 to 70 of the principal Rules shall apply with the necessary modifications to proceedings under Part II of the Act as they apply to proceedings instituted by a notice of reference under the principal Rules.

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Revocation of Rules

25. The Restrictive Practices Court (Resale Prices) Rules 1965(2), and the Restrictive Practices Court (Resale Prices) (Amendment) Rules 1966(3) are hereby revoked.

Dated 10th November 1976

Elywn-Jones, C

(2) (1965 I, p.586).
(3) (1966 III, p.3784).

EXPLANATORY NOTE

These Rules, which come into operation on the same day as the Restrictive Practices Court Act 1976 and the Resale Prices Act 1976, consolidate and replace the Restrictive Practices Court (Resale Prices) Rules 1965 and the amending Rules of 1966, with changes consequential upon the consolidation of the enactments relating to resale price maintenance.