

SCHEDULES

SCHEDULE 14

Article 49(1)

SUPERVISORY AND QUALIFYING BODIES: RESTRICTIVE PRACTICES

PART I

PREVENTION OF RESTRICTIVE PRACTICES

Refusal of recognition on grounds related to competition

1.—(1) The Department shall before deciding whether to make a recognition order in respect of a supervisory body or professional qualification send to the Director General of Fair Trading (in this Schedule referred to as “the Director”) a copy of the rules and of any guidance which the Department is required to consider in making that decision together with such other information as the Department considers will assist the Director.

(2) The Director shall consider whether the rules or guidance have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, and shall report to the Department; and the Department shall have regard to his report in deciding whether to make a recognition order.

(3) The Department shall not make a recognition order if it appears to it that the rules and any guidance of which copies are furnished with the application have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, unless it appears to it that the effect is reasonably justifiable having regard to the purposes of Part III of this Order.

Notification of changes to rules or guidance

2.—(1) Where a recognised supervisory or qualifying body amends, revokes or adds to its rules or guidance in a manner which may reasonably be regarded as likely—

- (a) to restrict, distort or prevent competition to any significant extent, or
- (b) otherwise to affect the question whether the recognition order granted to the body should continue in force,

it shall within 7 days give the Department written notice of the amendment, revocation or addition.

(2) Notice need not be given under sub-paragraph (1) of the revocation of guidance not intended to have continuing effect or issued otherwise than in writing or other legible form, or of any amendment or addition to guidance which does not result in or consist of guidance which is intended to have continuing effect and is issued in writing or other legible form.

Continuing scrutiny by the Director General of Fair Trading

3.—(1) The Director shall keep under review the rules made or guidance issued by a recognised supervisory or qualifying body, and if he is of the opinion that any rules or guidance of such a body

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have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, he shall report his opinion to the Department, stating what in his opinion the effect is or is likely to be.

(2) The Department shall send to the Director copies of any notice received by it under paragraph 2, together with such other information as it considers will assist the Director.

(3) The Director may report to the Department his opinion that any matter mentioned in such a notice does not have, and is not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition.

(4) The Director may from time to time consider whether—

- (a) any practices of a recognised supervisory or qualifying body in its capacity as such, or
- (b) any relevant practices required or contemplated by the rules or guidance of such a body or otherwise attributable to its conduct in its capacity as such,

have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and, if so, what that effect is or is likely to be; and if he is of that opinion he shall make a report to the Department stating his opinion and what the effect is or is likely to be.

(5) The practices relevant for the purposes of sub-paragraph (4)(b) in the case of a recognised supervisory body are practices engaged in for the purposes of, or in connection with, appointment as a company auditor or the conduct of company audit work by persons who—

- (a) are eligible under its rules for appointment as a company auditor, or
- (b) hold an appropriate qualification and are directors or other officers of bodies corporate which are so eligible or partners in, or employees of, partnerships which are so eligible.

(6) The practices relevant for the purposes of sub-paragraph (4)(b) in the case of a recognised qualifying body are—

- (a) practices engaged in by persons in the course of seeking to obtain a recognised professional qualification from that body, and
- (b) practices engaged in by persons approved by the body for the purposes of giving practical training to persons seeking such a qualification and which relate to such training.

Investigatory powers of the Director

4.—(1) The following powers are exercisable by the Director for the purpose of investigating any matter in connection with his functions under paragraph 1 or 3.

(2) The Director may by a notice in writing require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation.

(3) The Director may by a notice in writing require any person to furnish to the Director such information as may be specified or described in the notice, and specify the time within which and the manner and form in which any such information is to be furnished.

(4) A person shall not under this paragraph be required to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court.

(5) Subsections (6) to (8) of section 85 of the Fair Trading Act 1973⁽¹⁾ (enforcement provisions) apply in relation to a notice under this paragraph as they apply in relation to a notice under

(1) 1973 c. 41

subsection (1) of that section but as if, in subsection (7) of that section, for the words from “any one” to “the Commission” there were substituted “the Director”.

Publication of Director’s reports

5.—(1) The Director may, if he thinks fit, publish any report made by him under paragraph 1 or 3.

(2) He shall exclude from a published report, so far as practicable, any matter which relates to the affairs of a particular person (other than the supervisory or qualifying body concerned) the publication of which would or might in his opinion seriously and prejudicially affect the interests of that person.

Powers exercisable by the Department in consequence of report

6.—(1) The powers conferred by this paragraph are exercisable by the Department if, having received and considered a report from the Director under paragraph 3(1) or (4), it appears to the Department that—

- (a) any rules made or guidance issued by a recognised supervisory or qualifying body, or
- (b) any such practices as are mentioned in paragraph 3(4),

have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is reasonably justifiable having regard to the purposes of Part III of this Order.

(2) The powers are—

- (a) to revoke the recognition order granted to the body concerned,
- (b) to direct it to take specified steps for the purpose of securing that the rules, guidance or practices in question do not have the effect mentioned in sub-paragraph (1), and
- (c) to make alterations in the rules of the body for that purpose.

(3) The provisions of paragraph 3(2) to (5), (7) and (9) of Schedule 11 or, as the case may be, Schedule 12 have effect in relation to the revocation of a recognition order under sub-paragraph 2(a) as they have effect in relation to the revocation of such an order under that Schedule.

(4) Before the Department exercises the power conferred by sub-paragraph (2)(b) or (c) it shall—

- (a) give written notice of its intention to do so to the body concerned and take such steps (whether by publication or otherwise) as it thinks appropriate for bringing the notice to the attention of any other person who in its opinion is likely to be affected by the exercise of the power, and
- (b) have regard to any representation made within such time as it considers reasonable by the body or any such other person.

(5) A notice under sub-paragraph (4) shall give particulars of the manner in which the Department proposes to exercise the power in question and state the reasons for which it proposes to act; and the statement of reasons may include matters contained in any report received by it under paragraph 3.

Supplementary provisions

7.—(1) A direction under paragraph 6 is, on the application of the Department, enforceable by injunction.

(2) The fact that any rules made by a recognised supervisory or qualifying body have been altered by the Department, or pursuant to a direction of the Department, under paragraph 6 does not preclude their subsequent alteration or revocation by that body.

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(3) In determining for the purposes of this Schedule whether any guidance has or is likely to have, any particular effect the Department and the Director may assume that the persons to whom it is addressed will act in conformity with it.

PART II

CONSEQUENTIAL EXEMPTIONS FROM COMPETITION LAW

Fair Trading Act 1973 (c. 41)

8.—(1) For the purpose of determining whether a monopoly situation within the meaning of the Fair Trading Act 1973 exists by reason of the circumstances mentioned in section 7(1)(c) of that Act (supply of services by or for group of two or more persons), no account shall be taken of—

- (a) the rules of or guidance issued by a recognised supervisory or qualifying body, or
- (b) conduct constituting such a practice as is mentioned in paragraph 3(4).

(2) Where a recognition order is revoked there shall be disregarded for the purpose mentioned in sub-paragraph (1) any such conduct as is mentioned in that sub-paragraph which occurred while the order was in force.

(3) Where on a monopoly reference under section 50 or 51 of the Fair Trading Act 1973 falling within section 49 of that Act (monopoly reference not limited to the facts) the Monopolies and Mergers Commission find that a monopoly situation within the meaning of that Act exists and—

- (a) that the person (or, if more than one, any of the persons) in whose favour it exists is—
 - (i) a recognised supervisory or qualifying body, or
 - (ii) a person of a description mentioned in paragraph 3(5) or (6), or
- (b) that any such person's conduct in doing anything to which the rules of such a body relate is subject to guidance issued by the body,

the Commission in making their report on that reference shall exclude from their consideration the question whether the rules or guidance of the body concerned, or the acts or omissions of that body in its capacity as such, operate or may be expected to operate against the public interest.

Restrictive Trade Practices Act 1976 (c. 34)

9.—(1) The Restrictive Trade Practices Act 1976 does not apply to an agreement for the constitution of a recognised supervisory or qualifying body in so far as it relates to rules of or guidance issued by the body, and incidental matters connected therewith, including any term deemed to be contained in it by virtue of section 8(2) or 16(3) of that Act.

(2) Nor does that Act apply to an agreement the parties to which consist of or include—

- (a) a recognised supervisory or qualifying body, or
- (b) any such person as is mentioned in paragraph 3(5) or (6),

by reason that it includes any terms the inclusion of which is required or contemplated by the rules or guidance of that body.

(3) Where an agreement ceases by virtue of this paragraph to be subject to registration—

- (a) the Director shall remove from the register maintained by him under the Act of 1976 any particulars which are entered or filed in that register in respect of the agreement, and

(b) any proceedings in respect of the agreement which are pending before the Restrictive Practices Court shall be discontinued.

(4) Where a recognition order is revoked, sub-paragraphs (1) and (2) shall continue to apply for a period of 6 months beginning with the day on which the revocation takes effect, as if the order were still in force.

(5) Where an agreement which has been exempt from registration by virtue of this paragraph ceases to be exempt in consequence of the revocation of a recognition order, the time within which particulars of the agreement are to be furnished in accordance with section 24 of and Schedule 2 to the Act of 1976 shall be the period of one month beginning with the day on which the agreement ceased to be exempt from registration.

(6) Where in the case of an agreement registered under the 1976 Act a term ceases to fall within sub-paragraph (2) in consequence of the revocation of a recognition order and particulars of that term have not previously been furnished to the Director under section 24 of that Act, those particulars shall be furnished to him within the period of one month beginning with the day on which the term ceased to fall within that sub-paragraph.

Competition Act 1980 (c. 21)

10.—(1) No course of conduct constituting any such practice as is mentioned in paragraph 3(4) shall constitute an anti-competitive practice for the purposes of the Competition Act 1980.

(2) Where a recognition order is revoked there shall not be treated as an anti-competitive practice for the purposes of that Act any such course of conduct as is mentioned in sub-paragraph (1) which occurred while the order was in force.