



Fair Trading Act 1973

1973 CHAPTER 41

PART XII

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

124 Publication of information and advice

- (1) With respect to any matter in respect of which the Director has any duties under section 2(1) of this Act, he may arrange for the publication, in such form and in such manner as he may consider appropriate, of such information and advice as it may appear to him to be expedient to give to consumers in the United Kingdom.
- (2) In arranging for the publication of any such information or advice, the Director shall have regard to the need for excluding, so far as that is practicable,—
 - (a) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual, and
 - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.
- (3) Without prejudice to the exercise of his powers under subsection (1) of this section, it shall be the duty of the Director to encourage relevant associations to prepare, and to disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers in the United Kingdom.
- (4) In this section " relevant association " means any association (whether incorporated or not) whose membership consists wholly or mainly of persons engaged in the production or supply of goods or in the supply of services or of persons employed by or representing persons so engaged and whose objects or activities include the promotion of the interests of persons so engaged.

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125 Annual and other reports of Director

- (1) The Director shall, as soon as practicable after the end of the year 1974 and of each subsequent calendar year, make to the Secretary of State a report on his activities, and the activities of the Advisory Committee and of the Commission, during that year.
- (2) Every such report shall include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director's duties under any enactment (including any enactment contained in this Act, other than this section).
- (3) The Secretary of State shall lay a copy of every report made by the Director under subsection (1) of this section before each House of Parliament, and shall arrange for every such report to be published in such manner as he may consider appropriate.
- (4) The Director may also prepare such other reports as appear to him to be expedient with respect to such matters as are mentioned in subsection (2) of this section, and may arrange for any such report to be published in such manner as he may consider appropriate.
- (5) In making any report under this Act the Director shall have regard to the need for excluding, so far as that is practicable, any such matter as is specified in paragraph (a) or paragraph (b) of section 124(2) of this Act.
- (6) For the purposes of this section any period between the commencement of this Act and the end of the year 1973 shall be treated as included in the year 1974.

126 Special provisions relating to patents

The following subsections shall be substituted for subsections (3) and (4) of section 40 of the Patents Act 1949 (which confer certain powers on the comptroller where a report of the Commission relates to patented articles or processes):—

“(3) Where, on a reference under section 50 or section 51 of the Fair Trading Act 1973, a report of the Monopolies and Mergers Commission, as laid before Parliament, contains conclusions to the effect—

- (a) that a monopoly situation (within the meaning of that Act) exists in relation to a description of goods which consists of or includes patented articles, or consists of or includes articles to which a patented process has been applied, or that such a situation exists in relation to a description of services in which a patented process is used, and
- (b) that facts found by the Commission in pursuance of their investigations under section 49 of that Act operate, or may be expected to operate, against the public interest,

the appropriate Minister or Ministers, subject to subsection (3B) of this section, may apply to the comptroller for an order under subsection (4) of this section in respect of the patent.

(3A) Where, on a reference under section 64 or section 75 of the Fair Trading Act 1973, a report of the Monopolies and Mergers Commission, as laid before Parliament, contains conclusions to the effect—

- (a) that a merger situation qualifying for investigation has been created;
- (b) that one of the elements which constitute the creation of that situation is that the condition specified in subsection (2) or in subsection (3) of

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section 64 of that Act prevails (or does so to a greater extent) in respect of a description of goods which consists of or includes patented articles, or consists of or includes articles to which a patented process has been applied, or in respect of a description of services in which a patented process is used; and

- (c) that the creation of that situation, or particular elements in or consequences of it specified in the report, operate, or may be expected to operate, against the public interest,

the Secretary of State, subject to the next following subsection, may apply to the comptroller for an order under subsection (5) of this section in respect of the patent.

- (3B) Before making an application under subsection (3) or subsection (3A) of this section, the appropriate Minister or Ministers shall publish, in such manner as he or they think appropriate, a notice describing the nature of the proposed application, and shall consider any representations which, within the period of thirty days from the date of publication of the notice, may be made to him or them by persons whose interests appear to the appropriate Minister or Ministers to be likely to be affected by the proposed application.

- (4) If, on an application under subsection (3) of this section, it appears to the comptroller that the facts specified in the report of the Monopolies and Mergers Commission as being those which, in the opinion of the Commission, operate or may be expected to operate against the public interest include—

- (a) any conditions in a licence or licences granted by the patentee under the patent restricting the use of the invention by the licensee or the right of the patentee to grant other licences under the patent, or
- (b) a refusal by the patentee to grant licences under the patent on reasonable terms,

the comptroller may by order cancel or modify any such condition or may, if he thinks fit, instead of making such an order or in addition to making such an order, order the patent to be endorsed with the words ' licences of right'.

- (5) If on an application under subsection (3A) of this section it appears to the comptroller that the particular matters indicated in the report of the Monopolies and Mergers Commission as being those which, in the opinion of the Commission, operate or may be expected to operate against the public interest (whether those matters are so indicated in pursuance of a requirement imposed under section 69(4) or section 75(3) of the Fair Trading Act 1973 or otherwise) include any such condition or refusal as is mentioned in paragraph (a) or paragraph (b) of subsection (4) of this section, the comptroller may by order cancel or modify any such condition or may, if he thinks fit, instead of making such an order or in addition to making such an order, order the patent to be endorsed with the words licences of right'.

- (6) In this section ' the appropriate Minister or Ministers' in relation to a report of the Monopolies and Mergers Commission, means the Minister or Ministers to whom the report is made.”

127 Additional power to make orders under Agricultural Marketing Act 1958

The following section shall be inserted in the Agricultural Marketing Act 1958 after section 19:—

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- (1) The provisions of this section shall have effect where a report made by the Monopolies and Mergers Commission under section 54 of the Fair Trading Act 1973, as laid before Parliament, contains conclusions to the effect—
 - (a) that certain matters indicated in the report operate, or may be expected to operate, against the public interest, and
 - (b) that those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme.
- (2) In the circumstances mentioned in subsection (1) of this section, the Minister shall have the like power to make orders under section 19 of this Act as if those conclusions of the Monopolies and Mergers Commission—
 - (a) had been to the effect that the provision of the scheme in question, or the act or omission of the board to which those conclusions relate, were contrary to the interests of consumers of the regulated product, and
 - (b) had been contained in a report of a committee of investigation.”

128 Order superseded by declaration of Restrictive Practices Court

Where an application is made to the Restrictive Practices Court under subsection (2) of section 30 of the Act of 1956 (which in certain circumstances enables an application to be made to that Court to declare whether proposed restrictions are contrary to the public interest) and—

- (a) on that application the Court makes a declaration under that subsection in relation to a restriction proposed to be accepted under an agreement, and
- (b) by virtue of an order under section 56 of this Act which is for the time being in force, the making or carrying out of an agreement under which that restriction was accepted would be unlawful,

the order under section 56 of this Act shall cease to have effect in so far as it renders unlawful the making or carrying out of an agreement under which that restriction is accepted.

129 Time-limit for prosecutions

- (1) No prosecution for an offence under this Act shall be commenced after the expiration of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.
- (2) Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952, a magistrates' court may try an information for an offence under this Act if the information was laid within twelve months from the commission of the offence.
- (3) Notwithstanding anything in section 23 of the Summary Jurisdiction (Scotland) Act 1954, summary proceedings in Scotland for an offence under this Act may be commenced within twelve months from the commission of the offence, and subsection (2) of the said section 23 shall apply for the purposes of this subsection as it applies for the purposes of that section.
- (4) In the application of this section to Northern Ireland, for the references in subsection (2) to section 104 of the Magistrates' Courts Act 1952 and to the trial and laying of an information there shall be substituted respectively references to section 34 of the Magistrates' Courts Act (Northern Ireland) 1964 and to the hearing and determination and making of a complaint.

130 Notice to Director of intended prosecution

- (1) Where a local weights and measures authority in England or Wales proposes to institute proceedings for an offence under section 23 of this Act, or for an offence under the Trade Descriptions Act 1968, other than an offence under section 28(5) or section 29 of that Act, it shall, as between the authority and the Director, be the duty of the authority to give to the Director notice of the intended proceedings, together with a summary of the facts on which the charges are to be founded, and to postpone institution of the proceedings until either—
 - (a) twenty-eight days have elapsed since the giving of that notice, or
 - (b) the Director has notified the authority that he has received the notice and the summary of the facts.
- (2) In relation to offences under the Trade Descriptions Act 1968, the preceding subsection shall have effect subject to the transitional provisions having effect by virtue of section 139 of this Act.

131 Notification of convictions and judgments to Director

- (1) Where in any criminal proceedings a person is convicted of an offence by or before a court in the United Kingdom, or a judgment is given against a person in civil proceedings in any such court, and it appears to the court—
 - (a) having regard to the functions of the Director under Part III of this Act, that it would be expedient for the conviction or judgment to be brought to his attention, and
 - (b) that it may not be brought to his attention unless arrangements for the purpose are made by the court,the court may make arrangements for that purpose notwithstanding that the proceedings have been finally disposed of by the court.
- (2) In this section " judgment" includes any order or decree, and any reference to the giving of a judgment shall be construed accordingly.

132 Offences by bodies corporate

- (1) Where an offence under section 23, section 46, section 85(6) or Part XI of this Act, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) of this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

133 General restrictions on disclosure of information

- (1) Subject to subsections (2) to (4) of this section, no information with respect to any particular business which has been obtained under or by virtue of the provisions (other than Part II) of this Act or under or by virtue of the Act of 1956 or the Act of 1968

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shall, so long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business.

- (2) The preceding subsection does not apply to any disclosure of information which is made—
 - (a) for the purpose of facilitating the performance of any functions of the Director, the Commission, the Secretary of State or any other Minister under this Act, the Act of 1956 or the Act of 1968, or
 - (b) in pursuance of a Community obligation within the meaning of the European Communities Act 1972.
- (3) Subsection (1) of this section does not apply to any disclosure of information which is made for the purposes of any proceedings before the Restrictive Practices Court or of any other legal proceedings, whether civil or criminal, under this Act, the Act of 1956 or the Act of 1968.
- (4) Nothing in subsection (1) of this section shall be construed—
 - (a) as limiting the matters which may be included in, or made public as part of, a report of the Advisory Committee or of the Commission ;
 - (b) as limiting the particulars which may be entered or filed in, or made public as part of, the register under Part I of the Act of 1956; or
 - (c) as applying to any information which has been made public as part of such a report or as part of that register.
- (5) Any person who discloses any information in contravention of this section shall be guilty of an offence and shall be liable—
 - (a) on summary conviction, to a fine not exceeding £400;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (6) In this section references to this Act shall be construed as including references to any enactment repealed by this Act.

134 Provisions as to orders

- (1) Any statutory instrument whereby any order is made under any of the preceding provisions of this Act, other than a provision which requires a draft of the order to be laid before Parliament before making the order, or whereby any regulations are made under this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Any power conferred by any provision of this Act to make an order by statutory instrument shall include power to revoke or vary the order by a subsequent order made under that provision.

135 Financial provisions

- (1) The Secretary of State shall pay all remuneration, allowances or other sums payable under this Act to or in respect of persons who are or have been members of the Advisory Committee or the Commission, and shall defray—
 - (a) all expenses duly incurred by the Commission in the payment of remuneration or allowances payable under this Act to staff of the Commission, and

- (b) to such amount as the Secretary of State with the approval of the Minister for the Civil Service may determine, all other expenses duly incurred by the Advisory Committee or the Commission.
- (2) There shall be defrayed out of moneys provided by Parliament—
- (a) all expenses incurred by the Secretary of State in consequence of the provisions of this Act;
 - (b) any expenses incurred in consequence of those provisions by any other Minister of the Crown or government department, not being a Minister or department of the Government of Northern Ireland;
 - (c) the remuneration of, and any travelling or other allowances payable under this Act to, the Director and any staff of the Director, any other sums payable under this Act to or in respect of the Director, and any expenses duly incurred by the Director or by any of his staff in consequence of the provisions of this Act;
 - (d) any increase attributable to this Act in the sums payable out of moneys so provided under the Superannuation Act 1972.
- (3) The Secretary of State shall for each financial year pay into the Exchequer of Northern Ireland such sum as the Secretary of State and the Ministry of Commerce for Northern Ireland may agree to be appropriate, as representing the expenses incurred by that Ministry in enforcing the provisions of any order made under section 22 of this Act, in so far as any such order provides for matters with respect to which the Parliament of Northern Ireland does not have power to make laws.

136 Powers of Parliament of Northern Ireland

The Parliament of Northern Ireland shall have the same power to pass Acts with respect to any matter as they would have had if this Act had not been passed ; and, in the event of any inconsistency between any Act of the Parliament of Northern Ireland passed after the passing of this Act and any provision of this Act or any order or other instrument having effect by virtue of this Act, the Act of the Parliament of Northern Ireland shall, in Northern Ireland, prevail.

137 General interpretation provisions

- (1) In this Act—
- " the Act of 1948 " means the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 ;
 - " the Act of 1956 " means the Restrictive Trade Practices Act 1956;
 - " the Act of 1964 " means the Resale Prices Act 1964 ;
 - " the Act of 1965 " means the Monopolies and Mergers Act 1965 ;
 - " the Act of 1968 " means the Restrictive Trade Practices Act 1968 ;
 - " assignment ", in relation to Scotland, means assignation ;
 - " contract of employment " means a contract of service or of apprenticeship, whether it is express or implied, and (if it is express) whether it is oral or in writing;
 - " scale " (where the reference is to the scale on which any services are, or are to be, made available, supplied or obtained) means scale measured in terms of money or money's worth or in any other manner.

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(2) Except in so far as the context otherwise requires, in this Act, except in Part X, the following expressions have the meanings hereby assigned to them respectively, that is to say—

" the Advisory Committee " means the Consumer Protection Advisory committee;

" agreement " means any agreement or arrangement, in whatever way and in whatever form it is made, and whether it is, or is intended to be, legally enforceable or not;

" business " includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;

" commercial activities in the United Kingdom " means any of the following, that is to say, the production and supply of goods in the United Kingdom, the supply of services in the United Kingdom and the export of goods from the United Kingdom ;

" the Commission " means the Monopolies and Mergers Commission;

" complex monopoly situation " has the meaning assigned to it by section 11 of this Act;

" consumer " (subject to subsection (6) of this section) means any person who is either—

- (a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them, or
- (b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them, and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

" the Director " means the Director General of Fair Trading;

" enactment " includes an enactment of the Parliament of Northern Ireland;

" goods " includes buildings and other structures, and also includes ships, aircraft and hovercraft, but does not include electricity;

" group " (where the reference is to a group of persons fulfilling specified conditions, other than the condition of being interconnected bodies corporate) means any two or more persons fulfilling those conditions, whether apart from fulfilling them they would be regarded as constituting a group or not;

" merger reference " has the meaning assigned to it by section 5(3) of this Act;

" merger situation qualifying for investigation " has the meaning assigned to it by section 64(8) of this Act;

" Minister " includes a government department but shall not by virtue of this provision be taken to include the establishment consisting of the Director and his staff, and, except where the contrary is expressly provided, does not include any Minister or department of the Government of Northern Ireland ;

" monopoly reference " and " monopoly situation " have the meanings assigned to them by section 5(3) of this Act;

" newspaper merger reference " has the meaning assigned to it by section 59(3) of this Act;

" practice " means any practice, whether adopted in pursuance of an agreement or otherwise ;

" price " includes any charge or fee, by whatever name called;

" produce ", in relation to the production of minerals or other substances, includes getting them, and, in relation to the production of animals or fish, includes taking them;

" supply ", in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person ;

" uncompetitive practices " means practices having the effect of preventing, restricting or distorting competition in connection with any commercial activities in the United Kingdom;

" worker " (subject to subsection (7) of this section) has the meaning assigned to it by section 167 of the Industrial Relations Act 1971.

- (3) In the provisions of this Act other than Part X (and without prejudice to the construction of that Part in accordance with section 117 of this Act) "the supply of services" does not include the rendering of any services under a contract of employment but, with that exception,—
- (a) includes the undertaking and performance for gain or reward of engagements (whether professional or other) for any matter other than the supply of goods, and
 - (b) includes both the rendering of services to order and the provision of services by making them available to potential users;
- and any reference in those provisions to services supplied or to be supplied, or to services provided or to be provided, shall be construed accordingly.
- (4) For the purposes of this Act, except Part X, " services" includes electricity.
- (5) For the purposes of the provisions of this Act other than Part X, any two bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary (within the meaning of section 154 of the Companies Act 1948) or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate ; and in those provisions " interconnected bodies corporate " shall be construed accordingly, and " group of interconnected bodies corporate " means a group consisting of two or more bodies corporate all of whom are interconnected with each other.
- (6) For the purposes of the application of any provision of this Act in relation to goods or services of a particular description or to which a particular practice applies, " consumers" means persons who are consumers (as defined by subsection (2) of this section) in relation to goods or services of that description or in relation to goods or services to which that practice applies.
- (7) For the purposes of the application of this Act to Northern Ireland, the definition of " worker " in subsection (2) of this section shall apply as if the Industrial Relations Act 1971 extended to Northern Ireland but, in section 167(2)(a) of that Act, references to general medical services, pharmaceutical services, general dental services or general ophthalmic services provided under the enactments mentioned in that subsection were references to the corresponding services provided in Northern Ireland under the corresponding enactments there in force.

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- (8) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

138 Supplementary interpretation provisions

- (1) This section applies to the following provisions of this Act, that is to say, section 2(4), Parts II and III, section 137(6), and the definition of " consumer" contained in section 137(2),
- (2) For the purposes of any provisions to which this section applies it is immaterial whether any person supplying goods or services has a place of business in the United Kingdom or not.
- (3) For the purposes of any provisions to which this section applies any goods or services supplied wholly or partly outside, the United Kingdom, if they are supplied in accordance with arrangements made in the United Kingdom, whether made orally or by one or more documents delivered in the United Kingdom or by correspondence posted from and to addresses in the United Kingdom, shall be treated as goods supplied to, or services supplied for, persons in the United Kingdom.
- (4) In relation to the supply of goods under a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, the person conducting any antecedent negotiations, as well as the owner or seller, shall for the purposes of any provisions to which this section applies be treated as a person supplying or seeking to supply the goods.
- (5) Subsection (4) of this section shall be construed—
- (a) in relation to England and Wales, in accordance with subsections (1), (3), (4) and (5) of section 58 of the Hire-Purchase Act 1965 ;
 - (b) in relation to Scotland, in accordance with subsections (1), (3), (4) and (5) of section 54 of the Hire-Purchase (Scotland) Act 1965 ; and
 - (c) in relation to Northern Ireland, in accordance with subsections (1), (3), (4) and (5) of section 65 of the Hire-Purchase Act (Northern Ireland) 1966.
- (6) In any provisions to which this section applies—
- (a) any reference to a person to or for whom goods or services are supplied shall be construed as including a reference to any guarantor of such a person, and
 - (b) any reference to the terms or conditions on or subject to which goods or services are supplied shall be construed as including a reference to the terms or conditions on or subject to which any person undertakes to act as such a guarantor ;
- and in this subsection " guarantor ", in relation to a person to or for whom goods or services are supplied, includes a person who undertakes to indemnify the supplier of the goods or services against any loss which he may incur in respect of the supply of the goods or services to or for that person.
- (7) For the purposes of any provisions to which this section applies goods or services supplied by a person carrying on a business shall be taken to be supplied in the course of that business if payment for the supply of the goods or services is made or (whether under a contract or by virtue of an enactment or otherwise) is required to be made.

139 Amendments, repeals and transitional provisions

- (1) Subject to the transitional provisions and savings contained in Schedule 11 to this Act—
 - (a) the enactments specified in Schedule 12 to this Act shall have effect subject to the amendments specified in that Schedule (being minor amendments or amendments consequential upon the preceding provisions of this Act), and
 - (b) the enactments specified in Schedule 13 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) The provisions of Schedule 11 to this Act shall have effect for the purposes of this Act.

140 Short title, citation, commencement and extent

- (1) This Act may be cited as the Fair Trading Act 1973.
- (2) The Restrictive Trade Practices Act 1956, the Restrictive Trade Practices Act 1968, Parts IX and X of this Act, Schedules 4 and 10 to this Act and so much of Schedules 12 and 13 to this Act as relates to those Acts may be cited together as the Restrictive Trade Practices Acts 1956 to 1973.
- (3) This Act shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint; and different dates may be so appointed for, or for different purposes of, any one or more of the provisions of this Act (including, in the case of section 139 of this Act, the amendment or repeal of different enactments specified in Schedule 12 or Schedule 13 to this Act or of different provisions of any enactment so specified).
- (4) Where any provision of this Act, other than a provision contained in Schedule 11, refers to the commencement of this Act, it shall be construed as referring to the day appointed under this section for the coming into operation of that provision.
- (5) This Act extends to Northern Ireland.