



# Resale Prices Act 1976

## 1976 CHAPTER 53

### PART II

#### INDIVIDUAL MINIMUM RESALE PRICE MAINTENANCE

##### *Prohibition of individual resale price maintenance*

#### **9 Minimum resale prices maintained by contract or agreement**

- (1) Any term or condition—
- (a) of a contract for the sale of goods by a supplier to a dealer, or
  - (b) of any agreement between a supplier and a dealer relating to such a sale,
- is void in so far as it purports to establish or provide for the establishment of minimum prices to be charged on the resale of the goods in the United Kingdom.
- (2) It is unlawful for a supplier of goods (or for an association or person acting on behalf of such suppliers)—
- (a) to include in a contract for sale or agreement relating to the sale of goods a term or condition which is void by virtue of this section ;
  - (b) to require, as a condition of supplying goods to a dealer, the inclusion in a contract or agreement of any such term or condition, or the giving of any undertaking to the like effect;
  - (c) to notify to dealers, or otherwise publish on or in relation to any goods, a price stated or calculated to be understood as the minimum price which may be charged on the resale of the goods in the United Kingdom.

Paragraph (a) does not affect the enforceability of a contract of sale or other agreement, except in respect of the term or condition which is void by virtue of this section.

Paragraph (c) is not to be construed as precluding a supplier (or an association or person acting on behalf of a supplier) from notifying to dealers or otherwise publishing prices recommended as appropriate for the resale of goods supplied or to be supplied by the supplier.

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## **10 Patented articles under s. 9**

- (1) Section 9 above applies to patented articles (including articles made by a patented process) as it applies to other goods.
- (2) Notice of any term or condition which is void by virtue of section 9, or which would be so void if included in a contract of sale or agreement relating to the sale of any such article, is of no effect for the purpose of limiting the right of a dealer to dispose of that article without infringement of the patent.
- (3) Nothing in section 9 and in this section affects the validity, as between the parties and their successors, of any term or condition—
  - (a) of a licence granted by the proprietor of a patent or by a licensee under any such licence; or
  - (b) of any assignment of a patent,so far as it regulates the price at which articles produced or processed by the licensee or assignee may be sold by him.
- (4) References in this section to patented articles include references to—
  - (a) articles protected by the registration of a design, and
  - (b) articles protected by plant breeders' rights or a protective direction under Schedule 1 to the Plant Varieties and Seeds Act 1964,and references in this section to a patent shall be construed accordingly.

## **11 Minimum resale prices maintained by other means**

- (1) It is unlawful for a supplier to withhold supplies of any goods from a dealer seeking to obtain them for resale in the United Kingdom on the ground that the dealer—
  - (a) has sold in the United Kingdom at a price below the resale price goods obtained, either directly or indirectly, from that supplier, or has supplied such goods, either directly or indirectly, to a third party who had done so; or
  - (b) is likely, if the goods are supplied to him, to sell them in the United Kingdom at a price below that price, or supply them, either directly or indirectly, to a third party who would be likely to do so.
- (2) In this section " the resale price ", in relation to a sale of any description, means—
  - (a) any price notified to the dealer or otherwise published by or on behalf of a supplier of the goods in question (whether lawfully or not) as the price or minimum price which is to be charged on or is recommended as appropriate for a sale of that description; or
  - (b) any price prescribed or purporting to be prescribed for that purpose by a contract or agreement between the dealer and any such supplier.
- (3) Where under this section it would be unlawful for a supplier to withhold supplies of goods it is also unlawful for him to cause or procure any other supplier to do so.

## **12 Meaning of " withhold supplies " in relation to Part II**

- (1) For the purposes of this Part of this Act a supplier of goods shall be treated as withholding supplies of goods from a dealer—
  - (a) if he refuses or fails to supply those goods to the order of the dealer;

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- (b) if he refuses to supply those goods to the dealer except at prices, or on terms or conditions as to credit, discount or other matters, which are significantly less favourable than those at or on which he normally supplies those goods to other dealers carrying on business in similar circumstances ; or
  - (c) if, although he contracts to supply the goods to the dealer, he treats him in a manner significantly less favourable than that in which he normally treats other such dealers in respect of times or methods of delivery or other matters arising in the execution of the contract.
- (2) For the purposes of this Part a supplier shall not be treated as withholding supplies of goods on any such ground as is mentioned in section 11(1) above if, in addition to that ground, he has other grounds which, standing alone, would have led him to withhold those supplies.
- (3) If in proceedings brought against a supplier of goods in respect of a contravention of section 11 it is proved that supplies of goods were withheld by the supplier from a dealer, and it is further proved—
- (a) that down to the time when supplies were so withheld the supplier was doing business with the dealer or was supplying goods of the same description to other dealers carrying on business in similar circumstances, and
  - (b) that the dealer, to the knowledge of the supplier, had within the previous six months acted as described in section 11(1)(a), or had indicated his intention to act as described in paragraph (b) of that subsection in relation to the goods in question,

it shall be presumed, unless the contrary is proved, that the supplies were withheld on the ground that the dealer had so acted or was likely so to act.

This subsection does not apply where the proof that supplies , were withheld consists only of evidence of requirements imposed by the supplier in respect of the time at which or the form in which payment was to be made for goods supplied or to be supplied.

### **13 Exception for measures against loss leaders**

- (1) It is not unlawful by virtue of section 11 above for a supplier to withhold supplies of any goods from a dealer, or to cause or procure another supplier to do so, if he has reasonable cause to believe that within the previous twelve months the dealer or any other dealer to whom the dealer supplies goods has been using as loss leaders any goods of the same or a similar description, whether obtained from that supplier or not.
- (2) The reference in this section to the use of goods as loss leaders is a reference to a resale of the goods effected by the dealer, not for the purpose of making a profit on the sale of those goods, but for the purpose of attracting to the establishment at which the goods are sold customers likely to purchase other goods or otherwise for the purpose of advertising the business of the dealer.
- (3) A sale of goods shall not be treated for the purposes of this section as the use of those goods as loss leaders—
- (a) where the goods are sold by the dealer at a genuine seasonal or clearance sale, not having been acquired by the dealer for the purpose of being resold as mentioned in this section ; or
  - (b) where the goods are resold as mentioned in this section with the consent of the manufacturer of the goods or, in the case of goods made to the design

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of a supplier or to the order and bearing the trade mark of a supplier, of that supplier.

*Applications to the Restrictive Practices Court in relation to exemptions*

#### **14 Exemption of goods by the Court**

- (1) Upon an application under section 16 or section 17 below the Restrictive Practices Court (" the Court") may make an order in accordance with this section directing that goods of any class shall be exempted goods for the purposes of this Part of this Act.
- (2) The order referred to in subsection (1) above may be made if it appears to the Court that in default of a system of maintained minimum resale prices applicable to those goods—
  - (a) the quality of the goods available for sale, or the varieties of the goods so available, would be substantially reduced to the detriment of the public as consumers or users of those goods; or
  - (b) the number of establishments in which the goods are sold by retail would be substantially reduced to the detriment of the public as such consumers or users; or
  - (c) the prices at which the goods are sold by retail would in general and in the long run be increased to the detriment of the public as such consumers or users; or
  - (d) the goods would be sold by retail under conditions likely to cause danger to health in consequence of their misuse by the public as such consumers or users; or
  - (e) any necessary services actually provided in connection with or after the sale of the goods by retail would cease to be so provided or would be substantially reduced to the detriment of the public as such consumers or users;

and in any such case that the resulting detriment to the public as consumers or users of the goods in question would outweigh any detriment to them as such consumers or users (whether by the restriction of competition or otherwise) resulting from the maintenance of minimum resale prices in respect of the goods.

In this section—

" necessary services ", in relation to goods, means services which, having regard to the character of the goods, are required to guard against the risk of injury, whether to persons or to premises, in connection with the consumption, installation or use of the goods, or are otherwise reasonably necessary for the benefit of consumers or users; and

" consumers " and " users " include persons consuming or using for the purpose or in the course of trade or business or for public purposes.

#### **15 Who may apply to the Court**

An application to the Court under section 16 or section 17 below may be made by—

- (a) the Director General of Fair Trading (" the Director ");
- (b) any supplier of goods of the class in question ; or
- (c) any trade association whose members consist of or include such suppliers.

## **16 New applications**

- (1) Upon an application under this section the Court may make an order under section 14 above directing that goods of any class specified in the order other than goods in respect of which—
  - (a) a reference has been made under section 5 of the Resale Prices Act 1964, or
  - (b) a previous application has been made under this section,shall be exempted goods for the purposes of this Part of this Act.
- (2) No application shall be made under this section except with the Court's leave, and that leave shall not be granted except upon prima facie evidence of facts upon which an order could be made in accordance with section 14 in respect of the goods in question, or could be so made if any detriment to the public resulting from the maintenance of minimum resale prices were disregarded.

## **17 Court's power to review its decisions**

- (1) Upon an application under this section the Court may—
  - (a) discharge any order previously made by the Court directing that goods of any class shall be exempted goods ;
  - (b) make an order under section 14 above directing that goods of any class shall be exempted goods for the purposes of this Act where the Court has in respect of that class of goods previously refused to make such an order or has previously discharged such an order.
- (2) No application shall be made under this section except with the Court's leave, and that leave shall not be granted except upon prima facie evidence of a material change in the relevant circumstances since the Court's last decision in respect of the goods in question.

## **18 Facts found under the Restrictive Trade Practices Act 1976**

Upon an application under section 16 or section 17 above in respect of goods of any class which have been the subject of proceedings in the Court under Part I of the Restrictive Trade Practices Act 1976 (or under Part I of the Restrictive Trade Practices Act 1956) the Court may treat as conclusive any finding of fact made in those proceedings, and shall do so unless prima facie evidence is given of a material change in the relevant circumstances since those proceedings.

## **19 Effect of exemption order**

Where an exemption order is made under section 14 above—

- (a) section 9 above does not apply in relation to any contract of sale or other agreement relating to exempted goods of the class specified in the order, or anything done in relation to such goods; and
- (b) notwithstanding section 11 above, a supplier may withhold supplies of any such goods from a dealer seeking to obtain them for resale in the United Kingdom on the ground that the dealer—
  - (i) has sold in the United Kingdom at a price below the resale price (which means the same in this paragraph as in section 11) exempted goods obtained, either directly or indirectly, from that supplier or has

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supplied such goods, either directly or indirectly to a third party who had done so, or

- (ii) is likely, if the exempted goods are supplied to him, to sell them in the United Kingdom at a price below that price, or supply them, either directly or indirectly, to a third party who would be likely to do so.

## 20 Discharge of exemption order

Where, by virtue of a decision of the Court under section 17(1)(a) above, section 9 above takes effect, that section, so far as it affects the validity of any term or condition of a contract or agreement for or relating to the sale of any goods, or the effect of notice of any term or condition so relating, applies to contracts and agreements made and notices given before as well as after that section takes effect, and—

- (a) for the purposes of the jurisdiction of any court to grant an injunction in proceedings pending at the time when section 9 takes such effect, that section shall be treated as if it had taken effect before the cause of action arose; and
- (b) any injunction granted or undertaking given before section 9 takes such effect in or for the purpose of any proceedings shall be of no effect in so far as it would operate to require compliance with any term or condition which is void, or notice of which is invalidated, by virtue of that section.

## 21 Supplementary provisions as to applications to the Court

- (1) Rules made by virtue of section 9(1) of the Restrictive Practices Court Act 1976 in relation to an application under this Part of this Act shall include provisions—
  - (a) for enabling the Court, on the application of the Director or of any party interested, to give directions with respect to the goods to be included in or excluded from any application under this Part of this Act;
  - (b) for securing that retailers, and trade associations representing employees in the distributive trades, who—
    - (i) have an interest in any such application, and
    - (ii) have given notice to the Director within such time and in such manner as may be prescribed by the rules,
 are entitled, whether in consequence of a representation order or otherwise, to be represented before the Court in the proceedings.
- (2) Without prejudice to the generality of section 9(1) of the Restrictive Practices Court Act 1976, rules made under that subsection in relation to an application under this Part of this' Act may provide—
  - (a) for enabling a single application to be made to the Court in respect of a number of related classes of goods, or separate applications made in respect of related classes, to be heard together ;
  - (b) for enabling the Court to determine in a summary way any issue arising in relation to a class of goods where it appears to the Court that the class of goods and the circumstances of the case are substantially similar to the class of goods and circumstances considered in any previous proceedings before the Court;
  - (c) for enabling the Court to make an order for the payment by any party of costs in respect of proceedings in which he is guilty of unreasonable delay, or in respect of any improper, vexatious, prolix or unnecessary proceedings or any other unreasonable conduct on his part.

- (3) The Court does not have power to order the payment of costs by any party to proceedings on an application under this Part of this Act, except—
- (a) so far as may be the case under rules made as provided by subsection (2) above ;
  - (b) as is provided by subsection (4) below.
- (4) The Court may order the payment by the Director of all or any of the following costs incurred by any other party—
- (a) costs incurred on an application under section 16 above in respect of any issue determined in favour of that party, being an issue which in the Court's opinion substantially corresponds with an issue so determined in proceedings in respect of an agreement of which particulars are entered or filed in the register under the Restrictive Trade Practices Act 1976 (or under the Restrictive Trade Practices Act 1956) ;
  - (b) costs incurred on an application under section 17 above in respect of an issue determined in favour of that party.

#### *Miscellaneous*

## **22 Listing of the Court's orders as to goods**

The Director shall publish lists of the classes of goods in , respect of which the Court has made, refused to make or discharged orders under this Part of this Act.

## **23 Statutory schemes**

Nothing in this Part of this Act applies to an agreement which is expressly authorised by an enactment, or by a scheme, order or other instrument made under an enactment, or to anything done pursuant to any such agreement, scheme, order or instrument.

## **24 Interpretation of Part II**

- (1) In this Part of this Act—

" dealer " means a person carrying on a business of selling goods, whether by wholesale or by retail;

" supplier " means a person carrying on a business of selling goods other than a business in which goods are sold only by retail;

" trade association " means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or the persons represented by its members.

- (2) Where—

- (a) the dealer referred to in section 11(1)(a) above, or in section 13(1) above, or
- (b) the supplier referred to in section 11(1)(a),

is one of a group of interconnected bodies corporate the reference includes a reference to any other dealer or, as the case may be, any other supplier who is also a member of that group.