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 STATUTORY INSTRUMENTS
 

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**1976 No. 1898**

**FAIR TRADING**

**The Restrictive Practices Court (Protection of Consumers)  
Rules 1976**

*Made* - - - 10th November 1976

*Laid before Parliament* 22nd November 1976

*Coming into Operation* 15th December 1976

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

*Introductory*

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

**2.—(1)** The Interpretation Act 1889 (b) 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 Fair Trading Act 1973 (c);

“the Court” means the Restrictive Practices Court;

“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 (d) 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;

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

*Notice of application under section 35 or 38 of the Act*

**3.—(1)** Proceedings before the Court under section 35 or 38 of the Act shall be instituted by a notice of application issued out of the central office of the Court, or the office of the Court in Scotland or Northern Ireland, as the case may be, specifying the part of the United Kingdom in which the hearing is to take place and the persons against whom an order is sought, and containing the particulars and other information required by this rule.

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(a) 1976 c.33. (b) 1889 c.63. (c) 1973 c.41. (d) S.I. 1976/1897 (1976 III, p.5072).

- (2) Every notice of application shall contain particulars of—
- (a) the person carrying on a business;
  - (b) the course of conduct complained of;
  - (c) the ground or grounds upon which it is alleged that the course of conduct is—
    - (i) detrimental to the interests of consumers in the United Kingdom, and
    - (ii) to be regarded as unfair to consumers;
  - (d) the facts and matters on which the Director intends to rely in order to show that the person carrying on a business—
    - (i) has persisted in the course of conduct, and
    - (ii) has so persisted in the course of that business.
- (3) A notice of application under section 35 of the Act shall further state—
- (a) that the Director is unable, despite his best endeavours (of which particulars shall be given), to obtain a satisfactory written assurance from the person carrying on a business that he will refrain from continuing the course of conduct complained of and from carrying on any similar course of conduct in the course of that business; or
  - (b) the facts and matters from which it appears to the Director that the person who has given such an assurance has failed to observe it.
- (4) A notice of application under section 38 of the Act shall further state—
- (a) the name and address of each alleged accessory;
  - (b) (except where the same notice of application relates to proceedings under section 35 as well as under section 38), whether or not proceedings have been commenced under section 35 against the body corporate, and if so where and when they were commenced and what stage they have reached;
  - (c) the facts and matters from which it appears to the Director that each alleged accessory—
    - (i) consented to or connived at the course of conduct, and
    - (ii) fulfilled at a material time, which shall also be stated, the relevant conditions in relation to the body corporate;
  - (d) in relation to each alleged accessory, the particulars corresponding to those required by paragraph (3) of this rule in relation to a person carrying on a business.
- (5) If the Director, in reliance on section 11 of the Civil Evidence Act 1968 (a), section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (b), section 7 of the Civil Evidence Act (Northern Ireland) 1971 (c) or section 36(2) of the Act, intends to adduce evidence of a conviction or a finding of breach of contract or breach of duty in civil proceedings he must include in the notice of application under this rule a statement of his intention with particulars of—
- (a) the conviction or finding and the date thereof;
  - (b) the court which made the conviction or finding and, in the case of a finding, the proceedings in which it was made;

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(a) 1968 c.64.

(b) 1968 c.70.

(c) 1971 c.36 (N.I.).

- (c) the person or persons convicted or, as the case may be, against whom the finding was made; and
- (d) the issue in the proceedings to which the conviction or finding is relevant.

(6) A notice of application shall be accompanied by a list of all documents relevant to the application which are or have been in the Director's possession or power.

4. A notice of application shall be issued by being sealed with the Court's seal by the proper officer of the Court with whom a copy of the notice shall be left to be filed by him.

5. The Director shall serve a copy of the notice of application and of the list referred to in rule 3(6) on all persons or bodies against whom an order is sought, and those persons or bodies shall be respondents to the proceedings.

#### *Entry of appearance*

6. Every respondent who wishes to be heard in the proceedings shall within 14 days of service upon him of a copy of the notice of application enter an appearance in accordance with rule 7 of the principal Rules.

#### *Delivery of answer*

7. Every respondent who has entered an appearance shall, within 28 days of his entry of appearance, deliver to the Director and file with the proper officer of the Court an answer which shall be accompanied by a list of all the documents relevant to the proceedings which are or have been in his possession or power, indicating for which (if any) of those documents he claims privilege and the grounds of the claim.

8. Every allegation of fact in a notice of application shall be deemed to be admitted unless in the answer it is denied specifically or by necessary implication, or is stated not to be admitted, and any respondent who wishes to allege that a conviction or finding referred to in the notice was erroneous or is irrelevant must do so in his answer.

9. No reply or further pleading may be filed without leave.

#### *Inspection of documents*

10. Without prejudice to the provisions of these Rules relating to discovery, the Director and any respondent shall within seven days after receiving notice in that behalf from any opposite party, provide for his inspection the documents specified in the list referred to in rule 3(6) or 7 or such of them as may be specified in the notice, and shall permit that party to take copies thereof:

Provided that nothing in this rule shall affect the right of a respondent to claim privilege for any document.

#### *Particulars*

11.—(1) In proceedings in England and Wales or in Northern Ireland, any party may apply to any opposite party for further and better particulars of the notice of application, answer or reply and, if such particulars are not supplied within 14 days or such further time as may be agreed, he may apply to the Court which may order the delivery of such further and better particulars as it considers necessary.

(2) In proceedings in Scotland—

- (a) the Director shall, within seven days after the expiration of the time limited for filing an answer, make up an open record consisting of the notice of application and the answer and file two copies thereof with the proper officer of the Court, at the same time delivering a copy thereof to each of the respondents, and thereafter the parties shall forthwith proceed to adjust their pleadings;
- (b) upon expiration of 28 days from the filing of the open record, or of such period of continuation as may be allowed by the Court on cause shown, the record shall be deemed to be closed, and thereafter no amendment of the pleadings shall be made except by leave of the Court; and
- (c) within 14 days after the closing of the record the Director shall file two copies of the closed record with the proper officer of the Court, and shall at the same time deliver 15 copies thereof to each of the respondents.

*Amendment of pleadings*

**12.** In proceedings in England and Wales or in Northern Ireland a notice of application, answer or reply may be amended—

- (a) at any time by leave of the Court;
- (b) at any time before the hearing of the application for directions without leave, if—
  - (i) in the case of a notice of application or reply, the Director and all respondents who have entered an appearance or, as the case may be, to whose answer the reply is directed, agree; or
  - (ii) in the case of an answer, the Director and all respondents seeking to amend agree;

and a copy of the pleading as amended shall be delivered to all opposite parties and filed with the proper officer of the Court within such time as may be allowed by the Court or agreed between the parties concerned.

*Application for directions*

**13.—(1)** With a view to providing an occasion for the consideration of the preparations for the final hearing, so that—

- (a) all matters which can be dealt with on interlocutory applications and have not already been dealt with (including, in Scotland, any preliminary question of relevancy or sufficiency of specification arising on the pleadings) may, so far as possible, be dealt with; and
- (b) such directions may be given as to the future course of the proceedings as appear best adapted to secure the just, expeditious and economical disposal thereof,

the Director shall, as soon as practicable after every respondent has delivered an answer or after the time for doing so has expired (or in Scotland as soon as practicable after the closing of the record), make an application to the Court for directions and shall serve notice of the application on every respondent who has entered an appearance.

(2) The proper officer of the Court shall fix a date for the hearing of the application for directions and serve notice of the time and place of the hearing on every respondent who has entered an appearance, and rule 23(3) of the principal Rules (except sub-paragraph (k)) shall apply, with the necessary modifications, to the application for directions as if—

- (a) references to the notice of reference or to any statement of case were references to the notice of application; and
- (b) for the word “agreement” in sub-paragraph (i) there were substituted the words “course of conduct”.

*Application of principal Rules*

14. Rules 10, 20 and 21, 24 to 28, 30 and 32, 34 to 40 and 44 of the principal Rules shall apply, with the necessary modifications, to proceedings instituted by a notice of application under these Rules as they apply to proceedings instituted by a notice of reference under the principal Rules.

*Final hearing*

15. Subject to the provisions of section 7(1) of the Restrictive Practices Court Act 1976 the final hearing shall take place in public before such members of the Court as the President thereof may nominate for the purpose.

*Interconnected bodies corporate*

16.—(1) Where in any proceedings under section 35 or 38 of the Act the Director intends to apply for a direction under section 40 thereof that any order made against a body corporate which is a member of a group of interconnected bodies corporate shall be binding on all members of the group, he shall serve a notice to that effect on each of them and shall file a copy thereof with the proper officer of the Court.

(2) As soon as a date and place have been fixed for the final hearing of the proceedings or for any hearing under rule 20(4), the Director shall give notice thereof to each of the bodies corporate other than the respondent on which notice under paragraph (1) was served.

(3) Every body corporate on which notice is served under paragraph (1) may appear at the final hearing or at any hearing under rule 20(4) notwithstanding that it is not a respondent to the proceedings and may be heard on the question whether any order made under section 37 or 39 of the Act should be directed to be binding on each member of the group.

(4) If at any time the respondent wishes the application for a direction under section 40 of the Act to extend to an interconnected body corporate not mentioned in the notice served under paragraph (1), it shall serve on that body and on the Director, and file with the proper officer of the Court, a notice containing particulars of that body; and paragraphs (2) and (3) shall thereupon apply to that body as if it had been served with notice under paragraph (1).

(5) With a view to deciding whether or on whom to serve notice under paragraph (1) the Director may, at any time before applying for directions under rule 14 or 20 (2), serve on the respondent a notice requiring it to give to the Director within 14 days after service of the notice particulars of any interconnected bodies corporate which are members of a group of which the respondent is a member and shall file a copy of any such notice with the proper officer of the Court.

(6) The respondent shall comply with any notice served under paragraph (5) by delivering to the Director and filing with the proper officer of the Court the particulars required by the notice within the time thereby prescribed.

17. Any directions given by the Court under section 40(2) of the Act shall be contained in an order of the Court which shall be drawn up in accordance with rule 21.

*Applications under section 40(3) of the Act*

**18.**—(1) An application by the Director for a direction under section 40(3) of the Act may be made by notice in writing issued out of the central office of the Court, or the office of the Court in Scotland or Northern Ireland, as the case may be, specifying the bodies corporate against which the order was made and the bodies corporate in respect of which a direction is sought.

(2) The notice of application shall be issued by being sealed with the Court's seal by the proper officer of the Court with whom a copy of the notice shall be left to be filed by him.

(3) The Director shall serve a copy of the notice on every body corporate specified therein and those bodies shall be respondents to the notice.

(4) The provisions of these Rules shall apply, with the necessary modifications, to all further proceedings on an application under this rule as they apply to an application under rule 3.

*Costs*

**19.**—(1) In exercising its discretion as to costs the Court shall, subject to paragraph (2), have regard to the practice observed in civil proceedings in the High Court, the Court of Session or the High Court in Northern Ireland, as the case may be, and, without prejudice to the generality of the foregoing, may order the payment by any party of costs incurred by any person entitled under these Rules to be heard in the proceedings.

(2) Where the Court makes an order for the payment of costs by any party it may 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.

(3) Where the Court gives a direction under paragraph (2) in proceedings in England and Wales, the provisions of Order 62 of the Rules of the Supreme Court 1965 (a) shall apply, with the necessary modifications, to the taxation of the costs as if the proceedings in the Court were a cause or matter in the Supreme Court.

(4) Where the Court gives a direction under paragraph (2) in proceedings in Scotland, the provisions of rules 348 and 349 of the Rules of the Court of Session (b) shall apply, with the necessary modifications, to the taxation of the costs as if the proceedings in the Court were a cause or matter in the Court of Session.

(5) Where the Court gives a direction under paragraph (2) in proceedings in Northern Ireland, the provisions of Order 65 of the Rules of the Supreme Court (Northern Ireland) 1936 (c) shall apply, with the necessary modifications, to the taxation of the costs as if the proceedings in the Court were a cause or matter in the High Court in Northern Ireland.

*Discontinuance and summary application for final order*

**20.**—(1) The Director may at any time discontinue the proceedings against any or all of the respondents without the leave of the Court, on giving notice to every respondent who has entered an appearance and on his undertaking to pay the costs incurred by any respondent against whom the proceedings are discontinued.

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(a) S.I. 1965/1776 (1965 III, p.4995).      (b) S.I. 1965/321 (1965 I, p. 803).

(c) S.R. & O. 1936/70 (1936 II, p.2559).

(2) If at any time before the final hearing any respondent informs the Director that he is willing to submit to an order under section 37 or 39 of the Act or to give an undertaking under either of those sections, the Director shall apply to the Court for directions and shall serve notice on every other party that he has done so.

(3) On receipt of an application under paragraph (2) the proper officer of the Court shall fix a date for the hearing of the application and serve notice of the time and place of the hearing on the Director and on all respondents who have entered an appearance.

(4) On the hearing of the application the Court may take such steps as it thinks fit for disposing of the proceedings against any respondent who is willing to submit to an order or to give such an undertaking as aforesaid and for continuing the proceedings against any other respondent, and, without prejudice to the generality of the foregoing, may—

- (a) make and record any finding against any respondent if he consents;
- (b) make an order that the proceedings against any respondent be stayed, except for the purpose of carrying into effect the agreed terms on which the proceedings are stayed; and
- (c) make such order as to costs as it thinks fit.

#### *Drawing up and enforcement of orders*

**21.** The proper officer of the Court shall deliver or send to the Director a copy, sealed with the seal of the Court, of every order made under section 37 or 39 of the Act or containing directions given under section 40 thereof as well as of any order made under rule 20 (4) as soon as may be after the order has been drawn up.

#### *Supplementary*

**22.** Rules 60 to 70 (except rule 62) of the principal Rules shall apply, with the necessary modifications, to proceedings instituted by a notice of application under these Rules as they apply to proceedings instituted by a notice of reference under the principal Rules.

#### *Revocation of Rules*

**23.** The Restrictive Practices Court (Protection of Consumers) Rules 1973 (a) are hereby revoked.

Dated 10th November 1976.

*Elwyn-Jones. C.*

**EXPLANATORY NOTE**

*(This Note is not part of the Rules.)*

These Rules, which come into operation on the same day as the Restrictive Practices Court Act 1976 and the Restrictive Practices Court Rules 1976, replace the Restrictive Practices Court (Protection of Consumers) Rules 1973. The amendments are consequential upon the consolidation of the enactments and rules of procedure relating to restrictive trade practices.

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