



# Fair Trading Act 1973

## 1973 CHAPTER 41

### PART IX

#### AMENDMENTS OF RESTRICTIVE TRADE PRACTICES ACTS

#### **94 Transfer of functions of Registrar to Director**

- (1) Subject to the transitional provisions having effect by virtue of section 139 of this Act, the functions of the Registrar of Restrictive Trading Agreements are hereby transferred to the Director, and the office of Registrar of Restrictive Trading Agreements is hereby abolished.
- (2) In accordance with the preceding subsection, but without prejudice to any amendment made by any other provisions of this Act, in the Act of 1956, the Act of 1964 and the Act of 1968, for the words " the Registrar " or the words " the Registrar of Restrictive Trading Agreements ", in each place where they occur, there shall be substituted the words " the Director ".

#### **95 Agreements as to prices to be recommended or suggested for resale of goods**

Section 6(1) of the Act of 1956 (which provides for agreements under which restrictions are accepted on certain matters to be subject to Part I of the Act) and section 5(1) of the Act of 1968 (which makes similar provision in relation to information agreements) shall each be amended by inserting the following paragraph after paragraph (a):—

“(aa) the prices to be recommended or suggested as the prices to be charged or quoted in respect of the resale of goods supplied”.

#### **96 Subscriptions to trade associations**

In section 6 of the Act of 1956 (agreements to which Part I applies), after subsection (5) (which relates to obligations to make payments calculated by reference to certain variable factors) there shall be inserted the following proviso:—

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“Provided that this subsection does not apply to any obligation on the part of any person to make payments to a trade association of which he is a member, if the payments are to consist only of bona fide subscriptions for membership of the association”.

**97 "Trade association" not to include certain approved societies**

In section 6(8) of the Act of 1956 (which contains a definition of "trade association"), after the words "or of persons represented by its members" there shall be inserted the words "and which is not a society for the time being approved under section 6A of this Act".

**98 Wholesale co-operative societies**

After section 6 of the Act of 1956 there shall be inserted the following section:—

- (1) The Secretary of State may approve under this section any industrial and provident society which in his opinion fulfils the following conditions, that is to say—
  - (a) that it carries on business in the production or supply of goods or in the supply of services or in the application to goods of any process of manufacture ;
  - (b) that its shares are wholly or mainly held by industrial and provident societies ; and
  - (c) that those societies are retail societies or societies whose shares are wholly or mainly held by retail societies.
- (2) An approval given in respect of a society under this section shall (if it has not been previously withdrawn) expire at the end of the period of two years beginning with the date on which it was given or, if that period is extended (once or more than once) under the next following subsection, at the end of that period as so extended, or further extended, as the case may be.
- (3) The Secretary of State may extend or, if it has already been extended under this subsection, may further extend the period of two years referred to in subsection (2) of this section by such period, not exceeding two years, as he may specify.
- (4) The Secretary of State may at any time withdraw an approval given in respect of a society under this section if it appears to him—
  - (a) that the society has made an agreement which would have been subject to registration under this Part of this Act if the approval had not been given, or that such a recommendation as is mentioned in section 6(7) of this Act has been made by or on behalf of the society, and
  - (b) that the agreement or recommendation has such adverse effects on competition that it should not be precluded from being investigated by the Court under the following provisions of this Part of this Act.
- (5) On the expiry or withdrawal of an approval given in respect of a society under this section, the provisions of this Part of this Act shall have effect in relation to agreements and recommendations made by the society during the currency of the approval as if the society had not been approved under this section.

(6) In this section—

" industrial and provident society " means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or under the corresponding law in Northern Ireland ;

" retail society " means a society which carries on business in the sale by retail of goods for the domestic or personal use of individuals dealing with the society, or in the provision of services for such individuals;

" the corresponding law in Northern Ireland " means the law for the time being in force in Northern Ireland for purposes corresponding to those of the Industrial and Provident Societies Act 1965 " .”

## **99 Agreements relating to coal or steel**

In section 7 of the Act of 1956, before subsection (2) there shall be inserted the following subsections:—

“(1A) In determining whether an agreement is an agreement to which this Part of this Act applies, where—

- (a) the parties to the agreement are or include two or more bodies to which this subsection applies, and
- (b) restrictions relating to coal or steel, or relating to both coal and steel, are accepted under the agreement by two or more such bodies, whether the restrictions so accepted by those bodies are the same restrictions or different restrictions,

no account shall be taken of any such restriction which is accepted under the agreement by a body to which this subsection applies, whether that restriction is also accepted by any other party to the agreement or not

(1B) Subsection (1A) of this section applies to any body which, in accordance with Article 80 of the E.C.S.C. Treaty, constitutes an undertaking for the purposes of Articles 65 and 66 of that Treaty, and in that subsection " coal" and " steel" have the meanings assigned to them respectively by Annex I to that Treaty.”

## **100 Agreements to comply with standards of performance**

In section 7(3) of the Act of 1956 (which makes provision as to agreements to comply with standards of dimension, design or quality) in paragraph (a), for the words " or quality " there shall be substituted the words " quality or performance " .

## **101 Patent or design pooling agreements**

In section 8 of the Act of 1956, at the beginning of subsection (4) there shall be inserted the words " Subject to section 8A of this Act " ; and after that section there shall be inserted the following section:—

- (1) No licence, assignment or agreement shall by virtue of section 8(4) of this Act be precluded from being an agreement to which Part I of this Act applies if—
  - (a) in the case of an agreement, it is a patent or design pooling agreement,  
or

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- (b) whether being a licence, assignment or agreement, it is a licence, assignment or agreement granted or made in pursuance (directly or indirectly) of a patent or design pooling agreement.
- (2) In this section (subject to subsection (4)) 'patent or design pooling agreement' means an agreement to which the parties are or include at least three persons (in this sub-section referred to as 'principal parties') each of whom has an interest in one or more patents or registered designs, whereby each of the principal parties agrees, in respect of patents or registered designs in which he has an interest, or in respect of patents or registered designs in which he has or may during the currency of the agreement acquire an interest,—
- (a) to grant an interest in one or more such patents or registered designs to one or more of the other principal parties, or to one or more of those parties and to other persons, or
  - (b) to grant an interest in at least one such patent or registered design to a third person for the purpose of enabling that person to grant an interest in it to one or more of the other principal parties, or to one or more of those parties and to other persons,
- and 'interest', in relation to a patent or registered design, mean an interest as proprietor or licensee of the patent or registered design or an interest consisting of such rights as a person has by virtue of having applied for a patent or for the registration of a design or by virtue of having acquired the right to apply for a patent or for the registration of a design.
- (3) For the purposes of this section a licence, assignment or agreement—
- (a) shall be taken to be granted or made directly in pursuance of a patent or design pooling agreement if it is granted or made in pursuance of provisions of that agreement such as are mentioned in paragraph (a) of subsection (2) of this section, and
  - (b) shall be taken to be granted or made indirectly in pursuance of a patent or design pooling agreement if it is granted or made by a third person to whom an interest has been granted in pursuance of provisions of that agreement such as are mentioned in paragraph (b) of that subsection.
- (4) In relation to any interest held by or granted to any two or more persons jointly, subsection (2) of this section shall apply as if those persons were one person by whom the interest is held or to whom it is granted, and accordingly those persons shall be treated for the purposes of that subsection as together constituting one party”.

## **102 Particulars of export agreements to be furnished to Director**

(1) The following subsection shall be added at the end of section 10 of the Act of 1956:—

- “(8) Subsections (1) to (6) of this section shall have effect in relation to any agreement which—
- (a) relates to exports from the United Kingdom, and
  - (b) would, but for section 8(8) of this Act, be an agreement subject to registration under this Part of this Act,

as if, in those subsections, any reference to an agreement being or becoming subject to such registration were a reference to its being or becoming an

agreement which, but for section 8(8) of this Act, would be subject to such registration.”

(2) The following subsection shall be added at the end of section 14 of the Act of 1956:—

“(4) In subsection (1) of this section the reference to an agreement subject to registration under this Part of this Act shall be construed as including a reference to any agreement which—

- (a) relates to exports from the United Kingdom, and
- (b) would, but for section 8(8) of this Act, be an agreement subject to registration under this Part of this Act.”

(3) Subsection (1) of section 31 of the Act of 1956 (which requires particulars of agreements relating to exports to be furnished to the Secretary of State) shall cease to have effect.

### **103 Examination on oath of certain employees of bodies corporate and unincorporated trade associations**

(1) In subsection (3) of section 15 of the Act of 1956 (which in certain cases enables an order to be made for the attendance and examination on oath of an officer of a body corporate), after the words "director, manager, secretary or other officer of that body corporate " there shall be inserted the words " or of any person who (not being such a director, manager, secretary or other officer) is employed by the body corporate and appears to the Court to be likely to have particular knowledge of any of the matters in respect of which the notice was given ".

(2) After that subsection there shall be inserted the following subsections:—

“(3A) The provisions of subsection (3) of this section shall have effect in relation to a trade association which is not incorporated as they have effect in relation to a body corporate.

(3B) Nothing in this section shall be taken to compel the disclosure by a barrister, advocate or solicitor of any privileged communication made by or to him in that capacity, or the production by him of any document containing any such communication.”

### **104 Extension of certain powers of Restrictive Practices Court**

(1) In section 20 of the Act of 1956 (jurisdiction and powers of Restrictive Practices Court), in subsection (3) (which enables the Court to make orders imposing certain restraints on parties to an agreement in respect of restrictions found by the Court to be contrary to the public interest), after the words " United Kingdom " there shall be inserted the words " any trade association of which any such person is a member or any person acting on behalf of such a trade association " ; and at the end of that subsection there shall be added the words “or

- (c) where such an agreement as is mentioned in paragraph (b) of this subsection has already been made, from giving effect to that agreement or enforcing or purporting to enforce it;

and, where any of the parties to the agreement against whom the order is made is a member of a trade association, the order may include provisions for restraining the trade association, and any person acting on its behalf, from procuring or assisting

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any such party to do anything which would be a contravention of the order in its application to him”.

- (2) In section 7 of the Act of 1968 (consequences of failure to register), in subsection (3) (which enables the Restrictive Practices Court to make orders imposing certain restraints on parties to an agreement of which particulars have not been duly furnished), after the words " United Kingdom " there shall be inserted the words " any trade association of which any such person is a member or any person acting on behalf of such a trade association " . and for the word " him " there shall be substituted the words " that person or association " ; and after that subsection there shall be inserted the following subsection:—

“(3A) Where an order is made under subsection (3) of this section against any party to an agreement and that party is a member of a trade association, the order may include provisions for restraining the trade association, and any person acting on its behalf, from procuring or assisting that party to do anything which would be a contravention of the order in its application to him”.

## 105 Interim orders of Restrictive Practices Court

After section 21 of the Act of 1956 there shall be inserted the following section:—

- (1) Where the Director has made an application in respect of an agreement under subsection (1) of section 20 of this Act, then at any time, whether before or after the Court has made a declaration under that subsection in respect of the agreement, but before the Court has made an order in respect of it under subsection (3) of that section, the Director may apply to the Court for an interim order under this section.
- (2) An application under this section shall specify the restrictions which appear to the Director, in relation to the agreement to which the application relates,—
  - (a) to be restrictions such as are mentioned in section 20(1) of this Act, and
  - (b) to be contrary to the public interest, and
  - (c) to be restrictions in respect of which, in accordance with the following provisions of this section, it would be appropriate for an interim order to be made.
- (3) If on an application under this section the Court is satisfied that the following conditions are fulfilled in relation to all or any of the restrictions specified in the application, that is to say—
  - (a) that they are restrictions such as are mentioned in section 20(1) of this Act;
  - (b) that they could not reasonably be expected to be shown to fall within any of paragraphs (a) to (h) of section 21(1) of this Act; and
  - (c) that the operation of the restrictions, during the period likely to elapse before an order can be made in respect of them under section 20(3) of this Act, is likely to cause material detriment to the public or a section of the public generally, or to a particular person who is not a party to the agreement,

the Court may, if it thinks fit, make an interim order specifying the restrictions in relation to which the Court is satisfied that those conditions are fulfilled.

- (4) Any such interim order may exercise, in respect of the restrictions specified in the order, any powers which could be exercised in respect of them by an order

under section 20(3) of this Act if those restrictions had been found by the Court to be contrary to the public interest.

- (5) At any time when any such interim order is in force the Court, on the application of the Director or of any person who is subject to or entitled to the benefit of any restriction specified in the order, may discharge the order and substitute for it any interim order which could have been made on the original application under this section.
- (6) An interim order made under this section in respect of an agreement shall cease to have effect on the occurrence of whichever of the following first occurs, that is to say—
  - (a) the termination of such period, or the happening of such event, as may be specified for that purpose in the order;
  - (b) the discharge of the order by the Court;
  - (c) a declaration by the Court that the restrictions specified in the interim order are not contrary to the public interest;
  - (d) the final determination by the Court of an application under section 20(3) of this Act in respect of that agreement.”

## **106 Industrial and provident societies and their subsidiaries**

In section 36(1) of the Act of 1956, in the definition of " inter-connected bodies corporate ", after the words " all other bodies corporate which are its subsidiaries within the meaning of section one hundred and fifty-four of the Companies Act 1948 " there shall be inserted the words " or (in the case of an industrial and provident society) within the meaning of section 15 of the Friendly and Industrial and Provident Societies Act 1968 ".