



# Restrictive Trade Practices Act 1976

## 1976 CHAPTER 34

### PART III

#### SERVICES

#### 11 Restrictive agreements as to services

- (1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this section, as "services brought under control by the order") and direct by the order that this Act shall apply to agreements (whenever made) which—
  - (a) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties ; and
  - (b) are agreements under which restrictions, in respect of matters specified in the order for the purposes of this paragraph, are accepted by two or more parties.
- (2) The matters which may be specified in such an order for the purposes of subsection (1) (b) above are any of the following—
  - (a) the charges to be made, quoted or paid for designated services supplied, offered or obtained ;
  - (b) the terms or conditions on or subject to which designated services are to be supplied or obtained ;
  - (c) the extent (if any) to which, or the scale (if any) on which, designated services are to be made available, supplied or obtained;
  - (d) the form or manner in which designated services are to be made available, supplied or obtained;
  - (e) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services are to be made available or supplied or are to be obtained.

## 12 Information agreements as to services

- (1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this section, as " services brought under control by the order ") and direct by the order that this Act shall apply to agreements (whenever made) which—
  - (a) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties ; and
  - (b) are agreements under which provision is made for or in relation to the furnishing by two or more parties to each other or to other persons (whether parties or not) of information with respect to matters specified in the order for the purposes of this paragraph.
- (2) The matters which may be specified in such an order for the purposes of subsection (1) (b) above are any of the following—
  - (a) the charges made, quoted or paid or to be made, quoted or paid for designated services which have been or are to be supplied, offered or obtained ;
  - (b) the terms or conditions on or subject to which designated services have been or are to be supplied or obtained;
  - (c) the extent (if any) to which, or the scale (if any) on which, designated services have been or are to be made available, supplied or obtained ;
  - (d) the form or manner in which designated services have been or are to be made available, supplied or obtained;
  - (e) the costs incurred or to be incurred in making available, supplying or obtaining designated services ;
  - (f) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services have been or are to be made available or supplied or have been or are to be obtained.

## 13 Designated services

- (1) In relation to any order made under section 11 or section 12 above, " designated services" in this Act means services of any class described in the order as being designated services.
- (2) Subject to subsection (3) below, a class of services described in any such order as being designated services may consist wholly or partly of services brought under control by the order or wholly or partly of other services, and may be described so as to consist—
  - (a) of services of one or more descriptions specified in that behalf in the order, or
  - (b) of all services except services of one or more descriptions so specified,and different classes of services may be so described in relation to different matters specified in the order for the purposes of section 11(1)(b) or section 12(1)(b) above, as the case may be.
- (3) A class of services described in such an order as being designated services shall not include any of the services specified in Schedule 1 to this Act.

## 14 Supplementary provisions as to orders under Part III

- (1) A class of services described in an order under section 11 or section 12 above as being the services brought under control by the order may consist—
  - (a) of services of one or more descriptions specified in that behalf in the order ; or
  - (b) of all services except services of one or more descriptions so specified; or
  - (c) of all services without exception.
- (2) An order under section 11 or section 12 may limit the operation of the order to agreements fulfilling such conditions in addition to those mentioned in section 11 or section 12, as the case may be) as may be specified in the order.
- (3) In particular, but without prejudice to the generality of subsection (2) above, an order under section 12 may limit the operation of the order to agreements under which the provision for the furnishing of information (as mentioned in subsection (1)(b) of that section) is provision of a kind specified in the order or provides for the furnishing of information of a kind so specified.
- (4) Subject to subsection (2) above—
  - (a) for the purposes of any order under section 11 it is immaterial whether any restrictions accepted by parties to an agreement relate to the same or to different matters specified in the order for the purposes of subsection (1)(b) of that section, or have the same or a different effect in relation to any matter so specified, and
  - (b) for the purposes of any order under section 12 it is immaterial whether any information provision made by an agreement relates to the same or to different matters specified in the order for the purposes of subsection (1)(b) of that section,

and it is immaterial for those purposes whether the parties accepting any restrictions, or the parties by whom any information is to be furnished, as the case may be, carry on the same class or different classes of business.

- (5) Where, at a time when an order under section 11 or section 12 (in this subsection referred to as " the earlier order ") is in force, another order (in this subsection referred to as " the subsequent order ") is made under the same section, the subsequent order may provide that—
  - (a) for the purposes of the earlier order; or
  - (b) for the purposes of the subsequent order ; or
  - (c) for the purposes of both orders;

the condition specified in section 11(1)(a) or in section 12(1)(a), as the case may be, shall be treated as fulfilled in relation to an agreement if it is an agreement to which the parties are or include one person carrying on business in the United Kingdom in the supply of services brought under control by the earlier order and one person carrying on business within the United Kingdom in the supply of services brought under control by the subsequent order.

This subsection has effect without prejudice to any power to vary any order made under section 11 or section 12.

- (6) In the following provisions of this Part of this Act " the relevant provisions", in relation to an order under section 11 or section 12 above, means the provisions of this Act as they have effect in relation to that order.

## 15 Procedure as to orders under Part III

- (1) No order shall be made under section 11 or section 12 above unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (2) Before laying before Parliament a draft of any such order, the Secretary of State shall publish in such manner as he thinks appropriate a notice—
  - (a) describing the classes of services which, if the order is made, will be services brought under control by the order and will be designated services in relation to the order respectively;
  - (b) indicating the nature of any limitation to be imposed by the order under section 14(2) or (3) above ; and
  - (c) specifying a period (not being less than 28 days) within which representations with respect to the proposed order may be made to the Secretary of State.
- (3) In settling the draft to be laid before Parliament the Secretary of State shall take into consideration any representations with respect to the proposed order which may be received by him within the period specified in the notice in accordance with subsection (2)(c) above.

## 16 Services supply associations

- (1) For the purposes of any order made under section 11 or section 12 above, and for the purposes of the relevant provisions, subsections (2) to (6) below have effect in relation to any association (whether incorporated or not) if—
  - (a) its membership consists wholly or mainly of persons (in this subsection referred to as " members affected by the order ") who are either engaged in the supply of services brought under control by the order or are employed by or represent persons so engaged; and
  - (b) its objects or activities include the promotion of the interests of persons engaged in the supply of those services who are either members affected by the order or are persons represented by such members.
- (2) The relevant provisions have effect in relation to any agreement made by an association described in subsection (1) above (" services supply association ")—
  - (a) as if the agreement were made between all persons who are members of the association or are represented on it by members of the association, and
  - (b) where any restriction is accepted under the agreement by the association, or any information provision is made in the agreement by the association, as if the like restriction were accepted by, or (as the case may be) the like provision were made by, each of the persons who are members of the association or are so represented.
- (3) In the case of an order under section 11, where—
  - (a) specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, and
  - (b) those recommendations are as to the action to be taken or not to be taken by them in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(b) of that section,the relevant provisions have effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (4) below.

- (4) The term referred to in subsection (3) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the action to be taken by them in relation to the same class of services and in respect of the same matters.
- (5) In the case of an order under section 12 above, where—
- (a) specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, and
  - (b) those recommendations are as to the furnishing of information in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(b) of that section,
- the relevant provisions have effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (6) below.
- (6) The term referred to in subsection (5) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the furnishing of information in relation to the same class of services and in respect of the same matters.

## **17 Matters equivalent to restrictions for purposes of s. 11**

- (1) For the purposes of any order made under section 11 above, and for the purposes of the relevant provisions, an agreement which—
- (a) confers privileges or benefits only upon such parties as comply with conditions as to any such matters as are mentioned in subsection (2) of that section ; or
  - (b) imposes obligations upon parties who do not comply with such conditions;
- shall be treated as an agreement under which restrictions are accepted by each of the parties in respect of those matters.
- (2) Without prejudice to subsection (1) above, an obligation on the part of any party to an agreement to make payments calculated by reference to the extent to which, or the scale on which—
- (a) any designated services are made available or supplied by him; or
  - (b) any services are obtained by him for the purpose of making available or supplying any designated services;
- if the payments are calculated, or calculated at an increased rate, in respect of an extent or scale exceeding an extent or scale specified in or ascertained in accordance with the agreement, shall be treated for the purposes mentioned in subsection (1) as a restriction in respect of the extent or scale of the designated services to be made available or supplied. This subsection does not apply to any obligation on the part of any person to make payments to a services supply association of which he is a member, if the payments are to consist only of bona fide subscriptions for membership of the association.

**18 Provisions to be disregarded under Part III**

- (1) The following provisions of this section have effect for the purpose of determining whether an agreement is one to which this Act applies by virtue of an order under section 11 or section 12 above.
- (2) Subject to subsections (3) and (4) below, no account shall for that, purpose be taken of any term which relates exclusively to the services supplied in pursuance of the agreement in question.
- (3) Where—
  - (a) the order referred to in subsection (1) above is an order under section 11, and
  - (b) any of the restrictions accepted as mentioned in subsection (1)(b) of that section are accepted as between two or more persons by whom, or two or more persons for whom, designated services are to be supplied in pursuance of the agreement,subsection (2) above does not apply to any term of the agreement which imposes those restrictions unless they are accepted in pursuance of a previous agreement in respect of which particulars have been registered under this Act by virtue of this Part.
- (4) Where—
  - (a) the order referred to in subsection (1) is an order under section 12, and
  - (b) the term referred to in subsection (2) is one by which provision is made for the furnishing of information as mentioned in subsection (1)(b) of that section by two or more persons by whom, or two or more persons for whom, designated services are to be supplied in pursuance of the agreement,subsection (2) does not apply to that term unless it is included in the agreement in pursuance of a previous agreement of which particulars have been registered under this Act by virtue of this Part.
- (5) For the purpose mentioned in subsection (1) no account shall be taken of any term by which the parties or any of them agree to comply with or apply, in respect of making available, supplying or obtaining any designated services—
  - (a) any standards (whether being standards of performance in the provision of the services or standards of dimension, design, quality or performance in respect of goods used in providing them) which are either standards approved for the time being by the British Standards Institution or standards prescribed or adopted by an association or other body and for the time being approved by an order made by the Secretary of State by statutory instrument; or
  - (b) any arrangements either approved by the British Standards Institution, or prescribed or adopted and approved by an order of the Secretary of State, as mentioned in the preceding paragraph, as to the provision of information or advice to persons for whom designated services are supplied or agreed to be supplied.
- (6) For the purpose mentioned in subsection (1) no account shall be taken of any restriction which affects or relates to any of the matters mentioned in section 9(6) above (which relates to employment and to terms and conditions of employment) or of any information provision with respect to any of those matters.
- (7) Any reference in Schedule 3 to this Act—
  - (a) to restrictions accepted in respect of matters specified in an order under section 11 for the purposes of subsection (1)(b) of that section ; or

(b) to information provisions made with respect to matters specified in an order under section 12 for the purposes of subsection (1)(b) of that section; shall be construed, in relation to any agreement, as not including anything of which, by virtue of this section, account cannot be taken for the purpose mentioned in subsection (1).

## **19 Presumption under Part III as to the public interest**

- (1) For the purposes of any proceedings before the Court under Part I of this Act, a restriction accepted or information provision made in pursuance of an agreement to which this Act applies by virtue of this Part shall be deemed to be contrary to the public interest unless the Court is satisfied of any one or more of the following circumstances—
- (a) that the restriction or information provision is reasonably necessary having regard to the character of the services to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the use of those services or in connection with the consumption, installation or use of goods in relation to which those services are supplied ;
  - (b) that the removal of the restriction or information provision would deny to the public as users of any services, or as purchasers, consumers or users of any goods in relation to which any services are supplied, other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction or information provision itself or of any arrangements or operations resulting therefrom;
  - (c) that the restriction or information provision is reasonably necessary to counteract measures taken by any one person not party to the agreement with a view to preventing or restricting competition in or in relation to the trade or business in which the person party thereto are engaged;
  - (d) that the restriction or information provision is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of services to, or for obtaining services from, any one person not party thereto who controls a preponderant part of the trade or business of supplying such services, or for the supply of services to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such person, controls a preponderant part of the market for such services;
  - (e) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to have a serious and persistent adverse effect on the general level of unemployment in an area, or in areas taken together, in which a substantial proportion of the trade or industry to which the agreement relates is situated;
  - (f) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to cause a reduction in the volume or earnings of the export business which is substantial either in relation to the whole export business of the United Kingdom or in relation to the whole business (including export business) of the said trade or industry ;
  - (g) that the restriction or information provision is reasonably required for purposes connected with the maintenance of any other restriction accepted or information provision made by the parties, whether under the same agreement

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*Status: This is the original version (as it was originally enacted).*

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or under any other agreement between them, being a restriction or information provision which is found by the Court not to be contrary to the public interest upon grounds other than those specified in this paragraph, or has been so found in previous proceedings before the Court; or

- (h) that the restriction or information provision does not directly or indirectly restrict or discourage competition to any material degree in any relevant trade or industry and is not likely to do so ;

and is further satisfied (in any such case) that the restriction or information provision is not unreasonable having regard to the balance between those circumstances and any detriment to the public or to persons not parties to the agreement (being users of services supplied by such parties, or persons engaged or seeking to become engaged in any business of supplying such services or of making available or supplying similar services, or being purchasers, consumers or users of goods in relation to which any such services or similar services are supplied) resulting or likely to result from the operation of the restriction or information provision.

(2) In this section—

- (a) " purchasers ", " consumers " and " users " include persons purchasing, consuming or using for the purpose or in the course of trade or business or for public purposes ; and
- (b) references to any one person include references to any two or more persons being interconnected bodies corporate or individuals carrying on business in partnership with each other.

## **20 Interpretation of Part III**

In this Part of this Act—

" business " includes a professional practice ;

" the relevant provisions " has the meaning given by section 14(6) above;

" 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 ;

" services "—

- (a) does not include the application to goods of any process of manufacture or any services rendered to an employer under a contract of employment (that is, 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), but, with those exceptions,
- (b) includes engagements (whether professional or other) which for gain or reward are undertaken and performed for any matter other than the production or supply of goods,

and any reference to the supply of services or to supplying, obtaining or offering services or to making services available shall be construed accordingly.