

## 1982 No. 569

## RESTRICTIVE TRADE PRACTICES

## The Agricultural and Forestry Associations Order 1982

<i>Made - - - -</i>	18th April 1982
<i>Laid before Parliament</i>	28th April 1982
<i>Coming into Operation</i>	19th May 1982

The Minister of Agriculture, Fisheries and Food and the Secretaries of State for Scotland, Northern Ireland and Wales, acting jointly in exercise of powers conferred by subsections (3) and (4) of section 33 of the Restrictive Trade Practices Act 1976(a) and now vested in them(b), and of all other powers enabling them in that behalf, hereby make the following order:—

*Citation and commencement*

1. This order may be cited as the Agricultural and Forestry Associations Order 1982 and shall come into operation on 19th May 1982.

*Revocation*

2. The Agricultural and Forestry Associations Order 1974(c) is hereby revoked.

*Interpretation*

3. In this order, unless the context otherwise requires—

“the Act” means the Restrictive Trade Practices Act 1976;

“association” means an association concerned with agriculture or forestry or both to which section 33 of the Act applies;

“federal” means an association of which the membership includes at least one association and “first tier association” means any other kind of association;

“member”, in relation to a federal, includes a member of an association which is a member of the federal.

*Provisions to be contained in memorandum or articles of association*

4. For the purposes of section 33(3)(a) of the Act the following provisions are hereby prescribed as those to be contained in the memorandum or articles of association of an association which is a company within the meaning of the Companies Acts 1948 to 1980(d) or the Companies Acts (Northern Ireland) 1960 and 1978(e) that is to say—

(a) a provision that the profits of the association for any financial year; after distribution of an amount on share capital and payment of interest on loan capital provided by its members at a rate not exceeding—

(i) 2 per cent above the highest base rate charged by any of the four largest clearing banks at any time during that year, or

(a) 1976 c. 34.

(b) By virtue of S.I. 1978/272.

(c) S.I. 1974/1836.

(d) 1948 c. 38, 1967 c. 81, 1976 c. 69, 1980 c. 22.

(e) 1960 c. 22, (N.I.); S.I. 1978/1042 (N.I. 12).

- (ii) in the case of share capital,  $7\frac{1}{2}$  per cent, and in the case of loan capital, 10 per cent,

whichever is the greater, shall, if and so far as they are distributed among its members, be divided in proportion to the use made by them during that year of the facilities provided by the association, or of such of those facilities as may be specified in the provision, the extent of that use being determined in such manner as may be so specified, and that any reserves which are so distributed shall be divided in the like proportion:

Provided that until 20th August 1982 those companies which were incorporated before the coming into operation of this order may, instead of the provisions of sub-paragraph (i) of this paragraph, include in their memorandum or articles of association the following provision:— 2 per cent above the highest rate at which the Minimum Lending Rate of the Bank of England has been fixed at any time during that year.

- (b) in the case of a federal whose membership is confined to associations, a provision that a constituent association shall be entitled either to one vote only or to a vote or votes in accordance with a method which includes a provision whereby no constituent association shall be entitled to more than the number (rounded up, if necessary, to the nearest whole number, fractions of less than one-half being disregarded) of votes resulting from dividing the total number of votes capable of being then cast, but for such provision, by a fraction, which shall not be less than one-half, of the number of constituent associations then entitled to vote:

Provided that where the right of members of all the constituent associations to vote is restricted in the like manner in respect of any matter in accordance with such a method as is referred to in paragraph (c) below and where the memorandum or articles of association of the federal so provide, the number of votes to which a constituent association is entitled in respect of that matter shall bear the same proportion to the total number of votes which may be cast by all the constituent associations entitled to vote in respect of that matter as the number of its members who are for the time being so entitled bears to the total number of such members of all the said constituent associations;

- (c) in the case of any association to which paragraph (b) above does not apply, a provision that a member shall be entitled either to one vote only or to a vote or votes in accordance with a method which includes a provision whereby no member shall be entitled to more than a fraction, which shall not exceed one-tenth, of the votes capable of being then cast, but for such provision, by all the members entitled to vote, but which does not make the right of a member to vote in respect of a particular matter dependent on his use of the facilities provided by the association in relation to that matter:

Provided that, subject as aforesaid, where a right to vote is restricted to those members who have made use of any of the facilities provided by the association, the use to be taken into account shall be that extending over a specified period beginning,—

- (i) where the association was incorporated less than two years before the date of the taking of the vote, with the date of incorporation, or  
(ii) in any other case, with a date not less than two or more than three years before the date of the taking of the vote,  
and, in either case, ending with the date of the taking of the vote.

*Application of section 33(1) of the Act*

5. The exemption provided by section 33(1) of the Act shall not apply in relation to any agreement, whenever made, the parties to which include two or more associations, except—

- (a) an agreement for the supply of goods made (with or without one other party) between two or more associations under which no restrictions are accepted other than such as relate exclusively to the goods supplied in pursuance of the agreement;
- (b) an agreement made between two or more associations which is contained in the rules or in the memorandum or articles of association of a federal of which they are members;
- (c) an agreement made (with or without other parties) between two or more constituent associations of the same federal under which restrictions are accepted only by virtue of one or more of the following undertakings, that is to say—
  - (i) an undertaking by an association that the produce, or a specified kind, quantity or proportion thereof, produced by the association or by its members on land occupied by them and used for agriculture or forestry (with or without similar produce or any specified kind, quantity or proportion thereof, being produce not so produced but supplied to the association by its members), shall be sold to or marketed by or through the agency of the federal of which the association is a member;
  - (ii) an undertaking by an association to obtain from or through the agency of the federal of which the association is a member goods of a specified kind required by the association or by its members for the production of produce on land occupied by them and used for agriculture or forestry;
  - (iii) an undertaking by an association that produce produced by the association or by its members on land occupied by them and used for agriculture or forestry shall be produced, prepared for market or delivered in accordance with the requirements of the federal of which the association is a member, but, except where required for the purpose of obtaining a benefit under any legislation of the European Economic Community, without any term limiting the quantity so produced by them;
- (d) an agreement made (with or without other parties) between a federal and one or more of its constituent associations under which restrictions are accepted only by virtue of one or more of the following undertakings, that is to say—
  - (i) an undertaking by the federal that the produce, or a specified kind, quantity or proportion thereof, purchased or marketed by or through the agency of the federal shall be produce produced by its members on land occupied by them and used for agriculture or forestry, with or without a further undertaking by the federal that such produce shall be purchased or marketed by or through the agency of the federal on specified terms, including terms as to price;
  - (ii) an undertaking by the federal to supply only to its members goods of a specified kind required by those members for the production of produce on land occupied by them and used for agriculture or forestry;

- (iii) in the case of an agreement made in pursuance of such an undertaking as is referred to in paragraph (c)(ii) above, an undertaking by the federal that the goods shall be supplied on specified terms, including terms as to price;
- (iv) one or more of the undertakings referred to in paragraph (c)(i), (ii) or (iii) above;
- (e) an agreement for the supply of goods between two parties, being an agreement to which no other person is a party, under which—
  - (i) the party supplying the goods undertakes not to supply goods of the same description to any other person, and
  - (ii) the party acquiring the goods undertakes not to acquire other goods of the same description from any other person, no other restrictions being accepted;
- (f) an agreement made (with or without other parties) between an association and one or more of its members or between two or more associations and one or more members of each under which restrictions are accepted only by virtue of one or more of the following undertakings, that is to say—
  - (i) an undertaking by a member of an association which is a party to the agreement to supply produce to the association for marketing, and an undertaking by the association to accept it for that purpose;
  - (ii) an undertaking by a member of an association which is a party to the agreement to supply produce to the association for preparation for market, and an undertaking by the association to accept it for that purpose;
  - (iii) an undertaking given by one association to another that the first-mentioned association will use its best endeavours to ensure that produce supplied to it by any person for preparation for market but remaining the property of that person shall be marketed by the second-mentioned association.

*Amount of business to be done with members by certain associations*

6.—(1) Subject to paragraph (3) below, the exemption provided by section 33(1) of the Act shall not apply in relation to any agreement, whenever made, and whether or not within the exceptions to article 5 of this order, if at least one of the parties is an association which markets produce, supplies goods, or provides services for or to persons other than its members unless the condition mentioned in paragraph (2) below is satisfied and, in the case of an agreement made after 28th February 1975, unless the agreement contains an undertaking by the association forthwith to inform the other parties to the agreement of any determination made and certificate issued in accordance with that paragraph.

(2) The said condition is that the agreement is in force during any part of a financial year of the association immediately following a period of three consecutive financial years, taken together, during which the revenue accruing to the association from each of the activities described in column 1 of the following Table and actually engaged in by the association exceeds two-thirds of the revenue accruing to the association from the activity described in the corresponding place in column 2 of the Table, the proportion in each case being determined by reference to the records of the association and certified either by an accountant not in the employment of the association or by the auditor of the association's accounts:

TABLE

Column 1	Column 2
(a) The marketing by the association, as principal or agent, of produce produced by its members on land occupied by them and used for agriculture or forestry or both, after deducting, where the association acts as principal, sums paid or payable to members in respect of such produce.	(a) The marketing by the association, as principal or agent, of produce, whether or not produced by its members, and if so produced then whether or not produced as mentioned in item (a) of column 1 of this Table, after deducting, where the association acts as principal, sums paid or payable in respect of such produce.
(b) The supply by the association to its members of goods (other than produce) required by them for the production of produce on land occupied by them and used for agriculture or forestry or both, after deducting the cost to the association of such goods.	(b) The supply by the association to any person of goods (other than produce) required for any purpose, after deducting the cost to the association of such goods.
(c) The rendering by the association to its members of services (not within item (a) or (b) above) required for the production of produce on land occupied by them and used for agriculture or forestry or both.	(c) The rendering by the association of services (not within item (a) or (b) above) to any person.

## (3) The foregoing provisions of this article—

- (a) shall not take effect in relation to any agreement until the expiration of two months from the date on which an auditor has signed his report on the accounts for the last of the three consecutive financial years mentioned in paragraph (2) above, or two months from the date on which the accounts for that year have been presented to members of the association;
- (b) shall not apply to an association which is registered under the Industrial and Provident Societies Acts 1965 to 1978(a) or any of those Acts or under the Industrial and Provident Societies Acts (Northern Ireland) 1969 and 1976(b) or to a co-operative association within the meaning of section 33 of the Act.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 2nd April, 1982.

(L.S.)

*Peter Walker,*  
Minister of Agriculture, Fisheries and Food.

6th April 1982.

*George Younger,*  
Secretary of State for Scotland.

18th April 1982.

*James Prior,*  
Secretary of State for Northern Ireland.

14th April 1982.

*Nicholas Edwards,*  
Secretary of State for Wales.

(a) 1965 c. 12, 1967 c. 48, 1968 c. 55, 1975 c. 41, 1978 c. 34.

(b) 1969 c. 24 (N.I.); S.I. 1976/425 (N.I. 7).

## EXPLANATORY NOTE

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

1. The Restrictive Trade Practices Act 1976 ("the Act") provides for the registration of certain restrictive trading agreements and information agreements. Section 33 of the Act provides that the Act shall not apply to an agreement between members of an association to which that section applies, or between such an association and any other person, by reason only of restrictions or information provisions concerning a number of matters, of which those relevant to this Order are the marketing, or preparation for market, of members' produce, the supply of requisites for the production of that produce, and the production or supply of produce by members. Ministers were given power by section 33 to prescribe the provisions which must be included in the constitution of a company registered under the Companies Act 1948 (or the corresponding Northern Ireland legislation) to enable it to qualify as an association for the purposes of section 33, and also power to exclude certain agreements from the exemption provided by section 33.

2. The associations which benefit from section 33 include agricultural and forestry associations. It is these which are the subject of this Order, which re-enacts with amendments the provisions of the Agricultural and Forestry Associations Order 1974 (made under earlier legislation and now revoked). The Order deals with first tier associations of farmers or growers and also with "federals"—associations whose membership includes at least one association to which section 33 applies. The word "association" as used in the Order and this Note covers both these types of body.

3. Article 4 of the Order sets out the provisions to be included in the constitution of a company if it is to qualify as an association under section 33 of the Act. By these provisions limits must be set on the interest which may be paid on share capital, or on loan capital which has been provided by members, and payments out of profits must be divided and voting rights distributed in prescribed ways.

4. By article 5, the Order excludes from the benefit of section 33 of the Act with certain exceptions all agreements to which more than one association is a party. The exceptions are those mentioned in paragraphs (a) to (f) of article 5.

5. Article 6 provides that an association which is neither an industrial and provident society nor a co-operative association as defined in section 33 of the Act must do at least two-thirds of its business with members in order to benefit under the section ("the two-thirds rule"). If this condition is not satisfied by an association to which it applies over any period of three years, then any agreements to which it is a party are excluded from benefit thereafter, whether or not they are within the exceptions to article 5.

6. Apart from drafting amendments, this Order differs from the 1974 Order in the following ways:

- (a) it changes the definition of "association" so as to put it beyond doubt that it embraces all agricultural and forestry associations to which section 33 of the Act applies and not merely those referred to in section 33(2)(c) (article 3);
- (b) it changes the definition of "federal" so as to include not only associations of associations, but also associations of one or more associations and one or more individual members (article 3);

- (c) it exempts for the first time agreements between constituent associations of one federal and agreements between a federal and one or more of its constituent associations, referred to in article 5(c)(i) and (d)(iv), which contain undertakings relating to produce supplied by members but not produced by them;
- (d) it exempts for the first time agreements of the kind referred to in article 5(f);
- (e) the exemption from the two-thirds rule is extended to co-operative associations as defined in section 33 of the Act (article 6);
- (f) in the two-thirds rule calculation (i) the revenue of an association from marketing as principal is aggregated with its revenue from marketing as agent so as to form one sum, and (ii) the revenue of an association from marketing produce produced by its members on land occupied by them and used for agriculture or forestry or both or from supplying to its members goods, or from rendering to them services, required by them for such production, must account, in each case, for at least two-thirds of the association's total revenue from marketing of produce, supplying goods or rendering services to any person for any purpose (article 6).

SI 1982/569  
ISBN 0-11-026569-6

