
STATUTORY INSTRUMENTS

1996 No. 346

DEREGULATION

**The Deregulation (Restrictive Trade Practices Act 1976)
(Amendment) (Variation of Exempt Agreements) Order 1996**

Made - - - - *19th February 1996*

Coming into force - - *19th March 1996*

Whereas:

- (a) the Secretary of State is of the opinion that certain provisions of the Restrictive Trade Practices Act 1976(1) impose burdens affecting persons in the carrying on of a trade, business, profession or otherwise and that by amending or repealing the provisions concerned and by making certain other provision it is possible to remove or reduce the burdens without removing any necessary protection;
- (b) he has consulted such organisations as appear to him to be representative of interests substantially affected by his proposals and such other persons as he considers appropriate;
- (c) it appears to the Secretary of State that it is appropriate, following that consultation, to proceed with the making of this Order;
- (d) a document setting out the Secretary of State's proposals has been laid before Parliament in accordance with section 3 of the Deregulation and Contracting Out Act 1994(2) and the period for Parliamentary consideration under section 4 of that Act has expired;
- (e) the Secretary of State has had regard to the representations made during that period;
- (f) a draft of this Order has been laid before Parliament with a statement giving details of such representations and the changes (if any) to the Secretary of State's proposals in the light of those representations; and
- (g) a draft of this Order has been approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 1 of the Deregulation and Contracting Out Act 1994, hereby makes the following Order:

(1) 1976 c. 34.
(2) 1994 c. 40.

Title and Commencement

1. This Order may be cited as the Deregulation (Restrictive Trade Practices Act 1976) (Amendment) (Variation of Exempt Agreements) Order 1996 and shall come into force one month after the day on which it is made.

Variation of agreements approved under section 29 of the Restrictive Trade Practices Act 1976

2.—(1) Section 29 of the Restrictive Trade Practices Act 1976 (which provides for certain agreements important to the national economy to be exempt from registration under the Act if approved by the Secretary of State) shall be amended as follows.

(2) After subsection (5) there shall be inserted—

“(5A) If an agreement approved by an order under this section is subsequently varied—

- (a) the approval shall be treated as extending to the agreement as varied, but
- (b) the order shall cease to have effect unless the Secretary of State receives particulars of the variation before the end of the period of 21 days from the day of the variation.

(5B) The particulars to be given for the purposes of subsection (5A)(b) above shall—

- (a) in so far as the variation is made by an instrument in writing, be given by producing the original or a true copy of the instrument, and
- (b) in so far as the variation is not so made, be given by producing a memorandum in writing signed by a party to the agreement.

(5C) Where the Secretary of State receives under subsection (5A)(b) above particulars of a variation of an agreement approved by an order under this section, he shall consider whether the agreement should cease to be approved for the purposes of this section as a result of the variation and give notice of his decision to each of the parties to the agreement within 28 days of receipt of the particulars.

(5D) Where the Secretary of State has decided under subsection (5C) above that an agreement should cease to be approved for the purposes of this section and has given notice under that subsection of his decision, he may by order revoke the order under this section approving the agreement, but only after the end of the period of 28 days beginning with the date of the notice.

(5E) If, when the Secretary of State receives particulars of a variation under subsection (5A)(b) above, he is already engaged in a consideration under subsection (5C) above of the agreement concerned—

- (a) he shall discontinue his existing consideration, and
- (b) that subsection, in its application by virtue of his receipt of the further particulars, shall have effect to require him to consider the combined effect of the variation which was the subject of that consideration and the variation to which those particulars relate.

(5F) If, when the Secretary of State receives particulars of a variation under subsection (5A)(b) above, he has given to the parties to the agreement concerned notice under subsection (5C) above of his decision that the agreement should cease to be approved for the purposes of this section, but has not yet revoked the order under this section approving it—

- (a) the power conferred by subsection (5D) shall not become, or shall cease to be, exercisable by virtue of that notice, and

(b) subsection (5C) above, in its application by virtue of his receipt of the further particulars, shall have effect to require him to consider the combined effect of the variation which was the subject of that notice and the variation to which those particulars relate.

(5G) If the Secretary of State's decision under subsection (5C) above is one in relation to which subsection (5E) or (5F) above applies, subsection (5D) above shall have effect as if the time limit imposed on the exercise of the power conferred by that subsection were the limit specified in subsection (5H) or, as the case may be, (5I) below.

(5H) Where none of the variations to which the Secretary of State's decision relates has previously been the subject of a decision by virtue of which subsection (5D) above applied, the time limit is—

(a) the end of the period of 56 days beginning with the first date on which he received under subsection (5A)(b) above particulars of a variation to which his decision relates, or

(b) if earlier, the end of the period of 28 days beginning with the date of notice of his decision.

(5I) Where any variation to which the Secretary of State's decision relates has previously been the subject of a decision by virtue of which subsection (5D) above applied, the time limit is that which applied on that occasion.”

(3) After subsection (6) there shall be inserted—

“(6A) In the case of an order under subsection (5D) above, references in subsection (6) above to the agreement to which the order relates shall be construed as references to the variation in consequence of which the order is made.

(6B) Where the Secretary of State gives notice under subsection (5C) above that he has decided that the agreement should not cease to be approved for the purposes of this section, he shall—

(a) lay before each House of Parliament a copy of the notice and of the variation to which the notice relates; and

(b) make available for public inspection a copy of the variation.”

(4) In subsection (7) (which disapplies publication requirements in relation to variations which the Secretary of State considers insignificant)—

(a) for “Subsection (6)” there shall be substituted “Subsection (6B)”; and

(b) paragraphs (a) and (b) are hereby repealed.

Variation of agreements or terms approved under section 30 of the Restrictive Trade Practices Act 1976

3.—(1) Section 30 of the Restrictive Trade Practices Act 1976 (which provides for exemption from registration under the Act in relation to certain agreements made, or terms included, to hold down prices, if approved by a competent authority) shall be amended as follows.

(2) After subsection (4) there shall be inserted—

“(4A) If an agreement, or term of an agreement, approved by an order under this section is subsequently varied—

(a) the approval shall be treated as extending to the agreement, or term, as varied, but

(b) the order shall cease to have effect unless the competent authority which made the order receive particulars of the variation before the end of the period of 21 days from the day of the variation.

- (4B) The particulars to be given for the purposes of subsection (4A)(b) above shall—
- (a) in so far as the variation is made by an instrument in writing, be given by producing the original or a true copy of the instrument, and
 - (b) in so far as the variation is not so made, be given by producing a memorandum in writing signed by a party to the agreement.

(4C) Where a competent authority receive under subsection (4A)(b) above particulars of a variation of an agreement, or term of an agreement, approved by an order under this section (“the approval order”) the authority may by order revoke the approval order if it appears to them that as a result of the variation the agreement, or term, should no longer be approved for the purposes of this section.”

- (3) In subsection (5) (approved agreements or terms to be made available for public inspection)—
- (a) the words from “a copy” to the end shall become paragraph (a), and
 - (b) after that paragraph there shall be inserted
 - “; and
 - (b) where an authority receive particulars of a variation of an agreement or term of an agreement under subsection (4A)(b) above and decide not to make an order under subsection (4C) above, a copy of the variation.”

Consequential amendment and repeal

4.—(1) Section 31 of the Restrictive Trade Practices Act (supplementary provisions for sections 29 and 30) shall be amended as follows.

(2) In subsection (2), for the words from the beginning to the end of paragraph (a) there shall be substituted—

“(2) In the application of section 29(5) or (5C) in relation to a recommendation made by or on behalf of a trade association or a services supply association—

- (a) the requirement of that subsection as to the giving of notice shall be treated as a requirement to give notice to the association;”.

(3) Subsection (6) (which is superseded by the provisions inserted by Articles 2 and 3 above) is hereby repealed.

19th February 1996

John Taylor
Parliamentary Under Secretary of State
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Deregulation and Contracting Out Act 1994 which allows statutory provisions to be amended, without removing any necessary protection, in order to reduce burdens affecting persons carrying on business.

This Order amends the Restrictive Trade Practices Act 1976 which requires that restrictive agreements between two or more persons carrying on business in the United Kingdom in the production or supply of goods or supply of services be furnished to the Director General of Fair Trading for registration. This Order changes the procedure for dealing with variations of agreements which are exempt from registration by virtue of orders made under section 29 or 30 of the 1976 Act. At present, if variations are not approved by a further order before they are made, the original order made under section 29 or 30 ceases to have effect and the agreement becomes subject to registration.

This Order replaces the existing provisions with a power for the Secretary of State (or, in the case of section 30 orders made by him the Minister of Agriculture, Fisheries and Food) to revoke the section 29 or 30 order if he considers the agreement as varied should not continue to be exempt from registration. The Order also provides that if variations are not notified within 21 days to the Secretary of State (or, where appropriate, the Minister of Agriculture, Fisheries and Food) the section 29 or 30 order will cease to have effect. It also makes a number of consequential amendments.