

EXPLANATORY MEMORANDUM TO
THE MONOPOLIES AND RESTRICTIVE PRACTICES (DENTAL GOODS),
(IMPORTED HARDWOOD AND SOFTWOOD TIMBER) AND (ESTATE
AGENTS) (REVOCATION) ORDER 2005

2005 No. 3103

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Monopolies and Restrictive Practices (Dental Goods) Order 1951¹

2.2 The Monopolies and Restrictive Practices (Imported Hardwood and Softwood Timber) Order 1960²

2.3 The Restriction on Agreements (Estate Agents) Order 1970³

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative background

4.1 The Monopolies and Restrictive Practices (Dental Goods) Order 1951 renders unlawful certain kinds of agreement which relate to the collective enforcement of resale prices in respect of dental goods and those the effect of which is to restrict the number of persons carrying on business as suppliers of dental goods. The trade association named as acting against the public interest is now the British Dental Trade Association; the one company named in the report was dissolved in 1996.

4.2 The Monopolies and Restrictive Practices (Imported Hardwood and Softwood Timber) Order 1960 makes it unlawful for any person to make or carry out any agreement or arrangement relating to the supply of imported hardwood or imported softwood timber having effects which are described as being “similar to the original arrangements”. The main trade body, the Timber Trade Federation (TTF) still exists but the other bodies have been dissolved or amalgamated into the TTF. The TTF no longer maintains approved lists of importers and agents and there are no restrictions on whom agents can deal with. The operating conditions that required the Order no longer exist and there is no possibility of a return to the previous regime.

4.3 The Restriction on Agreements (Estate Agents) Order 1970 renders unlawful agreements and arrangements between estate agents relating to the charges, the advertising of the charges and the recommending of the charges in connection with the disposal of unfurnished dwellings other than agreements or arrangements

¹ S.I. 1951/1200

² S.I. 1960/1211

³ S.I. 1970/1696

which relate to the compulsory acquisition of unfurnished dwellings. Although many of the societies named in the Order are still operating the 2004 OFT market study of estate agents in England and Wales found no structural competition problems in the market and found no evidence that agreements of the type prohibited by the 1970 Order existed.

4.4 Section 88(5) of the Fair Trading Act 1973 (FTA)⁴ requires the Office of Fair Trading (OFT) to keep under review Orders made as a consequence of an MMC monopoly report and to advise the Secretary of State if they believe that changes are appropriate. The OFT recommended that the Secretary of State revoke the 1951, 1960 and 1970 Orders.

4.5 The Order revoking the 1951, 1960 and 1970 Orders are being made under provisions, which have been saved⁵.

4.6 The statutory consultation provisions contained in section 91(2) of the Fair Trading Act have been complied with. These require a Notice to be published stating the Minister's intention to make the Order, indicating the nature of the provisions to be contained in it and asking for representations. There has to be a minimum of 30 days consultation. The section 91(2) Notice was published on the DTI website and in the trade press on 28 September 2005.

5. Extent

This instrument applies to the United Kingdom.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 The dental goods Order was made following a 1950 MRPC report on the supply of dental goods.⁶ The report found that the main trade association, the Association of Dental Manufacturers and Traders, acted against the public interest

⁴ The Enterprise Act repealed the majority of the provisions of the FTA, but saving provisions continue to apply in relation to monopoly references made under the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 and the Monopolies and Mergers Act 1965. The Dental Goods Order and the Imported Timber Order were made under section 10 of the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 (c.66), which was repealed by the Monopolies and Mergers Act 1965 (c.50) ("the 1965 Act") but the Orders continued to have effect under section 3 of the 1965 Act as a result of section 11(6) of the 1965 Act. The Estate Agents Order 1970 was made under section 3 of the 1965 Act. Section 139 and Schedule 11 paragraph 1 of the Fair Trading Act 1973 (c.41) ("the 1973 Act") repealed the 1965 Act but, by virtue of Schedule 11 to the 1973 Act each Order continued to have effect as if made under section 56 of the 1973 Act. Section 56 of the 1973 Act was repealed by section 278(2) of and Schedule 26 to the Enterprise Act 2002 (c.40) but each Order continued in force by virtue of article 6(a) of S.I 2003/1397 which provided that the commencement of the amendments, repeals and revocations in Schedules 25 and 26 relating to the 1973 Act shall not have effect in relation to any orders which by virtue of paragraph 1 of Schedule 11 to the 1973 Act have effect as if made under that Act.

⁵ See footnote 4.

⁶ MRPC 1950, Report on the supply of dental goods.

by using its members to enforce resale price maintenance and by limiting entry to the industry. It also found a number of practices of one company, the largest supplier of dental goods, were expected to act against the public interest.

7.2 The Order makes it unlawful (among other things) for suppliers of dental goods to make agreements to withhold supply to some persons on the grounds that they did not retail the goods at the price indicated by the supplier. It also makes it unlawful for suppliers to make or carry out any agreement which is intended to, or likely to have the effect of, limiting the number of persons carrying out the business of supplying dental goods in the UK. In addition, it makes it unlawful for any person to procure the making or carrying out of agreements of this kind.

7.3 The imported timber Order was made following a 1953 MRPC report.^{7,8} The MRPC found that traders in imported hardwood timber and imported softwood timber formed ‘approved lists’ of importers and agents. Those on the lists would only deal with each other and they controlled any entry on to the lists.⁹ The agreements by traders on the lists to deal only with each other was seen to restrict the ability of some merchants to deal effectively in imported timber and was found to be against the public interest. The Order makes it unlawful to make or carry out the same or similar agreements (or those which have similar effects).

7.4 In 1969 the Monopolies Commission found that estate agents charged fees or commission at rates published by national societies or local associations and that this restricted competition and was against the public interest.¹⁰ An Order was made in 1970 to address the public interest concerns. The Order makes it unlawful for two or more estate agents to make any agreement or arrangement that places restrictions on: (i) the charges or terms and conditions of estate agency services; and (ii) the advertising of charges for estate agency services. In addition, it makes it unlawful for two or more estate agents, or an association of estate agents, to make any agreement or arrangement under which a person is to make any recommendation of charges for estate agency services.

7.5 In light of this advice, and following the statutory consultation period, the 1951, 1960 and 1970 Orders are no longer required as a matter of policy and are therefore being revoked.

7.6 The announcement will be uncontroversial, with little coverage outside the business pages or trade press.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies. A full Regulatory

⁷ MRPC 1953, Report on the supply of imported timber.

⁸ In 1958 the MRPC released a follow-up report to the 1953 report (Imported Timber: report on whether and to what extent the recommendation of the Commission has been complied with). This report found the agreements and arrangements that the 1953 report found to be against the public interest had been replaced by other arrangements with similar effects.

⁹ All the traders on the approved lists were members of the Timber Trade Federation which helped underpin the carrying out of the practice.

¹⁰ Monopolies Commission (1969), Estate Agents: a report on the supply of certain services by estate agents, Report 127.

Impact Assessment however was prepared for the Enterprise Act, a copy of which was placed in the Libraries of the House of Commons and House of Lords.

8.2 There is no impact on the public sector.

9. Contact

Philip Martin (020 7215 6363), Consumer and Competition Policy, Department of Trade and Industry, can answer any queries regarding the instrument.