



Restrictive Trade Practices Act 1976

1976 CHAPTER 34

PART IV

GENERAL

Proceedings

21 Director's duties as to proceedings for investigation

- (1) The Director may refrain from taking proceedings before the Court—
 - (a) in respect of an agreement if and for so long as he thinks it appropriate so to do having regard to the operation of any directly applicable Community provision and to the purpose and effect of any authorisation or exemption granted in relation to such a provision;
 - (b) where an agreement—
 - (i) of which particulars are entered or filed in the register pursuant to this Act has been determined (whether by effluxion of time or otherwise); or
 - (ii) has been so determined in respect of all restrictions accepted or information provisions made under that agreement.
- (2) If it appears to the Secretary of State, upon the Director's representation, that the restrictions accepted or information provisions made under an agreement of which particulars are so entered or filed are not of such significance as to call for investigation by the Court, the Secretary of State may give directions discharging the Director from taking proceedings in the Court in respect of that agreement during the continuance in force of the directions.
- (3) The Secretary of State may at any time upon the Director's representation withdraw any directions given by him under subsection (2) above if satisfied that there has been a material change of circumstances since the directions were given.

22 Rules of procedure

- (1) Without prejudice to the generality of section 9(1) of the Restrictive Practices Court Act 1976, rules made under that subsection may provide—
 - (a) for enabling a single application to be made to the Court in respect of a number of related agreements, or separate applications made in respect of related agreements to be heard together;
 - (b) for enabling the Court to determine in a summary way any issue arising in relation to an agreement where it appears to the Court that the relevant provisions of the agreement and the circumstances of the case are substantially similar to the provisions and circumstances considered, in relation to any other agreement, in any previous proceedings before the Court;
 - (c) for enabling the Court to make an order for the payment by any party to proceedings under sections 1, 2 and 4 above of costs in respect of proceedings in which he is guilty of unreasonable delay, or in respect of any improper, vexatious, prolix or unnecessary proceedings or any other unreasonable conduct on his part.
- (2) The Court—
 - (a) does not have power to order the payment of costs by any party to proceedings under sections 1, 2 and 4 above except so far as may be provided by rules made in pursuance of subsection (1)(c) above; but
 - (b) without prejudice to section 9(3) of the Restrictive Practices Court Act 1976, the Court has power in exercise of its jurisdiction under sections 26, 35 and 37 below to order the payment of costs by any party to proceedings before the Court.

Registration

23 General provisions as to the register

- (1) The register for the purposes of this Act shall be kept by the Director—
 - (a) at such premises within the United Kingdom; and
 - (b) in such form ;as he may determine.
- (2) The Director shall cause notice of—
 - (a) any declaration made under section 1(3) above ;
 - (b) any order made under section 2 above;to be entered in the register.
- (3) Regulations made under section 27 below shall provide for the maintenance of a special section of the register, and for the entry or filing in that section of such particulars as the Secretary of State may direct, being—
 - (a) particulars containing information the publication of which would in the Secretary of State's opinion be contrary to the public interest;
 - (b) particulars containing information as to any secret process of manufacture (or, in relation to Part III of this Act, any secret process) or as to the presence, absence or situation of any mineral or other deposits or as to any other similar matter, being information the publication of which in the Secretary of State's

opinion would substantially damage the legitimate business interests of any person.

- (4) The register, other than the special section, shall be open to public inspection during such hours and subject to payment of such fee as may be prescribed by regulations made under section 27.
- (5) Any person may, upon payment of such fee as may be prescribed by regulations made under section 27, require the Director to supply to him a copy of or extract from any particulars entered or filed in the register, other than the special section, certified by the Director to be a true copy or extract.
- (6) No process for compelling the production of the register or of any other document kept by the Director shall issue from any court except with the leave of the court, and any such process if issued shall bear a statement that it is issued with the leave of the court.
- (7) A copy of or extract from any document entered or filed in the register, certified under the hand of the Director or an officer authorised to act on his behalf (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original.

24 Particulars and time for registration

- (1) In respect of every agreement which is subject to registration under this Act the following particulars shall be furnished to the Director—
 - (a) the names and addresses of the persons who are parties to the agreement; and
 - (b) the whole of the terms of the agreement, whether or not relating to any such restriction or information provision as is described in this Act.
- (2) The additional provisions contained in Schedule 2 to this Act have effect as to the particulars to be furnished in respect of—
 - (a) an agreement which is subject to registration under this Act; and
 - (b) the variation or determination of such an agreement;and such particulars shall in the cases specified in the first column of the Table in paragraph 5(1) of that Schedule be furnished within the time specified in the second column of that Table.
- (3) In relation to an agreement to which this Act—
 - (a) has effect by virtue of section 8 above as if it were an agreement between members of a trade association, or persons represented on the trade association by such members;
 - (b) has effect by virtue of section 16 above as if it were an agreement between members of a services supply association, or persons represented on the services supply association by such members;

references in this section and Schedule 2 to the parties to the agreement include references to those members or persons, and in relation to an agreement in which a term is implied by virtue of section 8(2) or (4) above, or section 16(3) or (5) above, as the case may be, the reference in this section to the terms of the agreement includes a reference to that term, and references in this section and Schedule 2 to an agreement shall be construed accordingly.

25 Particulars of export agreements

Section 24 above has effect in relation to an agreement which is or becomes one to which this Act would apply but for—

- (a) paragraph 6(1) of Schedule 3 to this Act, where the agreement relates to exports from the United Kingdom, or
 - (b) paragraph 9(1) of that Schedule,
- as if that agreement were subject to registration under this Act.

26 Court's power to rectify the register, etc.

- (1) The Court may, on the application of any person aggrieved, order the register to be rectified by the variation or removal of particulars included in the register in respect of any agreement.
- (2) The Court may, on the application of—
 - (a) any person party to an agreement; or
 - (b) the Director, in respect of an agreement of which particulars have been furnished to him under this Act;declare whether or not the agreement is one to which this Act applies, and if so whether or not it is subject to registration under this Act.
- (3) Where application is made under subsection (2) above by a party to an agreement before the expiry of the time within which, if the agreement is subject to registration under this Act, particulars are required to be furnished under section 24 above, then—
 - (a) if particulars of the agreement have not been so furnished before the commencement of the proceedings, that time shall be extended by a time equal to the time during which the proceedings and any appeal therein are pending, and such further time, if any, as the Court may direct; and
 - (b) if particulars have been so furnished, the Director shall not enter or file particulars of the agreement in the register during the time during which the proceedings and any appeal therein are pending.
- (4) Notice of an application to the Court under this section shall be served, in accordance with rules of court—
 - (a) in the case of an application by a person other than the Director, on the Director;
 - (b) in the case of an application by the Director, on the parties to the agreement or such of them as may be prescribed or determined by or under the rules;and a party on whom notice is so served shall be entitled, in accordance with such rules, to appear and be heard on the application.

27 Regulations for registration

- (1) Subject to the provisions of this Act, the Director may make regulations for the purposes of registration under this Act and for purposes connected therewith, and in particular, but without prejudice to the generality of the foregoing provision—
 - (a) for requiring that—
 - (i) in respect of an agreement he is furnished with information as to any steps taken, or decision given, under or for the purpose of any directly applicable Community provision affecting the agreement; and

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- (ii) the information so given or such part, if any of it, as may be provided by the regulations is included in the particulars to be entered or filed in the register under section 1(2)(b) above ;
 - (b) for regulating the procedure to be followed in connection with the furnishing of particulars, information and documents under section 24 above and section 36 below;
 - (c) for excluding from the particulars to be furnished or from the particulars to be entered in the register under this Act—
 - (i) such details as to parties or other persons, prices (or, in relation to Part III of this Act, charges) terms or other matters as are material for the purpose only of defining the particular application of continuing restrictions accepted or information provisions made under agreements of which particulars are so entered;
 - (ii) particulars of such variations as may be specified in the regulations, being variations the registration of which is in the Director's opinion unnecessary for the purposes of this Act;
 - (d) for prescribing the form of any notice, certificate or other document to be given, made or furnished under the provisions of this Act;
 - (e) for regulating the inspection of the register or of any document kept by the Director;
 - (f) for prescribing anything authorised or required by this Act to be prescribed by regulations made under this section.
- (2) Nothing in regulations made by virtue of subsection (1)(c) above shall affect the Director's power under section 36(3) to require the furnishing of further documents or information by any such person as is mentioned in section 36(3).
- (3) Any regulations made under this section prescribing a fee for inspection of the register or for the supply of copies of or extracts from particulars entered or filed in the register, shall be made with the approval of the Treasury.
- (4) The Director's power to make regulations under this section is exercisable by statutory instrument, and the Statutory Instruments Act 1946 shall apply to such regulations as it applies to regulations made by a Minister of the Crown within the meaning of that Act.

Exemptions

28 Excepted agreements

This Act does not apply to the agreements described in Schedule 3 to this Act.

29 Agreements important to the national economy

- (1) If it appears to the Secretary of State, on consideration of an agreement proposed to be made by any parties, that the conditions set out in subsection (2) below are complied with in respect of the proposed agreement, he may, by order made on or before the conclusion of the agreement, approve the agreement for the purposes of this section; and any agreement so approved shall be exempt from registration under this Act during the continuance in force of the order.
- (2) The conditions for the making of an order under subsection (1) above in respect of an agreement (in this section referred to as the conditions of exemption) are—

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- (a) that the agreement is calculated to promote the carrying out of an industrial or commercial project or scheme of substantial importance to the national economy;
 - (b) that its object or main object is to promote efficiency in a trade or industry or to create or improve productive capacity in an industry;
 - (c) that the object cannot be achieved or achieved within a reasonable time except by means of the agreement or of an agreement for similar purposes ;
 - (d) that no restrictions are accepted or information provisions made under the agreement other than such as are reasonably necessary to achieve that object; and
 - (e) that the agreement is on balance expedient in the national interest.
- (3) In considering the national interest for the purposes of subsection (2)(e) above the Secretary of State shall take into account any effects which an agreement is likely to have on persons not parties thereto as purchasers, consumers or users of any relevant goods or, in relation to an agreement to which this Act applies by virtue of an order under section 11 or section 12 above, as users of any relevant services.
- (4) An order under this section shall continue in force for such period as may be specified therein, which may be extended by subsequent order of the Secretary of State: but the period so specified or extended shall not exceed the period which appears to the Secretary of State sufficient for the purposes for which the order was made.
- (5) An order under this section approving an agreement may be revoked by order of the Secretary of State at any time after the expiry of one year from the day on which the first-mentioned order was made if it appears to him—
- (a) that the object or main object of the agreement has not been or is not likely to be achieved, or that any other condition or exemption is no longer satisfied in respect of the agreement; or
 - (b) that the agreement is used for purposes other than those for which it was approved ;

and may be so revoked at any time if the Secretary of State becomes aware of circumstances by reason of which, if known to him at the material time, the agreement would not have been approved.

The Secretary of State shall not make an order by virtue of paragraph (a) or paragraph (b) of this subsection unless he has given to each of the parties at least 28 days' notice of his intention to make the order.

- (6) The Secretary of State shall—
- (a) lay before each House of Parliament a copy of any order made under this section and of the agreement to which the order relates ; and
 - (b) make available for public inspection a copy of any such agreement.
- (7) Subsection (6) above shall not apply—
- (a) to an agreement which varies an agreement previously approved under this section ; or
 - (b) to an order approving such an agreement;

if in the Secretary of State's opinion the variation does not substantially affect the operation of restrictions accepted or information provisions made under the agreement previously approved.

30 Agreements holding down prices

- (1) A competent authority may by order approve for the purposes of this section any agreement made at the request of the competent authority, or any term included at their request in any agreement, being an agreement or term which relates exclusively—
 - (a) to the prices to be charged in connection with transactions of any description and is designed either to prevent or restrict increases or to secure reductions in those prices; or
 - (b) in relation to an agreement to which this Act applies by virtue of an order under section 11 or section 12 above, to the charges to be made in connection with transactions of any description and is designed either to prevent or restrict increases or to secure reductions in those charges.
- (2) Where an agreement is approved by order under this section, the agreement shall be exempt from registration under this Act during the continuance in force of the order; and where a term of an agreement is so approved, that term, and any restrictions accepted or information provisions made thereunder, shall during the continuance in force of the order be disregarded for all purposes in determining whether this Act applies to the agreement.
- (3) An order under this section shall continue in force for such period as may be specified therein, which may be extended by subsequent order of the competent authority: but the period so specified shall not exceed two years, and shall not be extended by more than two years at a time.
- (4) An order under this section may at any time be revoked by order of the competent authority if it appears to that authority that the relevant agreement or term is used for purposes other than those for which it was approved.
- (5) A competent authority shall make available for public inspection a copy of any agreement or term of an agreement approved by order under this section.
- (6) The competent authorities for the purposes of this section are the Secretary of State, and the Minister of Agriculture, Fisheries and Food.

31 Supplementary provisions for ss. 29 and 30

- (1) Sections 29 and 30 above apply, with the necessary modifications, in relation to any recommendation made by or on behalf of a trade association or a services supply association as they apply in relation to an agreement; and where any such recommendation is approved by order under either of those sections—
 - (a) subsection (2) or subsection (4) of section 8 above;
 - (b) subsection (3) or subsection (5) of section 16 above;shall not apply in relation to the recommendation during the continuance in force of the order.
- (2) In the case of an order under section 29 approving a recommendation by or on behalf of a trade association or of a services supply association, as the case may be—
 - (a) the requirement of subsection (5) of that section as to the giving of notice of intention to revoke the order shall be treated as a requirement to give such notice as is there mentioned to the association; and
 - (b) any notice under that subsection which is required to be given to a trade association or to a services supply association or to each of the members of such an association shall be treated as duly so given if it is given either—

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- (i) to the association; or
 - (ii) to the secretary, manager or other similar officer of the association.
- (3) An order under section 29 or section 30 made before the conclusion of the agreement or issue of the recommendation to which it relates may be made subject to conditions—
- (a) as to the time within which the agreement is to be concluded or the recommendation issued ; and
 - (b) as to the furnishing of copies of the agreement or recommendation to the Secretary of State or other competent authority.
- (4) There may be omitted from the copies of any agreement, term of an agreement or recommendation to be laid before Parliament under section 29, and to be made available for public inspection under that section or section 30, the particulars mentioned in subsection (5) below.
- (5) The particulars referred to in subsection (4) above are such as would, in the opinion of the Secretary of State or other competent authority, fall to be entered in the special section of the register referred to in section 23(3) above if the relevant agreement were subject to registration under this Act.
- (6) If any agreement, term of an agreement or recommendation approved by order under section 29 or section 30 is subsequently varied, the order shall cease to have effect unless the variation is also approved by order under section 29 or section 30, as the case may be; and a variation may be so approved if (and only if) the agreement, term or recommendation could be so approved as varied.
- (7) The approval by order under section 29 or section 30 of an agreement or recommendation made by or on behalf of a trade association or a services supply association shall not be affected by any change in the persons who are members of the association or are represented on the association by such members, but without prejudice to the power of the Secretary of State or other competent authority to revoke the order under section 29 or section 30.
- (8) No order made by the Court in proceedings under this Act for restraining any person from making an agreement or recommendation, and no corresponding undertaking given to the Court in such proceedings, shall be construed as extending to an agreement or recommendation which is exempt from registration by virtue of an order under section 29 or section 30.
- (9) In any proceedings before the Court under sections 1 and 2 above in respect of an agreement, the fact that the agreement has or has not at any time been the subject of an order under section 29 or section 30 shall not be treated as relevant to the question whether any restrictions accepted or information provisions made under the agreement are contrary to the public interest.

32 Wholesale co-operative societies

- (1) The Secretary of State may approve under this section any industrial and provident society which in his opinion fulfils the following conditions—
- (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

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- (c) that those societies are retail societies or societies whose shares are wholly or mainly held by retail societies;
and a society which is for the time being so approved shall not be treated as a trade association or a services supply association.
- (2) An approval given in respect of a society under this section (if it has not been previously withdrawn) expires 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 subsection (3) below, 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) above 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 Act if the approval had not been given, or that such a recommendation as is mentioned in section 8(2) or (4) above 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 provisions of this Act.
- (5) In relation to a society which is for the time being approved under this section but which, in consequence of an order made under section 11 or section 12 above, is a society to which the provisions of section 16 above would apply if it were not so approved, subsection (4) above has effect as if in that subsection—
- (a) any reference to an agreement which would have been subject to registration under this Act if the approval had not been given included a reference to an agreement which would in those circumstances have been subject to such registration by virtue of the order ; and
 - (b) any reference to such a recommendation as is mentioned in section 8(2) or (4) included a reference to such a recommendation as is mentioned in section 16(3) or (5).
- (6) On the expiry or withdrawal of an approval given in respect of a society under this section, the provisions 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.
- (7) In this section—
- " industrial and provident society " means a society registered or deemed to be registered under the Industrial and Provident Societies Acts 1965 to 1975 or under the Industrial and Provident Societies Act (Northern Ireland) 1969;
 - " 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.

33 Agricultural and forestry associations, and fisheries associations

(1) Subject to the provisions of this section, this Act does not apply to an agreement between members of an association to which this section applies, or between such an association and any other person, whether a member of the association or not, by reason only of any restriction accepted or treated as accepted, or any information provision made or treated as made, by the association, or by members of the association or of any constituent association, for the purposes of or in connection with—

- (a) the marketing or preparation for market by the association of produce produced by members of the association on land occupied by them and used for agriculture or forestry (with or without similar produce not so produced); or
- (b) the marketing or preparation for market by the association of fish or shellfish caught or taken by members of the association in the course of their business (with or without fish or shellfish not so caught or taken); or
- (c) the supply by the association to the members of goods required for the production of that produce on that land, or for the catching or taking of fish or shellfish in the course of that business, as the case may be; or
- (d) the production of produce or the catching or taking of fish or shellfish, as the case may be, by members of the association; or
- (e) the supply of produce, or the supply of fish or shellfish, as the case may be, by members of the association;

and in determining whether any such agreement is an agreement to which this Act applies, no account shall be taken of any such restriction or information provision.

(2) This section applies—

- (a) to any association in the case of which the conditions specified in subsection (3) below are satisfied where the association is—
 - (i) of persons occupying land used for agriculture or forestry or both ;
 - (ii) of persons engaged in the business of catching or taking fish or shellfish ;
- (b) to any association of the associations referred to in paragraph (a) above which—
 - (i) satisfies the condition specified in paragraph (a) of subsection (3) below ; and
 - (ii) would satisfy the condition specified in paragraph (c) of subsection (3) if references in that paragraph to members of the association included references to members of constituent associations;
- (c) to any co-operative association (whether or not the conditions specified in paragraphs (a) to (c) of subsection (3) are satisfied) which has as its object or primary object to assist its members—
 - (i) in the carrying on of the businesses of agriculture or forestry or both on land occupied by them; or
 - (ii) in the carrying on of businesses consisting in the catching or taking of fish or shellfish.

(3) The conditions referred to in subsection (2) above are that—

- (a) the association is or is deemed to be registered under the Industrial and Provident Societies Acts 1965 to 1975 or, being a company within the

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meaning of the Companies Act 1948, contains in its memorandum or articles of association such provisions as may be prescribed by order of the Ministers with respect to the number of members, numbers of shares held by members, distribution of profits, voting rights or other matters;

- (b) at least 90 per cent. of the voting power is attached to shares held by persons occupying land used for agriculture or forestry or both, or by persons engaged in the business of catching or taking fish or shellfish, as the case may be ; and
- (c) the only business, or the principal business, carried on by the association is one or more of the following—
 - (i) the marketing or preparation for market of produce produced by members of the association on land occupied by them and used for agriculture or forestry or both (with or without similar produce not so produced);
 - (ii) the marketing or preparation for market of fish or shellfish caught or taken by members of the association in the course of their business (with or without fish or shellfish not so caught or taken);
 - (iii) the supply to the members of goods required for the production of that produce on that land, or for the catching or taking of fish or shellfish in the course of that business, as the case may be;
 - (iv) in the case of an association of persons occupying land for forestry, the carrying out of forestry operations for the members on that land.

References in this subsection to the Industrial and Provident Societies Acts 1965 to 1975, and the Companies Act 1948, include references respectively to the Industrial and Provident Societies Act (Northern Ireland) 1969 and the Companies Act (Northern Ireland) 1960.

- (4) The Ministers may by order made by statutory instrument direct that the exemption provided by subsection (1) shall not apply—
 - (a) in relation to agreements of such classes as may be prescribed by the order ; or
 - (b) in relation to agreements, or agreements of any class, made by associations of such classes as may be so prescribed;

and any such order may apply to agreements made before as well as after the coming into force of the order.

- (5) In this section—

" agriculture " has the meaning given by the Agriculture Act 1947 and the Agriculture (Scotland) Act 1948 ;

" co-operative association " has the meaning given by section 340(8) and (9) of the Income and Corporation Taxes Act 1970, and references to members of a co-operative association include references to members of any such association which is a member of that association ;

" forestry " includes the processing of wood for sale, but not the manufacture of articles of wood ;

" the Ministers " means—

- (a) the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with agriculture in Scotland and Northern Ireland, acting jointly; but
- (b) in the case of functions exercisable in relation to associations falling within paragraph (c) of subsection (2) above and concerned only with

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forestry in Wales " Secretary of State " shall be substituted for " Minister of Agriculture, Fisheries and Food ";

" produce " means anything (whether live or dead) produced in the course of agriculture or forestry.

- (6) Without prejudice to the responsibilities of the Secretaries of State respectively concerned with agriculture in Scotland and Northern Ireland, the discharge of any functions as functions exercisable by virtue of subsection (5) above by the Secretary of State shall belong to the Secretary of State for Wales; but nothing in this subsection shall be taken—
- (a) to prejudice any powers exercisable in relation to the functions of Ministers of the Crown and government departments by virtue of Her Majesty's prerogative, or
 - (b) to affect the power of any Secretary of State to perform any functions of that office in place of the Secretary of State entrusted with the discharge of those functions.

34 Authorisations for purposes of E.C.S.C. Treaty

An agreement is exempt from registration under this Act so long as there is in force in relation to that agreement an authorisation given for the purpose of any provision of the E.C.S.C. Treaty relating to restrictive trade practices.

Enforcement

35 Failure to register

- (1) If particulars of an agreement which is subject to registration under this Act are not duly furnished within the time required by section 24 above, or within such further time as the Director may, upon application made within that time, allow—
- (a) the agreement is void in respect of all restrictions accepted or information provisions made thereunder; and
 - (b) it is unlawful for any person party to the agreement who carries on business within the United Kingdom to give effect to, or enforce or purport to enforce, the agreement in respect of any such restrictions or information provisions.
- (2) No criminal proceedings lie against any person on account of a contravention of subsection (1)(b) above; but the obligation to comply with that paragraph is a duty owed to any person who may be affected by a contravention of it and any breach of that duty is actionable accordingly subject to the defences and other incidents applying to actions for breach of statutory duty.
- (3) Without prejudice to any right which any person may have by virtue of subsection (2) above to bring civil proceedings in respect of an agreement affected by subsection (1) (b), the Court may, upon the Director's application, make such order as appears to the Court to be proper for restraining all or any of those mentioned in subsection (4) below from giving effect to, or enforcing or purporting to enforce—
- (a) the agreement in respect of any restrictions or information provisions;
 - (b) other agreements in contravention of subsection (1) above;
- and nothing in subsection (2) prevents the enforcement of any such order by appropriate proceedings.

- (4) Those who may be restrained by an order of the Court under subsection (3) above are—
- (a) any person party to the agreement who carries on business within the United Kingdom ;
 - (b) a trade association or a services supply association of which any such person is a member ; or
 - (c) any person acting on behalf of any such association.
- (5) Where an order is made under subsection (3) against any party to an agreement and that party is a member of a trade association or a services supply association, the order may include provisions for restraining the 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.
- (6) In relation to an agreement for the constitution of a trade association or a services supply association which is subject to registration in consequence of the making of a recommendation to which—
- (a) subsection (2) or subsection (4) of section 8 above;
 - (b) subsection (3) or subsection (5) of section 16 above;
- applies, the Court's power under subsection (3) includes power to make such order as appears to the Court to be proper for restraining the association or any person acting on its behalf from making other such recommendations
- (7) Where any issue, whether of law or of fact or partly of law and partly of fact, has been finally determined on an application under subsection (3) above in respect of an agreement, then in any proceedings brought in respect of that agreement by virtue of subsection (2) above in which the same issue arises—
- (a) any finding of fact relevant to that issue which was made on the application shall be evidence (and in Scotland sufficient evidence) of that fact; and
 - (b) any decision on a question of law relevant to that issue which was given on the application shall be binding on the court in so far as the material facts found in those proceedings are the same as were found on the application.
- (8) Where an agreement which is subject to registration under this Act is varied so as to extend or add to the restrictions accepted or information provisions made under the agreement, the provisions of this section apply, with the necessary modifications, in relation to the variation as they apply in relation to an original agreement which is subject to registration under this Act.

36 Director's power to obtain information

- (1) If the Director has reasonable cause to believe that a person being—
- (a) a person carrying on within the United Kingdom any such business as is described in section 6(1) above; or
 - (b) a trade association, the members of which consist of or include persons carrying on business as so described, or representatives of such persons ; or
 - (c) a person carrying on within the United Kingdom any business of supplying services brought under control by an order under section 11 or section 12 above ; or
 - (d) an association which, in relation to such an order, is a services supply association ;

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is or may be party to an agreement subject to registration under this Act, he may give to that person such notice as is described in subsection (2) below.

- (2) The notice referred to in subsection (1) above may require any person mentioned in paragraphs (a) to (d) of that subsection to notify the Director (within such time as may be specified in the notice) whether that person is party to any agreement relating to—
- (a) any such matters as are described in paragraphs (a) to (f) of section 6(1); or
 - (b) any such matters as are described in paragraphs (a) to (h) of section 7(1) above ; or
 - (c) matters specified in the relevant order for the purposes of section 11(1)(b) above ; or
 - (d) matters specified in the relevant order for the purposes of section 12(1)(b) above ;

and if so to furnish to the Director such particulars of the agreement as may be specified in the notice.

- (3) The Director may give notice to any person by whom particulars are furnished under section 24 above in respect of an agreement, or to any other person being party to the agreement, requiring him to furnish such further documents or information in his possession or control as the Director considers expedient for the purposes of or in connection with the registration of the agreement.
- (4) In the case of—
- (a) any such trade association as is mentioned in subsection (1)(b) above; or
 - (b) any such services supply association as is mentioned in subsection (1)(d) above;

a notice may be given under subsection (1) by the Director either to the association or to the secretary, manager or other similar officer of the association. For the purposes of this section any such trade association or services supply association shall be treated as party to any agreement to which members of the association, or persons represented on the association by such members, are parties as such.

- (5) In subsection (1) the reference to an agreement subject to registration under this Act shall, in relation to Part II, be construed as including a reference to any agreement which—
- (a) relates to exports from the United Kingdom; and
 - (b) would, but for paragraph 6(1) of Schedule 3 to this Act, be an agreement subject to registration under this Act.

- (6) In subsection (1) the reference to an agreement subject to registration under this Act shall, in relation to Part III, be construed as including a reference to any agreement which would, but for paragraph 9(1) of Schedule 3, be an agreement subject to registration under this Act.

37 Court's power to order examination on oath

- (1) In any case in which the Director has given notice to any person under section 36 above the Court may on the Director's application order that person to attend and be examined on oath in accordance with this section concerning the matters in respect of which the Director has given notice to him under that section.
- (2) Where an order is made under this section for the attendance and examination of any person—

- (a) the Director shall take part in the examination and for that purpose may be represented by solicitor or counsel;
 - (b) the person examined shall answer all such questions as the Court may put or allow to be put to him, but may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him;
 - (c) notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him;
 - (d) the Court may require the person examined to produce any such particulars, documents or information in his possession or control as may be specified in the notice given by the Director as aforesaid.
- (3) Where notice under section 36 has been given to a body corporate, an order may be made under this section for the attendance and examination—
- (a) of any director, manager, secretary or other officer of that body corporate ; or
 - (b) of any other person who 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.
- (4) In any case referred to in subsection (3) above—
- (a) the reference in subsection (1) above to matters in respect of which the Director has given notice to the person examined shall be construed as a reference to matters in respect of which notice was given to the body corporate; and
 - (b) in paragraph (d) of subsection (2) above and in paragraph (c) so far as it relates to evidence, references to the person examined shall include references to the body corporate.
- (5) The provisions of subsections (3) and (4) above have effect—
- (a) in relation to a trade association which is not incorporated;
 - (b) in relation to a services supply association which is not incorporated ;
- as those provisions have effect in relation to a body corporate.
- (6) 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.

38 Offences in connection with registration

- (1) A person who fails without reasonable excuse to comply with a notice duly given to him under section 36 above is guilty of an offence and liable on summary conviction to a fine not exceeding £100.
- (2) If a person who furnishes or is required to furnish any particulars, documents or information under this Act—
- (a) makes any statement, or furnishes any document, which he knows to be false in a material particular; or
 - (b) recklessly makes any statement, or furnishes any document, which is false in a material particular ; or

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- (c) wilfully alters, suppresses or destroys any document which he is required to furnish as aforesaid;
- he is guilty of an offence under this section.
- (3) A person guilty of an offence mentioned in subsection (2) above is liable—
- (a) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £100, or to both such imprisonment and such a fine; or
 - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or to both such imprisonment and a fine.
- (4) If any default in respect of which a person is convicted of an offence under subsection (1) above continues after the conviction, that person is guilty of a further offence and liable on summary conviction to a fine—
- (a) not exceeding £100 ; or
 - (b) not exceeding £10 for every day on which the default continues within the three months next following his conviction for the first-mentioned offence ;
- whichever is the greater.
- (5) For the purposes of subsection (4) above a default in respect of the furnishing of any particulars, documents or information shall be deemed to continue until the particulars, documents or information have been furnished.
- (6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.
- (7) In this section " director ", in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

39 Proceedings and venue in respect of offences

- (1) No proceedings for an offence under the preceding provisions of this Act shall be instituted—
- (a) in England and Wales except by or with the consent of the Director of Public Prosecutions or the Director;
 - (b) in Northern Ireland except by or with the consent of the Attorney General for Northern Ireland or the Director.
- (2) Any information relating to an offence under the preceding provisions of this Act may be tried by a magistrates' court or by a court of summary jurisdiction in Northern Ireland, if it is laid at any time—
- (a) within three years after the commission of the offence; and
 - (b) within twelve months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions, the Attorney General for Northern Ireland or the Director, as the case may be, to justify the proceedings comes to his knowledge ;

notwithstanding anything in section 104 of the Magistrates' Courts Act 1952 or in section 34 of the Magistrates' Courts Act (Northern Ireland) 1964.

- (3) Proceedings in Scotland for an offence against the preceding provisions of this Act may be commenced at any time—
- (a) within three years after the commission of the offence; and
 - (b) within twelve months after the date on which evidence sufficient in the Director's opinion to justify a report to the Lord Advocate with a view to consideration of the question of proceedings comes to the Director's knowledge;

notwithstanding anything in section 23 of the Summary Jurisdiction (Scotland) Act 1954.

- (4) For the purposes of subsections (2) and (3) above, a certificate of the Director of Public Prosecutions, the Attorney General for Northern Ireland or the Director, as the case may be, as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence.
- (5) An offence under section 38 above may be tried by a court having jurisdiction either in the county or place in which the offence was actually committed or in any county or place in which the alleged offender carries on business.
- (6) For the purposes of article 7(2) of the Prosecution of Offences (Northern Ireland) Order 1972 (which relates to consents to prosecutions by the Director of Public Prosecutions for Northern Ireland) subsections (1) and (2) above shall be treated as if they were in force before the coming into operation of that order.