



Restrictive Trade Practices Act 1976

1976 CHAPTER 34

PART V

MISCELLANEOUS AND SUPPLEMENTAL

40 Order under s. 56 of Fair Trading Act 1973

- (1) The Court may, upon application made by any person who desires to make an agreement—
- (a) which, if made, would be an agreement to which this Act applies, and
 - (b) is one the making of which is unlawful by virtue of any order in force under section 56 of the Fair Trading Act 1973 or having effect as if made under that section,

declare whether or not any restrictions or information provisions by virtue of which this Act would apply to the agreement (not being such restrictions or information provisions as are described in paragraphs (b) to (d) of paragraph 6(1) of Schedule 3 to this Act) are contrary to the public interest.

- (2) The provisions of section 2(1) to (4) above apply with the necessary modifications in relation to any such declaration as they apply in relation to a finding under that section.
- (3) Where an application is made to the Court under subsection (1) above and—
- (a) on that application the Court makes a declaration under that subsection in relation to a restriction proposed to be accepted or an information provision proposed to be made under an agreement, and
 - (b) by virtue of an order under section 56 of the 1973 Act which is for the time being in force, the making or carrying out of an agreement under which that restriction was accepted or that information provision was made would be unlawful,

the order under section 56 of the 1973 Act shall cease to have effect in so far as it renders unlawful the making or carrying out of an agreement under which that restriction is accepted or that information provision is made.

Status: This is the original version (as it was originally enacted).

- (4) The Director shall be the respondent to any application made under this section; and the provisions of section 10 or section 19 above apply with the necessary modifications in relation to proceedings on any such application as they apply in relation to the proceedings mentioned in that section.

41 Disclosure of information

- (1) Subject to subsection (2) below, no information with respect to any particular business which has been obtained under or by virtue of the provisions of this Act shall, so long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business ; but this subsection does not apply to any disclosure of information which is made—
- (a) for the purpose of facilitating the performance of any functions of the Director, the Monopolies and Mergers Commission, the Secretary of State or any other Minister under this Act or the Fair Trading Act 1973 ;
 - (b) in pursuance of a Community obligation ;
 - (c) for the purposes of any proceedings before the Court or of any other legal proceedings, whether civil or criminal, under this Act or the Fair Trading Act 1973.
- (2) Nothing in subsection (1) above shall be construed—
- (a) as limiting the particulars which may be entered or filed in, or made public as part of, the register under this Act; or
 - (b) as applying to any information which has been made public as part of that register.
- (3) Any person who discloses any information in contravention of this section is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding £400;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) No prosecution for an offence under this section shall be commenced after the expiry of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.
- (5) Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952, a magistrates' court may try an information for an offence under this section if the information was laid within twelve months from the commission of the offence.
- (6) Notwithstanding anything in section 23 of the Summary Jurisdiction (Scotland) Act 1954, summary proceedings in Scotland for an offence under this section may be commenced within twelve months from the commission of the offence, and subsection (2) of the said section 23 applies for the purposes of this subsection as it applies for the purposes of that section.
- (7) In the application of this section to Northern Ireland, for the references in subsection (5) above to section 104 of the Magistrates' Courts Act 1952 and to the trial and laying of an information there shall be substituted respectively references to section 34 of the Magistrates' Courts Act (Northern Ireland) 1964 and to the hearing and determination and making of a complaint.

42 Orders and regulations

- (1) Any statutory instrument by which—
- (a) an order is made under section 18(5) or section 33(4) above ; or
 - (b) regulations are made under section 27(1) above;
- is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Any power conferred by a preceding provision of this Act to make an order by statutory instrument includes power to revoke or vary that order by a subsequent order made under that provision.

43 Interpretation and construction

- (1) In this Act—
- " agreement " includes any agreement or arrangement, whether or not it is or is intended to be enforceable (apart from any provision of this Act) by legal proceedings, and references in this Act to restrictions accepted or information provisions made under an agreement shall be construed accordingly ;
 - " the Court " means the Restrictive Practices Court;
 - " designated services " has the meaning given by section 13(1) above;
 - " the Director " means the Director General of Fair Trading appointed under the Fair Trading Act 1973 ;
 - " goods " includes ships and aircraft, minerals, substances and animals (including fish), and references to the production of goods include references to the getting of minerals and the taking of such animals ;
 - " information provision " includes a provision for or in relation to the furnishing of information ;
 - " interconnected bodies corporate " means bodies corporate which are members of the same group, and for the purposes of this definition " group " means a body corporate and all other bodies corporate which are its subsidiaries—
 - (a) within the meaning of section 154 of the Companies Act 1948 (or for companies in Northern Ireland, section 148 of the Companies Act (Northern Ireland) 1960); or
 - (b) in the case of an industrial and provident society, within the meaning of section 15 of the Friendly and Industrial and Provident Societies Act 1968 (or for industrial and provident societies in Northern Ireland, section 47 of the Industrial and Provident Societies Act (Northern Ireland) 1969);
 - " price " includes a charge of any description ;
 - " restriction " includes a negative obligation, whether express or implied and whether absolute or not;
 - " services supply association " means such an association as is described in section 16(1) above ;
 - " supply " includes supply by way of lease or hire, and " acquire " shall be construed accordingly ;
 - " trade association " means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members, or of persons represented by its members.
- (2) For the purposes of—

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- (a) sections 6 to 9 above, and Schedule 3 to this Act except for paragraph 5(4) to (8) of that Schedule;
 - (b) Part III of this Act except as is provided by section 19(2) above;
- any two or more interconnected bodies corporate, or any two or more individuals carrying on business in partnership with each other, shall be treated as a single person.
- (3) This Act applies to the construction or carrying out of buildings, structures and other works by contractors, as it applies to the supply of goods, and for the purposes of this Act any buildings, structures or other works so construed or carried out shall be deemed to be delivered at the place where they are constructed or carried out.
 - (4) For the purposes of this Act a person shall not be deemed to carry on a business within the United Kingdom by reason only of the fact that he is represented for the purposes of that business by an agent within the United Kingdom.
 - (5) Any reference in this Act to any other enactment is a reference to that enactment as amended, or extended or applied by or under any other enactment, including this Act.

44 Consequential amendments, repeals and transitional provisions

The provisions of Schedule 4 to this Act have effect; and subject to the transitional provisions and savings contained in that Schedule—

- (a) the enactments specified in Schedule 5 to this Act have effect subject to the amendments (being amendments consequent on the provisions of this Act) specified in that Schedule, and
- (b) the enactments specified in Schedule 6 to this Act are hereby repealed to the extent specified in the third column of that Schedule,

but nothing in this Act shall be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the operation of repeals).

45 Short title, extent and commencement

- (1) This Act may be cited as the Restrictive Trade Practices Act 1976.
- (2) This Act extends to Northern Ireland.
- (3) This Act shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint.