



# Restrictive Trade Practices Act 1976

## 1976 CHAPTER 34

An Act to consolidate the enactments relating to restrictive trade practices. [22nd July 1976]

### Modifications etc. (not altering text)

- C1** Act excluded by Energy Act 1976 (c. 76), **s. 5(1)**; retrospectively by Participation Agreements Act 1978 (c. 1), **s. 1(2)**; (1.5.1980) by Competition Act 1980 (c. 21), **ss. 29, 30(2)**; by Merchant Shipping (Liner Conferences) Act 1982 (c. 37, SIF 111), **s. 11(1)**; by Restrictive Trade Practices (Stock Exchange) Act 1984 (c. 2, SIF 124:1), **s. 1**; (*retrospectively*) by Gas Act 1986 (c. 44, SIF 44:2), **s. 62(1)(2)**; by Insolvency Act 1986 (c. 45, SIF 66), **s. 428**; by Financial Services Act 1986 (c. 60, SIF 69), **ss. 125(1)–(3), 140, Sch. 11 paras. 12(1), 36(2)**; (*retrospectively*) by Channel Tunnel Act 1987 (c. 53, SIF 102), **s. 33(1)(4)(8)**; (*retrospectively*) by Electricity Act 1989 (c. 29, SIF 44:1), **s. 100(2)**; by Companies Act 1989 (c. 40, SIF 27), **s. 47(1), Sch. 14 para. 9(1)(2)**; (*retrospectively*) by Broadcasting Act 1990 (c. 42, SIF 96), **s. 194(1)**; by S.I. 1990/593 (N.I. 5), **art. 49(1), Sch. 14 para. 9(1)(2)**  
Act excluded (6.1.1994) by 1993 c. 43, **s. 131(1)**; S.I. 1993/3237, **art. 2(2)**  
Act excluded (*retrospectively*) by 1996 c. 61, **s. 23(1)(4)**  
Act excluded (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 41**; S.R. 1996/216, **art. 2**  
Act excluded (8.5.1998) by 1997 c. 66, **ss. 33, 40**; S.I. 1998/1028, **art. 2**  
Act excluded (6.3.1997) by S.I. 1997/648, **regs. 1, 32(2)(4)**
- C2** Act modified by Housing Act 1985 (c. 68, SIF 61), **s. 455(1)**; by Electricity Act 1989 (c. 29, SIF 44:1), **s. 100(4)**
- C3** Act modified (E.W. N.I.) by Housing Defects Act 1984 (c. 50, SIF 61), **s. 28(1)**; (N.I.) by Insolvency Act 1985 (c. 65, SIF 27), **s. 217(1)**; (S.) by Housing (Scotland) Act 1987 (c. 26, SIF 61), **s. 228(1)**
- C4** Act amended by Transport Act 1985 (c. 67, SIF 126), **ss. 115(2), 116(3)**; by S.I. 1987/2068, **art. 3**; by S.I. 1988/67, **art. 3**; by S.I. 1988/68, **art. 3**; by Electricity Act 1989 (c. 29, SIF 44:1), **s. 100(1)**; by Companies Act 1989 (c. 40, SIF 27), **s. 144(4), Sch. 18 para. 14**
- C5** Act applied by S.I. 1976/98, **arts. 3, 6, 8** (arts. 6 and 8 being added by S.I. 1989/1082, **art. 2, Sch.**)  
Act applied (N.I.)(17.2.1994) by S.I. 1993/3160 (N.I. 15), **art.32**
- C6** Act amended (E.W.) (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59), **ss. 10(1), 12(4)** (with **ss. 25(2), 167(2)**); S.I. 1991/2288, **art. 3, Sch.**  
Act amended (S.) (21.10.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 108), **s. 33(1)** (with **ss. 47(4), 167(2)**); S.I. 1991/2286, **art. 2(1), Sch. 1**
- C7** Act modified (S.) (21.10.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 108), **s. 33(3)** (with **ss. 47(4), 167(2)**); S.I. 1991/2286, **art. 2(1), Sch. 1**

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	Act modified (E.W.) (1.11.1991) by <b>New Roads and Street Works Act 1991</b> (c. 22, SIF 59), <b>ss. 10(3), 12(4)</b> (with <b>ss. 25(2), 167(2)</b> ); S.I. 1991/2288, <b>art. 3</b> , Sch.
<b>C8</b>	Definition of 'agreement' in Act applied (E.W.) (1.11.1991) by <b>New Roads and Street Works Act 1991</b> (c. 22, SIF 59), <b>ss. 10(3), 12(4)</b> (with <b>ss. 25(2), 167(2)</b> ); S.I. 1991/2288, <b>art. 3</b> , Sch.
<b>C9</b>	Definition of 'agreement' in Act applied (S.) (21.10.1991) by <b>New Roads and Street Works Act 1991</b> (c. 22, SIF 108), <b>s. 33(3)</b> (with <b>ss. 47(4), 167(2)</b> ); S.I. 1991/2286, <b>art. 2(1), Sch.1</b>
<b>C10</b>	Act: power to amend conferred (21.9.1995) by <b>1995 c. 25, s. 94(1)(o)</b> (with <b>ss. 7(6), 115, 117</b> ); S.I. 1995/1983, <b>art. 3</b> Act: power to modify conferred ( <i>retrospectively</i> ) by <b>1996 c. 61, ss. 23(2), 26(4)</b> Act: power to modify conferred (18.12.1996) by <b>1996 c. 61, ss. 23(8), 26</b> Act: power to exclude or modify conferred (22.9.1998) S.I. 1998/1762, <b>arts. 1(2), 4(1)(n)</b>
<b>C11</b>	Act restricted ( <i>retrospectively</i> ) by 1996/385, <b>art. 2</b>
<b>Commencement Information</b>	
<b>I1</b>	Act not in force at Royal Assent see <b>s. 45(3)</b> ; Act wholly in force at 15.12.1976

## PART I

### REGISTRATION AND JUDICIAL INVESTIGATION OF RESTRICTIVE AGREEMENTS

#### Modifications etc. (not altering text)

- C12** Pt. I (ss. 1–5) restricted by **Financial Services Act 1986** (c. 60, SIF 69), **ss. 127(4)(5), 140, Sch. 11 para. 36(2)**  
Pt. I (ss. 1–5) restricted (6.3.1997) by 1997/648, **art. 33(5)**

## 1 Registration of agreements and Court's jurisdiction.

- (1) Every agreement to which this Act applies by virtue of—
- (a) section 6 below (restrictive agreements as to goods);
  - (b) an order under section 7 below (information agreements as to goods);
  - (c) an order under section 11 below (restrictive agreements as to services);
  - (d) an order under section 12 below (information agreements as to services);
- is subject to registration under this Act.
- (2) The Director General of Fair Trading (“the Director”) continues charged with the duty—
- (a) of compiling and maintaining a register of agreements subject to registration under this Act;
  - (b) of entering or filing in the register such particulars as may be prescribed by regulations made under section 27 below of any such agreement, being—
    - (i) particulars duly furnished to him under this Act by parties to the agreement; or
    - (ii) documents or information obtained by him under this Act;
  - (c) of taking proceedings before the Restrictive Practices Court (“the Court”) in respect of the agreements of which particulars are from time to time entered or filed in the register; but this paragraph is subject to—
    - (i) such directions as may be given by the Secretary of State as to the order in which those proceedings are to be taken;

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(ii) section 21 below (Director's duties as to proceedings for investigation).

[<sup>F1</sup>(2A) In the case of a non-notifiable agreement, subsection (2)(a) and (b) above shall only apply where the Director considers that any restrictions or information provisions by virtue of which this Act applies to the agreement are of such significance as to call for investigation by the Court.]

(3) The Court has jurisdiction, on the Director's application in respect of an agreement of which particulars are for the time being registered under this Act, to declare whether or not any restrictions or information provisions by virtue of which this Act applies to the agreement are contrary to the public interest; but this jurisdiction is subject to paragraphs 6(2) and 9(2) of Schedule 3 to this Act.

#### Textual Amendments

**F1** S. 1(2A) inserted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2), **Sch. 3 para. 2**

#### Modifications etc. (not altering text)

**C13** S. 1(3) amended (1.5.1980) by **Competition Act 1980 (c. 21)**, ss. 25, 26

## 2 Restrictions against public interest and consequent Court orders.

- (1) Where under section 1(3) above any restrictions or information provisions by virtue of which this Act applies to an agreement are found by the Court to be contrary to the public interest, the agreement shall be void in respect of those restrictions or those information provisions.
- (2) Without prejudice to subsection (1) above, the Court may, on 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 (3) below—
  - (a) from giving effect to, or enforcing or purporting to enforce, the agreement in respect of those restrictions or those information provisions;
  - (b) from making any other agreement (whether with the same parties or with other parties) to the like effect; or
  - (c) where such an agreement as is mentioned in paragraph (b) above has already been made, from giving effect to that agreement or enforcing or purporting to enforce it.
- (3) Those who may be restrained by an order of the Court under subsection (2) above are—
  - (a) the persons party to the agreement who carry 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.
- (4) Where any of the parties to an agreement against whom an order under subsection (2) is made is a member of a trade association or of a services supply association, the order may include provisions for restraining the association and any person acting on behalf of the association from procuring or assisting any such party to do anything which would be a contravention of the order in its application to him.

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(5) Where—

- (a) any restriction accepted under a term implied by virtue of section 8(2) below in an agreement for the constitution of a trade association;
- (b) any information provision made under a term implied by virtue of section 8(4) below in an agreement for the constitution of a trade association;
- (c) any restriction accepted under a term implied by virtue of section 16(3) below in an agreement for the constitution of a services supply association;
- (d) any information provision made under a term implied by virtue of section 16(5) below in an agreement for the constitution of a services supply association;

is found by the Court to be contrary to the public interest, the Court may (without prejudice to its powers under this section) make such order as appears to the Court to be proper for restraining the association or any person acting on behalf of the association from making any recommendation to which that term would apply.

- (6) The powers of the Court under this and the preceding section are not affected by the determination of an agreement effected after the commencement of the proceedings, and where an agreement is varied after the commencement of the proceedings, the Court may make a declaration and, if it thinks fit, an order under subsection (2) or subsection (5) above, either in respect of the agreement as at the commencement of the proceedings or in respect of the agreement as varied, or both.

### 3 Interim orders of the Court.

- (1) Where the Director has made an application under section 1(3) above, he may apply to the Court for an interim order under this section—
- (a) at any time before the Court has made an order under section 2(2) above in respect of the agreement, and
  - (b) whether before or after the Court has made a declaration under section 1(3) in respect of the agreement.
- (2) An application under this section shall specify the restrictions or information provisions which appear to the Director, in relation to the agreement to which the application relates—
- (a) to be restrictions or information provisions such as are mentioned in section 1(3), and
  - (b) to be contrary to the public interest, and
  - (c) to be restrictions or information provisions in respect of which, in accordance with the following provisions of this section, it would be appropriate for an interim order to be made.
- (3) If on an application under this section the Court is satisfied that the following conditions are fulfilled in relation to all or any of the restrictions or information provisions specified in the application—
- (a) that they are restrictions or information provisions such as are mentioned in section 1(3);
  - (b) that they could not reasonably be expected to be shown to fall within any of paragraphs (a) to (h) of section 10(1) below or any of paragraphs (a) to (h) of section 19(1) below, as the case may be; and
  - (c) that the operation of the restrictions or information provisions, during the period likely to elapse before an order can be made in respect of them under

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section 2(2), is likely to cause material detriment to the public or a section of the public generally, or to a particular person who is not a party to the agreement;

the Court may, if it thinks fit, make an interim order specifying the restrictions or information provisions in relation to which the Court is satisfied that those conditions are fulfilled.

- (4) Any such interim order may exercise, in respect of the restrictions or information provisions specified in the order, any powers which could be exercised in respect of them by an order under section 2(2) if those restrictions or those information provisions had been found by the Court to be contrary to the public interest.
- (5) At any time when any such interim order is in force the Court, on the application of the Director or of any person who is subject to or entitled to the benefit of any restriction or information provision specified in the order, may discharge the order and substitute for it any interim order which could have been made on the original application under this section.
- (6) An interim order made under this section in respect of an agreement ceases to have effect on the occurrence of whichever of the following first occurs—
  - (a) the termination of such period, or the happening of such event, as may be specified for that purpose in the order;
  - (b) the discharge of the order by the Court;
  - (c) a declaration by the Court that the restrictions or information provisions specified in the interim order are not contrary to the public interest;
  - (d) the final determination by the Court of an application under section 2(2) in respect of that agreement.

#### **4 Variation of the Court's decisions.**

- (1) The Court, upon application made in accordance with this section, may—
  - (a) discharge any previous declaration of the Court in respect of any restriction or information provision, and any order made by the Court in pursuance of that declaration, and
  - (b) substitute such other declaration, and make such order in pursuance of that declaration,as appears to the Court to be proper at the time of the hearing of the application.
- (2) The provisions of section 10 below or of section 19 below, as the case may be, apply with the necessary modifications in relation to proceedings on an application under this section as they apply in relation to the proceedings mentioned in those sections.
- (3) An application under this section may be made by the Director or by any person who is or was at the time of the previous determination of the Court, subject to or entitled to the benefit of the restriction or information provision in question.
- (4) No application shall be made under this section except with the leave of the Court, and such leave shall not be granted except upon prima facie evidence of a material change in the relevant circumstances.
- (5) Notwithstanding anything in subsection (4) above, leave to make an application under this section for the discharge of a declaration or order of the Court made before the commencement of the <sup>M1</sup>Restrictive Trade Practices Act 1968 (25th November 1968)

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may, if the applicant proposes to rely on paragraph (h) of section 10(1) below, be granted upon prima facie evidence of the relevance of that paragraph to the application.

(6) This section does not apply in relation to any order made under section 3 above.

#### Marginal Citations

**M1** 1968 c. 66.

## 5 The European Communities.

(1) This Act applies to an agreement notwithstanding that it is or may be void by reason of any directly applicable Community provision, or is expressly authorised by or under any such provision; but this subsection is subject to subsection (2) and section 34 below.

(2) The Court—

- (a) may decline or postpone the exercise of its jurisdiction under sections 1 and 2 above, or
- (b) may, notwithstanding subsection (2) of section 4 above, exercise its jurisdiction under that section,

if and in so far as it appears to the Court right so to do having regard to the operation of any directly applicable Community provision or to the purpose and effect of any authorisation or exemption granted in relation so such a provision.

## PART II

### GOODS

## 6 Restrictive agreements as to goods.

(1) This Act applies to agreements (whenever made) between two or more persons carrying on business within the United Kingdom in the production or supply of goods, or in the application to goods of any process of manufacture, whether with or without other parties, being agreements under which restrictions are accepted by two or more parties in respect of any of the following matters—

- (a) the prices to be charged, quoted or paid for goods supplied, offered or acquired, or for the application of any process of manufacture to goods;
- (b) the prices to be recommended or suggested as the prices to be charged or quoted in respect of the resale of goods supplied;
- (c) the terms or conditions on or subject to which goods are to be supplied or acquired or any such process is to be applied to goods;
- (d) the quantities or descriptions of goods to be produced, supplied or acquired;
- (e) the processes of manufacture to be applied to any goods, or the quantities or descriptions of goods to which any such process is to be applied; or
- (f) the persons or classes of persons to, for or from whom, or the areas or places in or from which, goods are to be supplied or acquired, or any such process applied.

(2) For the purposes of subsection (1) above it is immaterial—

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- (a) whether any restrictions accepted by parties to an agreement relate to the same or different matters specified in that subsection, or have the same or different effect in relation to any matter so specified, and
  - (b) whether the parties accepting any restrictions carry on the same class or different classes of business.
- (3) For the purposes of this Part of this Act an agreement which—
- (a) confers privileges or benefits only upon such parties as comply with conditions as to any such matters as are described in subsection (1)(a) to (f) above; or
  - (b) imposes obligations upon parties who do not comply with such conditions;
- shall be treated as an agreement under which restrictions are accepted by each of the parties in respect of those matters.
- (4) Without prejudice to subsection (3) above, an obligation on the part of any party to an agreement to make payments calculated by reference—
- (a) to the quantity of goods produced or supplied by him, or to which any process of manufacture is applied by him; or
  - (b) to the quantity of materials acquired or used by him for the purpose of or in the production of any goods or the application of any such process to goods;
- being payments calculated, or calculated at an increased rate, in respect of quantities of goods or materials exceeding any quantity specified in or ascertained in accordance with the agreement, shall be treated for the purposes of this Act as a restriction in respect of the quantities of those goods to be produced or supplied, or to which that process is to be applied.

This subsection does not apply to any obligation on the part of any person to make payments to a trade association of which he is a member, if the payments are to consist only of bona fide subscriptions for membership of the association.

**Modifications etc. (not altering text)**

C14 S. 6 modified by S.I. 1989/1081, arts. 4, 6

## 7 Information agreements as to goods.

- (1) The Secretary of State may by statutory instrument make an order directing that this Act shall apply to information agreements (whenever made) of any class described in the order; and in this section “information agreement” means an agreement between two or more persons carrying on within the United Kingdom any such business as is described in section 6(1) above, whether with or without other parties, being an agreement under which provision is made for or in relation to the furnishing by two or more parties to each other or to other persons (whether parties or not) of information in respect of any of the following matters—
- (a) the prices charged, quoted or paid or to be charged, quoted or paid for goods which have been or are to be supplied, offered or acquired or for the application of any process of manufacture to goods;
  - (b) the prices to be recommended or suggested as the prices to be charged or quoted in respect of the resale of goods supplied;
  - (c) the terms or conditions on or subject to which goods have been or are to be supplied or acquired or any such process has been or is to be applied to goods;



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- (d) the quantities or descriptions of goods produced, supplied or acquired or to be produced, supplied or acquired;
  - (e) the costs incurred or to be incurred in producing, supplying or acquiring goods or in applying any such process to goods;
  - (f) the processes of manufacture which have been or are to be applied to any goods or the quantities or descriptions of goods to which any such process has been or is to be applied;
  - (g) the persons or classes of persons to or for whom goods have been or are to be supplied, or from or for whom goods have been or are to be acquired, or for whom any such process has been or is to be applied;
  - (h) the areas or places in or from which goods have been or are to be supplied or acquired or in which any such process has been or is to be applied to goods.
- (2) For the purposes of subsection (1) above it is immaterial—
- (a) whether any information provisions made by the parties to an agreement relate to the same or different matters specified in that subsection, or have the same or different effect in relation to any matter so specified, and
  - (b) whether the parties by whom any information is to be furnished carry on the same class or different classes of business.
- (3) An order under this section may describe the classes of information agreements to which it applies by reference to one or more of the following matters—
- (a) the trade or industry in which the persons to whom the information provision made by the agreement applies are engaged, or the class of business carried on by such persons;
  - (b) the character of the information provision made by the agreement, or the goods, processes, transactions, areas, places or other matters with respect to which that provision relates;
  - (c) any other features which appear to the Secretary of State to be expedient.
- [<sup>F2</sup>(3A) An order under this section may specify matters (in addition to those mentioned in section 9) which are to be disregarded in determining whether an agreement is one to which this Act applies by virtue of the order.]
- (4) No order shall be made under this section unless a draft of the order has been laid before, and approved by resolution of, each House of Parliament.
- (5) The Secretary of State shall, before laying before Parliament the draft of an order under this section for applying this Act in relation to information agreements of any class, publish in such manner as he thinks appropriate a notice—
- (a) describing the classes of agreements to which the proposed order would apply; and
  - (b) specifying a period (not being less than 28 days) within which representations with respect to the proposed order may be made to the Secretary of State;
- and in settling the draft to be laid before Parliament shall take into consideration any such representations received by him within that period.

#### Textual Amendments

**F2** S. 7(3A) inserted retrospectively by [Restrictive Trade Practices Act 1977 \(c. 19\), s. 3\(1\)](#)



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## **8 Trade associations.**

- (1) This Act has effect in relation to an agreement made by a trade association as if the agreement were made between all persons who are members of the association or are represented on it by such members and, where any restriction is accepted or information provision made in the agreement on the part of the association, as if the like restriction or the like information provision were accepted or made by each of those persons.
- (2) Where—
  - (a) specific recommendations (whether express or implied) are made by or on behalf of an association to its members, or to any class of its members, and
  - (b) those recommendations are as to the action to be taken or not to be taken by them in relation to any particular class of goods or process of manufacture in respect of any matters described in section 6(1) above,this Act has effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (3) below.
- (3) The term referred to in subsection (2) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the action to be taken by them in relation to the same class of goods or process of manufacture and in respect of the same matters.
- (4) In the case of an order under section 7 above, where—
  - (a) specific recommendations (whether express or implied) are made by or on behalf of an association to its members, or to any class of its members, and
  - (b) those recommendations are as to the furnishing of information in relation to any particular class of goods or process of manufacture in respect of any matters described in subsection (1) of that section,this Act has effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (5) below.
- (5) The term referred to in subsection (4) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the furnishing of information in relation to the same class of goods or process of manufacture and in respect of the same matters.

## **9 Provisions to be disregarded under Part II.**

- (1) In determining whether an agreement is an agreement to which this Act applies by virtue of this Part, where—
  - (a) the parties to the agreement are or include two or more bodies to which this subsection applies, and
  - (b) restrictions or information provisions relating to coal or steel, or relating to both coal and steel, are accepted or made, as the case may be, under the agreement by two or more such bodies, whether the restrictions so accepted or the information provisions so made by those bodies are the same restrictions or different restrictions or are the same information provisions or different information provisions,

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no account shall be taken of any such restriction or information provision which is accepted or made under the agreement by a body to which this subsection applies, whether that restriction or information provision is also accepted or made by any other party to the agreement or not.

- (2) Subsection (1) above applies to any body which, in accordance with Article 80 of the E.C.S.C. Treaty, constitutes an undertaking for the purposes of Articles 65 and 66 of that Treaty, and in that subsection “coal” and “steel” have the meanings assigned to them respectively by Annex I to that Treaty.
- (3) In determining whether an agreement for the supply of goods or for the application of any process of manufacture to goods is an agreement to which this Act applies by virtue of this Part, no account shall be taken of any term which relates exclusively to the goods supplied, or to which the process is applied, in pursuance of the agreement.
- (4) Where any such restrictions as are described in section 6(1) above are accepted or any such information provisions as are described in section 7(1) above are made as between two or more persons by whom, or two or more persons to or for whom, goods are to be supplied, or the process applied, in pursuance of the agreement, subsection (3) above shall not apply to those restrictions or to those information provisions unless accepted or made in pursuance of a previous agreement—
  - (a) in respect of which particulars have been registered under this Act; or
  - (b) which is exempt from registration by virtue of an order under section 29 (agreements important to the national economy) or section 30 (agreements holding down prices) below.
- (5) In determining whether an agreement is an agreement to which this Act applies by virtue of this Part, no account shall be taken of any term by which the parties or any of them agree to comply with or apply, in respect of the production, supply or acquisition of any goods or the application to goods of any process of manufacture—
  - (a) standards of dimension, design, quality or performance, or
  - (b) arrangements as to the provision of information or advice to purchasers, consumers or users,
 being either standards or arrangements for the time being approved by the British Standards Institution or standards or arrangements prescribed or adopted by any trade association or other body and for the time being approved by order of the Secretary of State made by statutory instrument.
- (6) In determining whether an agreement is an agreement to which this Act applies by virtue of this Part, no account shall be taken of any restriction or information provision which affects or otherwise relates to the workers to be employed or not employed by any person, or as to the remuneration, conditions of employment, hours of work or working conditions of such workers.

In this subsection “worker” means a person who has entered into or works under a contract with an employer whether the contract be by way of manual labour, clerical work, or otherwise, be express or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour.

- (7) Any reference in Schedule 3 to this Act to—
  - (a) such restrictions as are described in section 6(1) above, or
  - (b) such information provisions as are described in section 7(1) above,

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**Changes to legislation:** There are currently no known outstanding effects for the Restrictive Trade Practices Act 1976 (repealed 1.3.2000). (See end of Document for details)

shall be construed, in relation to any agreement, as not including references to restrictions or information provisions of which, by virtue of any provision of this section, account cannot be taken in determining whether the agreement is one to which this Act applies by virtue of this Part, or of restrictions accepted or information provisions made by any term of which account cannot be so taken.

#### Subordinate Legislation Made

**P1** [S. 9\(5\)](#): S. 9(5) power exercised (21. 08. 1991) by [S.I.1991/1896](#)

For previous exercises of power see Index to Government Orders

## 10 Presumption under Part II as to the public interest.

- (1) For the purposes of any proceedings before the Court under Part I of this Act, a restriction accepted or information provision made in pursuance of an agreement to which this Act applies by virtue of this Part shall be deemed to be contrary to the public interest unless the Court is satisfied of any one or more of the following circumstances—
- (a) that the restriction or information provision is reasonably necessary, having regard to the character of the goods to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the consumption, installation or use of those goods;
  - (b) that the removal of the restriction or information provision would deny to the public as purchasers, consumers or users of any goods other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction or information provision itself or of any arrangements or operations resulting therefrom;
  - (c) that the restriction or information provision is reasonably necessary to counteract measures taken by any one person not party to the agreement with a view to preventing or restricting competition in or in relation to the trade or business in which the persons party thereto are engaged;
  - (d) that the restriction or information provision is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of goods to, or the acquisition of goods from, any one person not party thereto who controls a preponderant part of the trade or business of acquiring or supplying such goods, or for the supply of goods to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such person, controls a preponderant part of the market for such goods;
  - (e) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to have a serious and persistent adverse effect on the general level of unemployment in an area, or in areas taken together, in which a substantial proportion of the trade or industry to which the agreement relates is situated;
  - (f) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to cause a reduction in the volume or earnings of the export business which is substantial either in relation to the whole export business of the United Kingdom or in relation to the whole business (including export business) of the said trade or industry;

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- (g) that the restriction or information provision is reasonably required for purposes connected with the maintenance of any other restriction accepted or information provision made by the parties, whether under the same agreement or under any other agreement between them, being a restriction or information provision which is found by the Court not to be contrary to the public interest upon grounds other than those specified in this paragraph, or has been so found in previous proceedings before the Court; or
- (h) that the restriction or information provision does not directly or indirectly restrict or discourage competition to any material degree in any relevant trade or industry and is not likely to do so;

and is further satisfied (in any such case) that the restriction or information provision is not unreasonable having regard to the balance between those circumstances and any detriment to the public or to persons not parties to the agreement (being purchasers, consumers or users of goods produced or sold by such parties, or persons engaged or seeking to become engaged in the trade or business of selling such goods or of producing or selling similar goods) resulting or likely to result from the operation of the restriction or the information provision.

(2) In this section—

- (a) “purchasers”, “consumers” and “users” include persons purchasing, consuming or using for the purpose or in the course of trade or business or for public purposes; and
- (b) references to any one person include references to any two or more persons being interconnected bodies corporate or individuals carrying on business in partnership with each other.

### PART III

#### SERVICES

#### 11 Restrictive agreements as to services.

- (1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this section, as “services brought under control by the order”) and direct by the order that this Act shall apply to agreements (whenever made) which—
  - (a) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties; and
  - (b) are agreements under which restrictions, in respect of matters specified in the order for the purposes of this paragraph, are accepted by two or more parties.
- (2) The matters which may be specified in such an order for the purposes of subsection (1) (b) above are any of the following—
  - (a) the charges to be made, quoted or paid for designated services supplied, offered or obtained;
  - (b) the terms or conditions on or subject to which designated services are to be supplied or obtained;
  - (c) the extent (if any) to which, or the scale (if any) on which, designated services are to be made available, supplied or obtained;

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- (d) the form or manner in which designated services are to be made available, supplied or obtained;
- (e) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services are to be made available or supplied or are to be obtained.

**Modifications etc. (not altering text)**

**C15** Ss. 11, 12 amended by [Merchant Shipping \(Liner Conferences\) Act 1982 \(c. 37, SIF 111\)](#), s. 11(5)

## 12 Information agreements as to services.

- (1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this section, as “services brought under control by the order”) and direct by the order that this Act shall apply to agreements (whenever made) which—
  - (a) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties; and
  - (b) are agreements under which provision is made for or in relation to the furnishing by two or more parties to each other or to other persons (whether parties or not) of information with respect to matters specified in the order for the purposes of this paragraph.
- (2) The matters which may be specified in such an order for the purposes of subsection (1) (b) above are any of the following—
  - (a) the charges made, quoted or paid or to be made, quoted or paid for designated services which have been or are to be supplied, offered or obtained;
  - (b) the terms or conditions on or subject to which designated services have been or are to be supplied or obtained;
  - (c) the extent (if any) to which, or the scale (if any) on which, designated services have been or are to be made available, supplied or obtained;
  - (d) the form or manner in which designated services have been or are to be made available, supplied or obtained;
  - (e) the costs incurred or to be incurred in making available, supplying or obtaining designated services;
  - (f) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services have been or are to be made available or supplied or have been or are to be obtained.

**Modifications etc. (not altering text)**

**C16** Ss. 11, 12 amended by [Merchant Shipping \(Liner Conferences\) Act 1982 \(c. 37, SIF 111\)](#), s. 11(5)

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### **13 Designated services.**

- (1) In relation to any order made under section 11 or section 12 above, “designated services” in this Act means services of any class described in the order as being designated services.
- (2) Subject to subsection (3) below, a class of services described in any such order as being designated services may consist wholly or partly of services brought under control by the order or wholly or partly of other services, and may be described so as to consist—
  - (a) of services of one or more descriptions specified in that behalf in the order, or
  - (b) of all services except services of one or more descriptions so specified,
 and different classes of services may be so described in relation to different matters specified in the order for the purposes of section 11(1)(b) or section 12(1)(b) above, as the case may be.
- (3) A class of services described in such an order as being designated services shall not include any of the services specified in Schedule 1 to this Act.

### **14 Supplementary provisions as to orders under Part III.**

- (1) A class of services described in an order under section 11 or section 12 above as being the services brought under control by the order may consist—
  - (a) of services of one or more descriptions specified in that behalf in the order; or
  - (b) of all services except services of one or more descriptions so specified; or
  - (c) of all services without exception.
- (2) An order under section 11 or section 12 may limit the operation of the order to agreements fulfilling such conditions (in addition to those mentioned in section 11 or section 12, as the case may be) as may be specified in the order [<sup>F3</sup>and may specify matters (in addition to those mentioned in section 18) which are to be disregarded for the purpose of determining whether an agreement is one to which this Act applies by virtue of the order].
- (3) In particular, but without prejudice to the generality of subsection (2) above, an order under section 12 may limit the operation of the order to agreements under which the provision for the furnishing of information (as mentioned in subsection (1)(b) of that section) is provision of a kind specified in the order or provides for the furnishing of information of a kind so specified.
- (4) Subject to subsection (2) above—
  - (a) for the purposes of any order under section 11 it is immaterial whether any restrictions accepted by parties to an agreement relate to the same or to different matters specified in the order for the purposes of subsection (1)(b) of that section, or have the same or a different effect in relation to any matter so specified, and
  - (b) for the purposes of any order under section 12 it is immaterial whether any information provision made by an agreement relates to the same or to different matters specified in the order for the purposes of subsection (1)(b) of that section,

and it is immaterial for those purposes whether the parties accepting any restrictions, or the parties by whom any information is to be furnished, as the case may be, carry on the same class or different classes of business.

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(5) Where, at a time when an order under section 11 or section 12 (in this subsection referred to as “the earlier order”) is in force, another order (in this subsection referred to as “the subsequent order”) is made under the same section, the subsequent order may provide that—

- (a) for the purposes of the earlier order; or
- (b) for the purposes of the subsequent order; or
- (c) for the purposes of both orders;

the condition specified in section 11(1)(a) or in section 12(1)(a) as the case may be, shall be treated as fulfilled in relation to an agreement if it is an agreement to which the parties are or include one person carrying on business in the United Kingdom in the supply of services brought under control by the earlier order and one person carrying on business within the United Kingdom in the supply of services brought under control by the subsequent order.

This subsection has effect without prejudice to any power to vary any order made under section 11 or section 12.

(6) In the following provisions of this Part of this Act “the relevant provisions”, in relation to an order under section 11 or section 12 above, means the provisions of this Act as they have effect in relation to that order.

#### Textual Amendments

**F3** Words added retrospectively by [Restrictive Trade Practices Act 1977 \(c. 19\), s. 1\(1\)](#)

### 15 Procedure as to orders under Part III.

- (1) No order shall be made under section 11 or section 12 above unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (2) Before laying before Parliament a draft of any such order, the Secretary of State shall publish in such manner as he thinks appropriate a notice—
  - (a) describing the classes of services which, if the order is made, will be services brought under control by the order and will be designated services in relation to the order respectively;
  - (b) indicating the nature of any limitation to be imposed by the order under section 14 (2) or (3) above; and
  - (c) specifying a period (not being less than 28 days) within which representations with respect to the proposed order may be made to the Secretary of State.
- (3) In settling the draft to be laid before Parliament the Secretary of State shall take into consideration any representations with respect to the proposed order which may be received by him within the period specified in the notice in accordance with subsection (2)(c) above.

### 16 Services supply associations.

- (1) For the purposes of any order made under section 11 or section 12 above, and for the purposes of the relevant provisions, subsections (2) to (6) below have effect in relation to any association (whether incorporated or not) if—



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- (a) its membership consists wholly or mainly of persons (in this subsection referred to as “members affected by the order”) who are either engaged in the supply of services brought under control by the order or are employed by or represent persons so engaged; and
  - (b) its objects or activities include the promotion of the interests of persons engaged in the supply of those services who are either members affected by the order or are persons represented by such members.
- (2) The relevant provisions have effect in relation to any agreement made by an association described in subsection (1) above (“services supply association”)—
- (a) as if the agreement were made between all persons who are members of the association or are represented on it by members of the association, and
  - (b) where any restriction is accepted under the agreement by the association, or any information provision is made in the agreement by the association, as if the like restriction were accepted by, or (as the case may be) the like provision were made by, each of the persons who are members of the association or are so represented.
- (3) In the case of an order under section 11, where—
- (a) specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, and
  - (b) those recommendations are as to the action to be taken or not to be taken by them in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(b) of that section,
- the relevant provisions have effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (4) below.
- (4) The term referred to in subsection (3) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the action to be taken by them in relation to the same class of services and in respect of the same matters.
- (5) In the case of an order under section 12 above, where—
- (a) specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, and
  - (b) those recommendations are as to the furnishing of information in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(b) of that section, the relevant provisions have effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (6) below.
- (6) The term referred to in subsection (5) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the furnishing of information in relation to the same class of services and in respect of the same matters.

**Modifications etc. (not altering text)**

C17 S. 16(1) restricted by [Trustee Savings Bank Act 1981 \(c. 65, SIF 110\)](#), s. 7(6)

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- C18** S. 16(3) excluded (1.5.1980) by Competition Act 1980 (c. 21), s. 27
- C19** S. 16(3)(5) excluded (S.) by Home Purchase Assistance and Housing Corporation Guarantee Act 1978 (c. 27), s. 2(5)
- C20** S. 16(3)(5) excluded (E.W.) by Housing and Building Control Act 1984 (c. 29, SIF 61), s.20(7), Housing Act 1985 (c. 68, SIF 61), s. 454, by Housing Associations Act 1985 (c. 69, SIF 61), s. 84(6)
- C21** S. 16(3)(5) excluded (S.) by Housing Associations Act 1985 (c. 69, SIF 61), s. 86(5), by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 227(2), 229(5)

## 17 Matters equivalent to restrictions for purposes of s. 11.

- (1) For the purposes of any order made under section 11 above, and for the purposes of the relevant provisions, an agreement which—
- confers privileges or benefits only upon such parties as comply with conditions as to any such matters as are mentioned in subsection (2) of that section; or
  - imposes obligations upon parties who do not comply with such conditions; shall be treated as an agreement under which restrictions are accepted by each of the parties in respect of those matters.
- (2) Without prejudice to subsection (1) above, an obligation on the part of any party to an agreement to make payments calculated by reference to the extent to which, or the scale on which—
- any designated services are made available or supplied by him; or
  - any services are obtained by him for the purpose of making available or supplying any designated services;

if the payments are calculated, or calculated at an increased rate, in respect of an extent or scale exceeding an extent or scale specified in or ascertained in accordance with the agreement, shall be treated for the purposes mentioned in subsection (1) as a restriction in respect of the extent or scale of the designated services to be made available or supplied.

This subsection does not apply to any obligation on the part of any person to make payments to a services supply association of which he is a member, if the payments are to consist only of bona fide subscriptions for membership of the association.

## 18 Provisions to be disregarded under Part III.

- (1) The following provisions of this section have effect for the purpose of determining whether an agreement is one to which this Act applies by virtue of an order under section 11 or section 12 above.
- (2) Subject to subsections (3) and (4) below, no account shall for that purpose be taken of any term which relates exclusively to the services supplied in pursuance of the agreement in question.
- (3) Where—
- the order referred to in subsection (1) above is an order under section 11, and
  - any of the restrictions accepted as mentioned in subsection (1)(b) of that section are accepted as between two or more persons by whom, or two or more persons for whom, designated services are to be supplied in pursuance of the agreement,

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subsection (2) above does not apply to any term of the agreement which imposes those restrictions unless they are accepted in pursuance of a previous agreement in respect of which particulars have been registered under this Act by virtue of this Part.

(4) Where—

- (a) the order referred to in subsection (1) is an order under section 12, and
- (b) the term referred to in subsection (2) is one by which provision is made for the furnishing of information as mentioned in subsection (1)(b) of that section by two or more persons by whom, or two or more persons for whom, designated services are to be supplied in pursuance of the agreement,

subsection (2) does not apply to that term unless it is included in the agreement in pursuance of a previous agreement of which particulars have been registered under this Act by virtue of this Part.

(5) For the purpose mentioned in subsection (1) no account shall be taken of any term by which the parties or any of them agree to comply with or apply, in respect of making available, supplying or obtaining any designated services—

- (a) any standards (whether being standards of performance in the provision of the services or standards of dimension, design, quality or performance in respect of goods used in providing them) which are either standards approved for the time being by the British Standards Institution or standards prescribed or adopted by an association or other body and for the time being approved by an order made by the Secretary of State by statutory instrument; or
- (b) any arrangements either approved by the British Standards Institution, or prescribed or adopted and approved by an order of the Secretary of State, as mentioned in the preceding paragraph, as to the provision of information or advice to persons for whom designated services are supplied or agreed to be supplied.

(6) For the purpose mentioned in subsection (1) no account shall be taken of any restriction which affects or relates to any of the matters mentioned in section 9(6) above (which relates to employment and to terms and conditions of employment) or of any information provision with respect to any of those matters.

(7) Any reference in Schedule 3 to this Act—

- (a) to restrictions accepted in respect of matters specified in an order under section 11 for the purposes of subsection (1)(b) of that section; or
- (b) to information provisions made with respect to matters specified in an order under section 12 for the purposes of subsection (1)(b) of that section;

shall be construed, in relation to any agreement, as not including anything of which, by virtue of this section, account cannot be taken for the purpose mentioned in subsection (1).

#### **Subordinate Legislation Made**

**P2** [S. 18\(5\)](#): power exercised (21.8.1991) by [S.I.1991/1897](#)

## **19 Presumption under Part III as to the public interest.**

(1) For the purposes of any proceedings before the Court under Part I of this Act, a restriction accepted or information provision made in pursuance of an agreement

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to which this Act applies by virtue of this Part shall be deemed to be contrary to the public interest unless the Court is satisfied of any one or more of the following circumstances—

- (a) that the restriction or information provision is reasonably necessary having regard to the character of the services to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the use of those services or in connection with the consumption, installation or use of goods in relation to which those services are supplied;
- (b) that the removal of the restriction or information provision would deny to the public as users of any services, or as [<sup>F4</sup>vendors], purchasers, consumers or users of any goods [<sup>F5</sup>or other property] in relation to which any services are supplied, other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction or information provision itself or of any arrangements or operations resulting therefrom;
- (c) that the restriction or information provision is reasonably necessary to counteract measures taken by any one person not party to the agreement with a view to preventing or restricting competition in or in relation to the trade or business in which the person party thereto are engaged;
- (d) that the restriction or information provision is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of services to, or for obtaining services from, any one person not party thereto who controls a preponderant part of the trade or business of supplying such services, or for the supply of services to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such person, controls a preponderant part of the market for such services;
- (e) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to have a serious and persistent adverse effect on the general level of unemployment in an area, or in areas taken together, in which a substantial proportion of the trade or industry to which the agreement relates is situated;
- (f) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to cause a reduction in the volume or earnings of the export business which is substantial either in relation to the whole export business of the United Kingdom or in relation to the whole business (including export business) of the said trade or industry;
- (g) that the restriction or information provision is reasonably required for purposes connected with the maintenance of any other restriction accepted or information provision made by the parties, whether under the same agreement or under any other agreement between them, being a restriction or information provision which is found by the Court not to be contrary to the public interest upon grounds other than those specified in this paragraph, or has been so found in previous proceedings before the Court; or
- (h) that the restriction or information provision does not directly or indirectly restrict or discourage competition to any material degree in any relevant trade or industry and is not likely to do so;

and is further satisfied (in any such case) that the restriction or information provision is not unreasonable having regard to the balance between those circumstances and

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any detriment to the public or to persons not parties to the agreement (being users of services supplied by such parties, or persons engaged or seeking to become engaged in any business of supplying such services or of making available or supplying similar services, or being [<sup>F4</sup>vendors], purchasers, consumers or users of goods [<sup>F5</sup>or other property] in relation to which any such services or similar services are supplied) resulting or likely to result from the operation of the restriction or information provision.

(2) In this section—

- (a) [<sup>F6</sup> “vendors” ], “purchasers”, “consumers” and “users” include persons [<sup>F6</sup>selling], purchasing, consuming or using for the purpose or in the course of trade or business or for public purposes; and
- (b) references to any one person include references to any two or more persons being interconnected bodies corporate or individuals carrying on business in partnership with each other.

#### Textual Amendments

- F4** Word inserted (1.5.1980) by [Competition Act 1980 \(c. 21\), s. 28\(1\)\(a\)](#)
- F5** Words inserted (1.5.1980) by [Competition Act 1980 \(c. 21\), s. 28\(1\)\(b\)](#)
- F6** Word inserted (1.5.1980) by [Competition Act 1980 \(c. 21\), s. 28\(2\)](#)

## 20 Interpretation of Part III.

In this Part of this Act—

“business” includes a professional practice;

“the relevant provisions” has the meaning given by section 14(6) above;

“scale” (where the reference is to the scale on which any services are, or are to be, made available, supplied or obtained) means scale measured in terms of money or money’s worth or in any other manner;

“services”—

- (a) does not include the application to goods of any process of manufacture or any services rendered to an employer under a contract of employment (that is, a contract of service or of apprenticeship, whether it is express or implied, and, if it is express, whether it is oral or in writing), but, with those exceptions.
- (b) includes engagements (whether professional or other) which for gain or reward are undertaken and performed for any matter other than the production or supply of goods, [<sup>F7</sup>and]
- (c) [<sup>F8</sup>includes arrangements for the use by public service vehicles (within the meaning of the Public Passenger Vehicles Act 1981) of a parking place which is used as a point at which passengers on services provided by means of such vehicles may be taken up or set down.]

and any reference to the supply of services or to supplying, obtaining or offering services or to making services available shall be construed accordingly.

#### Textual Amendments

- F7** Word added by [Transport Act 1985 \(c. 67, SIF 126\), s. 116\(2\)](#)

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**F8** Paragraph (c) added in the definition of “services” by [Transport Act 1985 \(c. 67, SIF 126\), s. 116\(2\)](#)

## 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 <sup>M2</sup>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.

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(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 <sup>M3</sup>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.

**Marginal Citations**

**M2** 1976 c. 33.

**M3** 1976 c. 33.

*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;
  - [<sup>F9</sup>(b) particulars containing information whose publication would, in the Secretary of State's opinion, substantially damage the legitimate business interests of any person, not being information whose publication is, in the Secretary of State's opinion, in the public interest.]
- (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.



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- (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.

#### Textual Amendments

- F9** S. 23(3)(b) substituted (3.1.1995) by 1994 c. 40, s. 11 (which s. 11 is prospectively repealed by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 19(1)(2), **Sch. 14 Pt. I**); S.I. 1994/3188, **arts. 2, 3**

## 24 Particulars and time for registration.

- (1) In respect of every agreement which is subject to registration under this Act [<sup>F10</sup>, other than a non-notifiable agreement,] the following particulars shall be furnished to the Director—
- the names and addresses of the persons who are parties to the agreement; and
  - 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—
- an agreement which is subject to registration under this Act [<sup>F11</sup>and is not a non-notifiable agreement]; and
  - the variation or determination of [<sup>F12</sup>an agreement which, at the time of the variation or determination, falls within paragraph (a) above];

[<sup>F13</sup>(2A) Subsections (1) and (2)(a) above shall not apply in relation to an agreement which ceases to be a non-notifiable agreement by virtue of the Director entering or filing particulars of it under section 1(2)(b) above.]

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—
- 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;
  - 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.

#### Textual Amendments

- F10** Words in s. 24(1) inserted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), **Sch. 3 para. 3(2)**

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- F11** Words in s. 24(2)(a) inserted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), **Sch. 3 para. 3(3)(a)**  
**F12** Words in s. 24(2)(b) substituted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), **Sch. 3 para. 3(3)(b)**  
**F13** S. 24(2A) inserted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), **Sch. 3 para. 3(4)**

**Modifications etc. (not altering text)**

- C22** S. 24 modified by Financial Services Act 1986 (c. 60, SIF 69), ss. 125(6), 140, **Sch. 11 para. 36(2)** and S.I. 1990/593 (N.I. 5), art. 49(1), **Sch. 14 para. 9(5)**  
**C23** S. 24 applied by Channel Tunnel Act 1987 (c. 53, SIF 102), **s. 33(9)**  
**C24** S. 24 extended (18.12.1996) by 1996 c. 61, **s. 23(3)**

**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.

**[<sup>F14</sup>25A Registration of non-notifiable agreement: duty to inform parties.**

- (1) Where an agreement ceases to be a non-notifiable agreement by virtue of the Director entering or filing particulars of it under section 1(2)(b) above, he shall give notice of that fact to each of the parties to the agreement.
- (2) Regulations under section 27 below may prescribe how notice under subsection (1) above is to be given and who is to be treated as a party to an agreement for the purposes of that subsection.]

**Textual Amendments**

- F14** S. 25A inserted 1994 c. 40, ss. 10(4), 82(2)(b), **Sch. 3 para. 4**

**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, [<sup>F15</sup> declare whether or not it is subject to registration under this Act and declare whether or not it is a non-notifiable agreement.].
- [<sup>F16</sup>(3) Where a party to an agreement makes an application for a declaration under subsection (2) above, 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.

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(3A) Subsection (3) above shall not apply where—

- (a) the only question in relation to which the declaration is sought is whether or not the agreement is a non-notifiable agreement, and
- (b) the Director considers that any restrictions or information provisions by virtue of which this Act applies to the agreement are of such significance as to call for investigation by the Court.

(3B) Where—

- (a) a party to an agreement makes an application for a declaration under subsection (2) above,
- (b) the question in relation to which the declaration is sought is relevant to the existence of a duty to furnish particulars of the agreement under section 24 above, and
- (c) the application is made before the expiry of the time within which particulars of the agreement are required to be furnished if the duty to furnish particulars under that section applies,

then, if particulars of the agreement have not been furnished under that section 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.]

(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.

#### Textual Amendments

**F15** Words in s. 26(2) substituted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), **Sch. 3 para. 5(2)**

**F16** S. 26(3)(3A)(3B) substituted (3.1.1995) for s. 26(3) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), **Sch. 3 para. 5(3)**

## 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
  - (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;

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- (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 <sup>M4</sup>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.

#### Marginal Citations

M4 1946 c. 36.

VALID FROM 19/03/1996

#### <sup>F17</sup>27ZACertain provisions not to be acted upon before registration.

- (1) This section has effect where—
  - (a) the time for furnishing particulars of an agreement or variation to the Director is determined by entry (a), (f) or (i) in the Table in paragraph 5(1) of Schedule 2 to this Act, and
  - (b) that time has not expired.
- (2) Where the time is determined by entry (a) or (f), it shall be unlawful, before particulars of the agreement concerned have been duly furnished to the Director, for any person who—

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- (a) carries on business within the United Kingdom, and  
 (b) is a party to the agreement,  
 to give effect to, or enforce or purport to enforce, the agreement in respect of the restrictions accepted or information provisions made under the agreement.
- (3) Where the time is determined by entry (i), it shall be unlawful, before particulars of the variation concerned have been duly furnished to the Director, for any person who—
- (a) carries on business within the United Kingdom, and  
 (b) is a party to the agreement concerned,  
 to give effect to, or enforce or purport to enforce, the extensions or additions to the restrictions accepted or information provisions made under the agreement.
- (4) Subsections (2) to (7) of section 35 below shall apply in relation to the enforcement of the obligation imposed by subsection (2) above as they apply in relation to the enforcement of the obligation imposed by subsection (1)(b) of that section.
- (5) Subsections (2) to (7) of section 35 below, as applied by subsection (8) of that section, shall apply in relation to the enforcement of the obligation imposed by subsection (3) above as they apply in relation to the enforcement of the obligation imposed by subsection (1)(b) of that section, as so applied.]

#### Textual Amendments

**F17** S. 27ZA inserted (19.3.1996) by S.I. 1996/347, art. 4

*[<sup>F18</sup> Non-notifiable agreements]*

#### Textual Amendments

**F18** S. 27A inserted (3.1.1995) by 1994 c. 40, ss. 10(1), 82(2)(a)

#### <sup>F19</sup>27A Non-notifiable agreements.

- (1) For the purposes of this Act, a non-notifiable agreement is one which—
- (a) is subject to registration under this Act,  
 (b) is, and has always been, of a description specified for the purposes of this section by order made by the Secretary of State,  
 (c) is not, and has never been, a price-fixing agreement, and  
 (d) is not an agreement in respect of which the Director has entered or filed particulars under section 1(2)(b) above.
- (2) Without prejudice to the generality of paragraph (b) of subsection (1) above, an order under that paragraph may frame a description by reference—
- (a) to the size of the businesses of the parties to an agreement, whether expressed by reference to turnover, as defined in the order, or to market share, as so defined, or in any other manner, or

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- (b) to exemption under, or any steps taken or decision given under or for the purpose of, any directly applicable Community provision (including any such provision as it has effect from time to time).
- (3) In subsection (1)(c) above, the reference to a price-fixing agreement is to an agreement to which this Act applies by virtue of—
  - (a) a restriction in respect of any of the matters set out in section 6(1)(a) or (b) or 11(2)(a) above, or
  - (b) an information provision in respect of any of the matters set out in section 7(1)(a) or (b) or 12(2)(a) above.
- (4) An order under subsection (1)(b) above shall be made by statutory instrument and may contain such transitional provisions as the Secretary of State considers appropriate.

#### Textual Amendments

**F19** S. 27A inserted (3.1.1995) by 1994 c. 40, ss. 10(1), 82(2)(a)(which s. 10 is prospectively repealed by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 19(1)(2), Sch. 14 Pt. I)

### 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—
  - (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

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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



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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—
    - (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.

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- (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
  - (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.

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- (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<sup>M5</sup> 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.

#### Marginal Citations

M5 1969 c. 24 (N.I.)

### 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

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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 meaning of the [F20Companies Act 1985], 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—

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- (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 [<sup>F20</sup>Companies Act 1985], include references respectively to the <sup>M6</sup>Industrial and Provident Societies Act (Northern Ireland) 1969 and the [<sup>F21</sup>Companies (Northern Ireland) Order 1986].

- (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 <sup>M7</sup>Agriculture Act 1947 and the <sup>M8</sup>Agriculture (Scotland) Act 1948;

“co-operative association” has the meaning given by section 340(8) and (9) of the <sup>M9</sup>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 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—

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- (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.

#### Textual Amendments

**F20** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

**F21** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), [Sch. 1 Pt. II](#)

#### Modifications etc. (not altering text)

**C25** Functions exercisable jointly by Minister of Agriculture, Fisheries and Food and Secretaries of State respectively concerned with agriculture in Scotland and Northern Ireland under s. 33 now exercisable (W.) by those Ministers and Secretary of State for Wales jointly: [S.I. 1978/272](#), art. 2(3), [Sch. 1](#)

#### Marginal Citations

**M6** 1969 c. 24 (N.I.)

**M7** 1947 c. 48.

**M8** 1948 c. 45.

**M9** 1970 c. 10.

### 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)

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- (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.

**Modifications etc. (not altering text)**

C26 S. 35 applied with modifications by [Energy Act 1976 \(c. 76\), s. 5\(6\)](#)



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### 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;

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.

[<sup>F22</sup>(3A) The Director may give notice to any person being party to an agreement which—

- (a) is a non-notifiable agreement, or
- (b) has ceased to be a non-notifiable agreement by virtue of the Director entering or filing particulars of it under section 1(2)(b) above,

requiring him to furnish such 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

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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.

#### Textual Amendments

**F22** S. 36(3A) inserted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), Sch. 3 para. 6

### 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

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- 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 [<sup>F23</sup>level 3 on the standard scale].
- (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
  - (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

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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.

#### Textual Amendments

**F23** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#), (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#) and (N.I.) by [S.I. 1984/703 \(N.I. 3\)](#), [arts. 5, 6](#)

#### Modifications etc. (not altering text)

**C27** [S. 38\(4\): Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 35](#) (in relation to liability on first and subsequent convictions), [38](#) (increase of fines) and [46](#) (substitution of references to levels on the standard scale) apply (E.W.), [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289E](#) (in relation to liability on first and subsequent convictions), applies (S.) and [S.I. 1984/703](#), (N.I. 3), [art. 9](#) (in relation to liability on first and subsequent convictions), [art. 6](#) (increase of fines) and [art. 5](#) (substitution of references to level on the standard scale) apply (N.I.)

### 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 [<sup>F24</sup>section 127(1) of the <sup>M10</sup>Magistrates’ Courts Act 1980] or in [<sup>F25</sup>Article 19(1) of the Magistrates’ Courts (Northern Ireland) Order 1981].
- (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;

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notwithstanding anything in [<sup>F26</sup>section 331 of the <sup>M11</sup>Criminal Procedure (Scotland) Act 1975].

- (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 <sup>M12</sup>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.

#### Textual Amendments

**F24** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, [Sch. 7 para. 140](#)

**F25** Words substituted by [S.I. 1981/1675 \(N.I. 26\)](#), art. 170(2), [Sch. 6 para. 42](#)

**F26** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), s. 460(7)

#### Marginal Citations

**M10** [1980 c. 43](#).

**M11** [1975 c. 21](#).

**M12** [S.I. 1972/538 \(N.I. 1\)](#).

## 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 <sup>M13</sup>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—

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- (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.

- (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.

#### Marginal Citations

M13 1973 c. 41.

## 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, [F27 the Director General of Telecommunications,][F28 the Director General of Gas Supply,][F29 the Civil Aviation Authority,][F30 the Director General of Water Services,][F31 the Director General of Electricity Supply][F32 the Director General of Electricity Supply for Northern Ireland][F33 the Rail Regulator][F34 the Authorised Conveyancing Practitioners Board, the Coal Authority] the Monopolies and Mergers Commission, the Secretary of State or any other Minister under this Act or the M14 Fair Trading Act 1973 [F35 or the M15 Estate Agents Act 1979][F36 or the M16 Competition Act 1980][F27 or the Telecommunications Act 1984][F37 or Chapter XIV of Part I of the Financial Services Act 1986][F28 or the Gas Act 1986][F29 or the Airports Act 1986][F30 or the Water Act 1989][F38 the Water Industry Act 1991 or any of the other consolidation Acts (within the meaning of section 206 of that Act of 1991)][F39 or the Electricity Act 1989][F32 or the Electricity (Northern Ireland) Order 1992][F40 or Part IV of the Airports (Northern Ireland) Order 1994][F41 or the Broadcasting Act 1990][F42 or the Control of Misleading Advertisements Regulations 1988][F43 or the Courts and Legal Services Act 1990][F44 or the Railways Act 1993][F34 or the Coal Industry Act 1994];
- (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 M17 Fair Trading Act 1973 [F45 or the Control of Misleading Advertisements Regulations 1988].

- (2) Nothing in subsection (1) above shall be construed—

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- (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 [<sup>F46</sup>section 127(1) of the <sup>M18</sup>Magistrates' Courts Act 1980], 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 [<sup>F47</sup>section 331 of the <sup>M19</sup>Criminal Procedure (Scotland) Act 1975], summary proceedings in Scotland for an offence under this section may be commenced within twelve months from the commission of the offence, and [<sup>F47</sup>subsection (3) of the said section 331] 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 [<sup>F48</sup>section 127(1) of the <sup>M20</sup>Magistrates' Courts Act 1980] and to the trial and laying of an information there shall be substituted respectively references to [<sup>F49</sup>Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981] and to the hearing and determination and making of a complaint.

#### Textual Amendments

- F27** Words inserted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 65, **Sch. 5 para. 45**
- F28** Words inserted by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), s. 67(1), **Sch. 7 para. 23**
- F29** Words inserted by [Airports Act 1986 \(c. 31, SIF 9\)](#), s. 83(1), **Sch. 4 para. 5**
- F30** Words inserted (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(1), **Sch. 25 para. 53**
- F31** Words inserted (E.W.S.) after “the Director General of Water Supply” by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 19**
- F32** Words in s. 41(1)(a) inserted (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12 para. 16(a)(b)**; S.R. 1992/117, **art. 3(1)**
- F33** Words in s. 41(1) inserted (6.1.1994) by 1993 c. 43, ss. 150(1)(o), 152(1), **Sch. 12 para. 10(a)**; S.I. 1993/3237, **art. 2(2)**
- F34** Words in s. 41(1)(a) substituted (31.10.1994) by 1994 c. 21, s. 67(1), **Sch. 9 para. 17(a)(b)** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**
- F35** Words added by [Estate Agents Act 1979 \(c. 38, SIF 124:4\)](#), s. 10(4)(c)
- F36** Words added by [Competition Act 1980 \(c. 21, SIF 124:1\)](#), s. 19(4)(e)
- F37** Words inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 182, **Sch. 13 para. 2**
- F38** S. 41(1)(a): by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2, 4(2), **Sch. 1 para. 31** words are expressed to be inserted (E.W.) (1.12.1991) after 'or the Water Act 1989,' in s. 4(1)(a)
- F39** Words inserted (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 19**



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- F40** Words in s. 41(1)(a) inserted (1.9.1995) by S.I. 1994/426 (N.I. 1) art. 71(2), Sch. 9 para. 5; S.R. 1995/294, **art. 2**
- F41** Words inserted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 25**
- F42** Words inserted by S.I. 1988/915, **art. 7(6)(c)(i)**
- F43** Words inserted (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 37), ss. 124(3), 125(3), **Sch. 18 para. 19(b)**
- F44** Words in s. 41(1) inserted (6.1.1994) by 1993 c. 43, ss. 150(1)(o), 152(1), **Sch. 12 para. 10(b)**; S.I. 1993/3237, **art. 2(2)**
- F45** Words inserted by S.I. 1988/915, **art. 7(6)(c)(ii)**
- F46** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154, **Sch. 7 para. 140**
- F47** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21), **s. 460(7)**
- F48** Words substituted (with saving) by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154, **Sch. 7 para. 140**
- F49** Words substituted by S.I. 1981/1675 (N.I. 26), art. 170(2), **Sch. 6 para. 43**

#### Modifications etc. (not altering text)

- C28** S. 41(1) excluded by Broadcasting Act 1990 (c. 42, SIF 96), **s. 197(5)(b)**

#### Marginal Citations

- M14** 1973 c. 41.  
**M15** 1979 c. 38.  
**M16** 1980 c. 21.  
**M17** 1973 c. 41.  
**M18** 1980 c. 43.  
**M19** 1975 c. 21.  
**M20** 1980 c. 43.

## 42 Orders and regulations.

- (1) Any statutory instrument by which—
- an order is made under section 18(5) [<sup>F50</sup>, 27A(1)(b)] or section 33(4) above; or
  - 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.

#### Textual Amendments

- F50** Words in s. 42(1)(a) inserted (3.1.1995) by 1994 c. 40, **ss. 10(2), 82(2)(a)**(which s. 10 is prospectively repealed by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 19(1)(2), **Sch. 14 Pt. I**)

## 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;



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“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 <sup>M21</sup>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 [<sup>F51</sup>section 736 of the Companies Act 1985] (or for companies in Northern Ireland, [<sup>F52</sup>Article 4 of the Companies (Northern Ireland) Order 1986]); or

(b) in the case of an industrial and provident society, within the meaning of section 15 of the <sup>M22</sup>Friendly and Industrial and Provident Societies Act 1968 (or for industrial and provident societies in Northern Ireland, section 47 of the <sup>M23</sup>Industrial and Provident Societies Act (Northern Ireland) 1969);

[<sup>F53</sup>“non-notifiable agreement” has the meaning given by section 27A(1) above;]

“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—

(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 constructed 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.

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- (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

#### Textual Amendments

- F51** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)
- F52** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, [Sch. 1 Pt. II](#)
- F53** [S. 43\(1\)](#): definition of “non-notifiable agreement” inserted (3.1.1995) by [1994 c. 40, ss. 10\(3\)](#), [82\(2\)\(a\)](#) (which s. 10 itself is prospectively repealed by [1998 c. 41, s. 74\(1\)\(3\)](#), [Sch. 12 para. 19\(1\)](#), [Sch. 14 Pt. I](#))

#### Modifications etc. (not altering text)

- C29** Definition of “trade association” restricted (*retrospectively*) by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34, SIF 2:1\)](#), s. [45\(1\)](#)

#### Marginal Citations

- M21** [1973 c. 41](#).
- M22** [1968 c. 55](#).
- M23** [1969 c. 24 \(N.I.\)](#)

#### 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 [<sup>F54</sup>sections 16(1) and 17(2)(a) of the <sup>M24</sup>Interpretation Act 1978] (which [<sup>F54</sup>relate] to the operation of repeals).

#### Textual Amendments

- F54** Words substituted by virtue of [Interpretation Act 1978 \(c. 30\)](#), s. [25\(2\)](#)

#### Marginal Citations

- M24** [1978 c. 30](#).

#### 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.

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**Modifications etc. (not altering text)**

**C30** 15.12.1976 appointed under s. 45(3) by [S.I. 1976/1877](#)

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## SCHEDULES

### SCHEDULE 1

Section 13.

#### SERVICES EXCLUDED FROM SECTION 13 (DESIGNATED SERVICES)

- 1 Legal services (that is to say, the services of barristers, advocates or solicitors in their capacity as such).
- 2 Medical services (that is to say, the provision of medical or surgical advice or attendance and the performance of surgical operations).
- 3 Dental services (that is to say, any services falling within the practice of dentistry within the meaning of the <sup>M25</sup>Dentists Act [<sup>F55</sup>1984]).

#### Textual Amendments

**F55** Figure substituted by [Dentists Act 1984 \(c. 24, SIF 83:1\)](#), s. 54(1), **Sch. 5 para. 7**

#### Marginal Citations

**M25** [1984 c. 24.](#)

- 4 Ophthalmic services (that is to say, the testing of sight).
- 5 Veterinary services (that is to say, any services which constitute veterinary surgery within the <sup>M26</sup>meaning of the [Veterinary Surgeons Act 1966.](#))

#### Marginal Citations

**M26** [1966 c. 36](#)

[<sup>F56</sup> The services of nurses]

#### Textual Amendments

**F56** [Para. 6](#) substituted by [Nurses, Midwives and Health Visitors Act 1979 \(c. 36\)](#), s. 24(2), **Sch. 7 para. 27**

- 7 The services of midwives, physiotherapists or chiropodists in their capacity as such.

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- 8 The services of architects in their capacity as such.
- 9 Accounting and auditing services (that is to say, the making or preparation of accounts or accounting records and the examination, verification and auditing of financial statements).

[<sup>F57</sup>9A Insolvency services within the meaning of section 428 of the Insolvency Act 1986]

#### Textual Amendments

**F57** Sch. 1 para. 9A substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(2), **Sch. 14** for para. 9A which was inserted by Insolvency Act 1985 (c. 65, SIF 27, 66), **s. 217**

[<sup>F58</sup>10 The services of registered patent agents (within the meaning of Part V of the Copyright, Designs and Patents Act 1988) in their capacity as such.]

#### Textual Amendments

**F58** Sch. 1 para. 10 substituted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 303(1), **Sch. 7 para. 18(2)**

[<sup>F59</sup>10A The services of persons carrying on for gain in the United Kingdom the business of acting as agents or other representatives of other persons for the purpose of applying for or obtaining European patents or for the purpose of conducting proceedings [<sup>F60</sup>in relation to applications for or otherwise] in connection with such patents before the European Patent Office or the comptroller and whose names appear on the European list (within the meaning of [<sup>F61</sup>Part V of the Copyright, Designs and Patents Act 1988]), in their capacity as such persons.]

#### Textual Amendments

**F59** Para. 10A inserted by Patents Act 1977 (c. 37), **Sch. 5 para. 8(2)**

**F60** Words inserted by Administration of Justice Act 1985 (c. 61, SIF 76:1), **s. 60(2)(a)(6)**

**F61** Words substituted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 303(1), **Sch. 7 para. 18(2)**

11 The services of parliamentary agents entered in the register in either House of Parliament as agents entitled to practise both in promoting and in opposing Bills, in their capacity as such parliamentary agents.

12 The services of surveyors (that is to say, of surveyors of land, of quantity surveyors, of surveyors of buildings or other structures and of surveyors of ships) in their capacity as such surveyors.

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- 13 The services of professional engineers or technologists (that is to say, of persons practising or employed as consultants in the field of—
- (a) civil engineering;
  - (b) mechanical, aeronautical, marine, electrical or electronic engineering;
  - (c) mining, quarrying, soil analysis or other forms of mineralogy or geology;
  - (d) agronomy, forestry, livestock rearing or ecology;
  - (e) metallurgy, chemistry, biochemistry or physics; or
  - (f) any other form of engineering or technology analogous to those mentioned in the preceding sub-paragraphs);
- in their capacity as such engineers or technologists.
- 14 Services consisting of the provision—
- (a) of primary, secondary or further education within the meaning of the <sup>M27</sup>Education Act 1944, the Education (Scotland) Acts 1939 to 1971 or the <sup>M28</sup>Education and Libraries (Northern Ireland) Order 1972, or
  - (b) of university or other higher education not falling within the preceding sub-paragraph.

**Marginal Citations**

**M27** 1944 c. 31.

**M28** 1972/1263 (N.I. 12).

- 15 The services of ministers of religion in their capacity as such ministers.

SCHEDULE 2

Section 24.

FURNISHING OF PARTICULARS OF AGREEMENTS

**Modifications etc. (not altering text)**

**C31** Sch. 2 modified by Financial Services Act 1986 (c. 60, SIF 69), ss. 125(6), 140, **Sch. 11 para. 36(2)** and by S.I. 1990/593 (N.I. 5), art. 49(1), **Sch. 14 para. 9(5)**

- 1 <sup>F62</sup>(1) Subject to paragraph 2 below, no duty to furnish particulars in respect of an agreement which is subject to registration shall be affected by any subsequent variation or determination of the agreement.]
- (2) If at any time after an agreement has become subject to registration it is varied (whether in respect of the parties or in respect of the terms) or determined otherwise than by effluxion of time, particulars of the variation or determination shall be furnished to the Director.

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#### Textual Amendments

**F62** Sch. 2 para. 1(1) substituted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), Sch. 3 para. 7(2)

- 2
- (1) The following provisions of this paragraph apply where [<sup>F63</sup>, after an agreement is made, it becomes an agreement in respect of which particulars fall to be furnished under section 24 above].
  - (2) If, before the expiry of the time within which, apart from this paragraph, particulars would be required to be furnished in respect of the agreement, and before particulars have been so furnished, the agreement is determined (whether by effluxion of time or otherwise), section 24(1) above [<sup>F64</sup>(so far as applicable)] and paragraph 1 above shall cease to apply to the agreement.
  - (3) If, before the expiry of that time and before particulars have been furnished in respect of the agreement, the agreement is varied, the particulars to be furnished under section [<sup>F65</sup>24(1)] shall be particulars of the agreement as varied, and paragraph 1 above shall not apply in relation to the variation.

#### Textual Amendments

**F63** Words in Sch. 2 para. 2(1) substituted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), Sch. 3 para. 7(3)

**F64** Words in Sch. 2 para. 2(2) inserted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), Sch. 3 para. 7(4)

**F65** Word in Sch. 2 para. 2(3) substituted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), Sch. 3 para. 7(5)

- 3
- Particulars of an agreement shall—
- (a) in so far as the agreement, or any variation or determination of it, is made by an instrument in writing, be furnished by the production of the original or a true copy of the instrument;
  - (b) in so far as the agreement, or any variation or determination of it, is not made by an instrument in writing, be furnished by the production of a memorandum in writing signed by the person by whom the particulars are furnished.
- 4
- (1) Particulars may be furnished by or on behalf of any person who is party to the agreement or, as the case may be, was party thereto immediately before its determination.
  - (2) Where such particulars are duly furnished by or on behalf of any such person the provisions of section 24 and this Schedule shall be deemed to be complied with on the part of all such persons.
- 5
- (1) The following Table shows the time within which particulars of agreements and any variation or determination of an agreement, are to be furnished under section 24 and this Schedule:—

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## TABLE

<i>Description of agreement</i>	<i>Time for registering particulars</i>
(a) Agreement made on or after 25th November 1968, other than an agreement to which (b) to (j) below apply.	Before the date on which any restriction accepted or information provision made under the agreement takes effect, and in any case within 3 months from the day on which the agreement is made.
(b) Agreement approved by order under section 29 or section 30 above which becomes subject to registration by virtue of the expiry or revocation of that order.	Within 1 month from the day on which the agreement becomes so subject.
(c) Agreement which becomes subject to registration by virtue of the revocation of an order under section 9(5) above.	Within 1 month from the day on which the agreement becomes so subject.
[ <sup>F66</sup> (ca) Agreement which ceases to be a non-notifiable agreement.]	Within 1 month from the day on which the agreement so ceases.]
(d) Agreement which becomes subject to registration by virtue of an order under section 7 above coming into force after the making of the agreement.	Within 3 months from the day on which the agreement becomes so subject.
(e) Agreement which becomes subject to registration by virtue of an order under section 11 or section 12 above coming into force after the making of the agreement.	Within 3 months from the day on which the agreement becomes so subject.
(f) Agreement whether made before on or after 25th November 1968 which becomes subject to registration by virtue of a variation on or after that date [ <sup>F67</sup> not being a variation which becomes subject to registration by virtue of an order under section 11 or 12 above].	Within the time which would apply under (a) above if the agreement were made on the day on which it becomes so subject.
(g) Agreement which becomes subject to registration by virtue of the expiry or withdrawal of an approval given under section 32 above.	Within 3 months from the day on which the agreement becomes so subject.
(h) Agreement which was subject to registration on 25th November 1968, of which particulars had not been duly furnished.	Within 3 months from 25th November 1968.
(i) Variation on or after 25th November 1968 of an agreement (whether made before or after that date) being a	Within the time which would apply under (a) above in the case of an



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variation which extends or adds to the restrictions accepted or information provisions made under the agreement [F68 other than a variation to which (ii) below applies].	agreement made on the day of the variation.
[F69(ii) Variation of an agreement being a variation which extends or adds to the restrictions accepted or information provisions made under the agreement and which becomes subject to registration by virtue of the revocation or variation of an order made under section 11 or 12 above.]	[F69 Within 1 month from the day on which the variation becomes so subject.]
(j) Any other variation of an agreement, and the determination of an agreement.	Within 3 months from the day of the variation or determination.

- (2) Any reference in the second column of the Table in this paragraph to a period calculated from a specified day is a reference to the period in question inclusive of that day.

#### Textual Amendments

- F66** Sch. 2 para. 5 Table: entry (ca) inserted (3.1.1995) by 1994 c. 40, ss. 10(4), 82(2)(a)(b), Sch. 3 para. 7(6)  
**F67** Words added (1.5.1980) by Competition Act 1980 (c. 21), s. 27(4)(a)  
**F68** Words added (1.5.1980) by Competition Act 1980 (c. 21), s. 27(4)(b)  
**F69** Para. (ii) added (1.5.1980) by Competition Act 1980 (c. 21), s. 27(4)(c)

## SCHEDULE 3

Section 28.

### EXCEPTED AGREEMENTS

#### *Agreements for statutory purposes*

- 1 (1) This Act does not apply to an agreement which is expressly authorised by an enactment, or by any scheme, order or other instrument made under an enactment.
- (2) This Act does not apply to an agreement which constitutes or forms part of a scheme certified by the Secretary of State under Chapter V of Part XIV of the <sup>M29</sup>Income and Corporation Taxes Act 1970 (which relates to schemes for rationalising industry).
- (3) Sub-paragraphs (1) and (2) above have effect in relation to any agreement notwithstanding any order under section 11 or section 12 above.

#### Marginal Citations

- M29** 1970 c. 10.

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### *Exclusive dealing*

- 2 This Act does not apply to an agreement for the supply of goods between two persons, neither of whom is a trade association, being an agreement to which no other person is party and under which no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made other than restrictions accepted or provision made for the furnishing of information—
- (a) by the party supplying the goods, in respect of the supply of goods of the same description to other persons; or
  - (b) by the party acquiring the goods, in respect of the sale, or acquisition for sale, of other goods of the same description.

### *Know-how about goods*

- 3 This Act does not apply to an agreement between two persons (neither of whom is a trade association) for the exchange of information relating to the operation of processes of manufacture (whether patented or not) where—
- (a) no other person is party to the agreement; and
  - (b) no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made under the agreement except in respect of the descriptions of goods to be produced by those processes or to which those processes are to be applied.

### *Trade marks*

- [<sup>F70</sup>4 (1) This Act does not apply to an agreement authorising the use of a registered trade mark (other than a collective mark or certification mark) if no such restrictions as are described in section 6(1) or 11(2) above are accepted, and no such information provisions as are described in section 7(1) or 12(2) above are made, except in respect of—
- (a) the descriptions of goods bearing the mark which are to be produced or supplied, or the processes of manufacture to be applied to such goods or to goods to which the mark is to be applied, or
  - (b) the kinds of services in relation to which the mark is to be used which are to be made available or supplied, or the form or manner in which such services are to be made available or supplied, or
  - (c) the descriptions of goods which are to be produced or supplied in connection with the supply of services in relation to which the mark is to be used, or the process of manufacture to be applied to such goods.
- (2) This Act does not apply to an agreement authorising the use of a registered collective mark or certification mark if—
- (a) the agreement is made in accordance with regulations approved by the registrar under Schedule 1 or 2 to the Trade Marks Act 1994, and

*Status:* Point in time view as at 01/09/1995. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Restrictive Trade Practices Act 1976 (repealed 1.3.2000). (See end of Document for details)

- (b) no such restrictions as are described in section 6(1) or 11(2) above are accepted, and no such information provisions as are described in section 7(1) or 12(2) above are made, except as permitted by those regulations.]

#### Textual Amendments

**F70** Sch. 3 para. 4 substituted (31.10.1994) by 1994 c. 26, s. 106(1), Sch. 4 para. 7; S.I. 1994/2550, art. 2

#### *Patents and registered designs*

- 5 (1) Subject to sub-paragraphs (4) to (8) below, this Act does not apply—
- (a) to a licence granted by the proprietor or a licensee of a patent or registered design, or by a person who has applied for a patent or for the registration of a design;
  - (b) to an assignment of a patent or registered design, or of the right to apply for a patent or for the registration of a design; or
  - (c) to an agreement for such a licence or assignment;
- being a licence, assignment or agreement such as is described in sub-paragraph (2) or sub-paragraph (3) below.
- (2) The licence, assignment or agreement referred to in sub-paragraph (1) above is in relation to Part II of this Act one under which no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made except in respect of—
- (a) the invention to which the patent or application for a patent relates, or articles made by the use of that invention; or
  - (b) articles in respect of which the design is or is proposed to be registered and to which it is applied;
- as the case may be.
- (3) The licence, assignment or agreement referred to in sub-paragraph (1) above is in relation to Part III of this Act one under which—
- (a) in the case of an order under section 11 above, no restrictions in respect of matters specified in the order for the purposes of subsection (1)(b) of that section are accepted except in respect of the invention to which the patent or application for a patent relates; or
  - (b) in the case of an order under section 12 above, no information provision with respect to matters specified in the order for the purposes of subsection (1)(b) of that section is made except in respect of that invention.
- (4) No licence, assignment or agreement is by virtue of sub-paragraph (1) above precluded from being an agreement to which this Act applies if—
- (a) it is a patent or design pooling agreement; or
  - (b) it is a licence, assignment or agreement granted or made in pursuance (directly or indirectly) of a patent or design pooling agreement.
- (5) In this paragraph, subject to sub-paragraph (8) below, “patent or design pooling agreement” means an agreement—

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- (a) to which the parties are or include at least three persons (in this and the following sub-paragraph the “principal parties”) each of whom has an interest in one or more patents or registered designs, and
  - (b) by which each of the principal parties agrees, in respect of patents or registered designs in which he has an interest, or in respect of patents or registered designs in which he has or may during the currency of the agreement acquire an interest, to grant such an interest as is mentioned in sub-paragraph (6) below.
- (6) The grant referred to in sub-paragraph (5) above is—
- (a) of an interest in one or more such patents or registered designs to one or more of the other principal parties, or to one or more of those parties and to other persons; or
  - (b) of an interest in at least one such patent or registered design to a third person for the purpose of enabling that person to grant an interest in it to one or more of the other principal parties, or to one or more of those parties and to other persons;
- and “interest”, in relation to a patent or registered design, means an interest as proprietor or licensee of the patent or registered design or an interest consisting of such rights as a person has by virtue of having applied for a patent or for the registration of a design or by virtue of having acquired the right to apply for a patent or for the registration of a design.
- (7) For the purposes of sub-paragraphs (4) to (6) above, a licence, assignment or agreement—
- (a) shall be taken to be granted or made directly in pursuance of a patent or design pooling agreement if it is granted or made in pursuance of provisions of that agreement such as are mentioned in sub-paragraph (6)(a); and
  - (b) shall be taken to be granted or made indirectly in pursuance of a patent or design pooling agreement if it is granted or made by a third person to whom an interest has been granted in pursuance of provisions of that agreement such as are mentioned in sub-paragraph (6) (b)
- (8) In relation to any interest held by or granted to any two or more persons jointly, sub-paragraphs (5) and (6) apply as if those persons were one person by whom the interest is held or to whom it is granted, and accordingly those persons shall be treated for the purposes of those sub-paragraphs as together constituting one party.
- (9) In this paragraph, references—
- (a) to an assignment mean, in relation to Scotland, an assignation;
  - (b) to the registration of designs have effect only in relation to Part II.

### *Copyrights*

[<sup>F71</sup>5A (1) This Act does not apply to—

- (a) a licence granted by the owner or a licensee of any copyright;
- (b) an assignment of any copyright; or
- (c) an agreement for such a licence or assignment;

being a licence, assignment or agreement such as is described in sub-paragraph (2) or sub-paragraph (3) below.

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**Changes to legislation:** There are currently no known outstanding effects for the Restrictive Trade Practices Act 1976 (repealed 1.3.2000). (See end of Document for details)

- (2) The licence, assignment or agreement referred to in sub-paragraph (1) above is in relation to Part II of this Act one under which no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made except in respect of the work or other subject-matter in which the copyright subsists or will subsist.
- (3) The licence, assignment or agreement referred to in sub-paragraph (1) above is in relation to Part III of this Act one under which—
  - (a) in the case of an order under section 11 above, no restrictions in respect of matters specified in the order for the purposes of subsection (1)(b) of that section are accepted except in respect of the work or other subject-matter in which the copyright subsists or will subsist; or
  - (b) in the case of an order under section 12 above, no information provision with respect to matters specified in the order for the purposes of subsection (1)(b) of that section is made except in respect of that work or other subject-matter.
- (4) In relation to Scotland references in this paragraph to an assignment mean an assignation.]

#### Textual Amendments

**F71** Para. 5A inserted (1.5.1980) by [Competition Act 1980 \(c. 21\)](#), s. 30(1)

*[<sup>F72</sup>Design right]*

#### Textual Amendments

**F72** Sch. 3 para. 5B inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(1), [Sch. 7 para. 18\(3\)](#)

- 5B (1) This Act does not apply to—
- (a) a licence granted by the owner or a licensee of any design right,
  - (b) an assignment of design right, or
  - (c) an agreement for such a licence or assignment,
- if the licence, assignment or agreement is one under which no such restrictions as are described in section 6(1) above are accepted, or no such information provisions as are described in section 7(1) above are made, except in respect of articles made to the design; but subject to the following provisions.
- (2) Sub-paragraph (1) does not exclude a licence, assignment or agreement which is a design pooling agreement or is granted or made (directly or indirectly) in pursuance of a design pooling agreement.
  - (3) In this paragraph a “design pooling agreement” means an agreement—
    - (a) to which the parties are or include at least three persons (the “principal parties”) each of whom has an interest in one or more design rights, and
    - (b) by which each principal party agrees, in respect of design right in which he has, or may during the currency of the agreement acquire, an interest to

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grant an interest (directly or indirectly) to one or more of the other principal parties, or to one or more of those parties and to other persons.

- (4) In this paragraph—  
“assignment”, in Scotland, means assignation; and  
“interest” means an interest as owner or licensee of design right.
- (5) This paragraph applies to an interest held by or granted to more than one person jointly as if they were one person.
- (6) References in this paragraph to the granting of an interest to a person indirectly are to its being granted to a third person for the purpose of enabling him to make a grant to the person in question.

*Agreements as to goods with overseas operation*

- 6 (1) This Act does not apply to an agreement in the case of which all such restrictions as are described in section 6(1) above, or all such information provisions as are described in section 7(1) above, relate exclusively—
- (a) to the supply of goods by export from the United Kingdom;
  - (b) to the production of goods, or the application of any process of manufacture to goods, outside the United Kingdom;
  - (c) to the acquisition of goods to be delivered outside the United Kingdom and not imported into the United Kingdom for entry for home use; or
  - (d) to the supply of goods to be delivered outside the United Kingdom otherwise than by export from the United Kingdom;
- and subsections (2) and (4) of section 8 above do not apply in relation to recommendations relating exclusively to those matters.
- (2) The Court’s jurisdiction mentioned in section 1(3) above does not extend to restrictions or to information provisions in respect of matters described in paragraphs (b) to (d) of sub-paragraph (1) above.

*Exclusive supply of services*

- 7 This Act does not apply to an agreement to which there are no parties other than one person who agrees to supply services and another person for whom they are to be supplied, where neither of those persons is, in relation to any order under Part III of this Act, a services supply association and, except in respect of the supply of services of the same description to, or obtaining services of the same description from, other persons—
- (a) in the case of an order under section 11 above, no restrictions are accepted under the agreement by those parties in respect of matters specified in the order for the purposes of subsection (1)(b) of that section; or
  - (b) in the case of an order under section 12 above, no information provision is made under the agreement with respect to matters specified in the order for the purposes of subsection (1)(b) of that section.

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### *Know-how about services*

- 8 This Act does not apply to an agreement between two persons (neither of whom is a services supply association) for the exchange of information relating to techniques or processes to be applied in the provision of designated services where—
- (a) no other person is party to the agreement; and
  - (b) all such restrictions as are mentioned in section 11(1)(b) above which are accepted under the agreement relate exclusively to the form or manner in which services incorporating those techniques or processes are to be made available or supplied.

### *Agreements for supplying services with overseas operation*

- 9 (1) This Act does not apply to an agreement where—
- (a) in the case of an order under section 11 above, all such restrictions as are accepted under the agreement in respect of matters specified in the order for the purposes of subsection (1)(b) of that section (or, in a case falling within section 16(3) above, all the recommendations referred to in that subsection) relate to the supply of services outside the United Kingdom or to the supply of services to persons or in relation to property (of any description, whether movable or immovable) outside the United Kingdom; or
  - (b) in the case of an order under section 12 above, all such provision as is made under the agreement for or in relation to the furnishing of information with respect to matters specified in the order for the purposes of subsection (1)(b) of that section (or, in a case falling within section 16(5), every such recommendation as is referred to in that subsection) relates to the supply of services as mentioned in paragraph (a) above.
- (2) The Court's jurisdiction mentioned in section 1(3) above does not extend to restrictions or to information provisions—
- (a) in respect of the supply of services outside the United Kingdom; or
  - (b) in respect of the supply of services to persons or in relation to property (of any description, whether movable or immovable) outside the United Kingdom.

## SCHEDULE 4

Section 44.

### TRANSITIONAL PROVISIONS AND SAVINGS

#### *General provisions*

- 1 (1) In so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision of this Act it shall not be invalidated by the repeal but shall have effect as if done under that provision.

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*Changes to legislation:* There are currently no known outstanding effects for the Restrictive Trade Practices Act 1976 (repealed 1.3.2000). (See end of Document for details)

- (2) Without prejudice to sub-paragraph (1) above, any reference in this Act (whether express or implied) to a thing done or required or authorised to be done, or omitted to be done, or to an event which has occurred, under or for the purposes of or by reference to or in contravention of any provisions of this Act shall, except where the context otherwise requires, be construed as including a reference to the corresponding thing done or required or authorised to be done, or omitted, or to the corresponding event which occurred, as the case may be, under or for the purposes of or by reference to or in contravention of any corresponding provisions of the repealed enactments.
- 2 Where a document refers expressly or by implication to an enactment repealed by this Act the reference shall (except where the context otherwise requires) be construed as a reference to the corresponding provision of this Act.
- 3 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, and there is a corresponding provision in this Act, this Act shall have effect as if that corresponding provision had been in force when that period began to run.

*Insignificant agreements under the Restrictive Trade Practices Act 1956, s. 12*

- 4 (1) Directions under section 12 of the <sup>M30</sup>Restrictive Trade Practices Act 1956 in force at the commencement of this Act for the removal from the register of particulars of such agreements as appeared to be of no substantial economic significance continue to have effect by virtue of this paragraph.
- (2) Sub-paragraph (1) above does not affect the operation in relation to the agreement of paragraph 1 of Schedule 2 to this Act; and where any such agreement is varied as mentioned in that paragraph—
- (a) the particulars to be furnished thereunder shall include all such particulars as would be required in the case of an original agreement in the terms of the agreement as varied;
  - (b) the directions referred to in sub-paragraph (1) shall cease to have effect, but without prejudice to the Secretary of State's power to give further directions under section 21(2) above.

**Marginal Citations**

**M30** 1956 c. 68.

*Section 18(2) of the Restrictive Trade Practices Act 1956*

- 5 Nothing in this Act affects the right of a person to make an application to the Court in a case where an order is in force against that person under section 18(2) of the <sup>M31</sup>Restrictive Trade Practices Act 1956.



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**Marginal Citations**

**M31** 1956 c. 68.

*Disclosure of information*

- 6 Section 41 above applies in relation to information obtained under or by virtue of—
- (a) the Restrictive Trade Practices Act 1956;
  - (b) the <sup>M32</sup>Restrictive Trade Practices Act 1968;
- as that section applies in relation to information obtained under or by virtue of this Act.

**Marginal Citations**

**M32** 1968 c 66.

*Particulars of certain export agreements*

- 7 Any particulars furnished to the Board of Trade or to the Secretary of State under section 31(1) of the Restrictive Trade Practices Act 1956 shall be treated as if they had been furnished to the Director under sections 24 and 25 above.

*Restrictive Trade Practices Act 1968, s. 11*

- 8 An agreement which—
- (a) was made before the commencement of this Act by a society at a time when it was approved for the purposes of section 11 of the Restrictive Trade Practices Act 1968 (wholesale co-operative societies), and
  - (b) by virtue of that approval was not subject to registration under Part I of the Restrictive Trade Practices Act 1956,
- shall, notwithstanding the repeal of that section (by the <sup>M33</sup>Fair Trading Act 1973), not be subject to registration under this Act.

**Marginal Citations**

**M33** 1973 c. 41.

**Status:** Point in time view as at 01/09/1995. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Restrictive Trade Practices Act 1976 (repealed 1.3.2000). (See end of Document for details)

## SCHEDULE 5

Section 44.

## CONSEQUENTIAL AMENDMENTS

**Modifications etc. (not altering text)**

- C32** The text of Sch. 5 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

VALID FROM 08/05/1998

F73

**Textual Amendments**

- F73** Entry repealed by [Resale Prices Act 1976 \(c. 53\)](#), [Sch. 3 Pt. I](#)

*Northern Ireland Act 1962 c. 30*

In Part I of Schedule 1 to the Northern Ireland Act 1962 for “The Restrictive Trade Practices Act, 1956” substitute “The Restrictive Trade Practices Act 1976”; and in the adjoining entry for “Section thirteen” substitute “Section twenty-six”.

*Plant Varieties and Seeds Act 1964 c. 14*

In section 8 of the Plant Varieties and Seeds Act 1964 for “Part I of the Restrictive Trade Practices Act 1956” substitute “The Restrictive Trade Practices Act 1976”.

*Cereals Marketing Act 1965 c. 14*

In paragraph 3 of Schedule 1 to the Cereals Marketing Act 1965 for “Restrictive Trade Practices Act 1956” substitute “Restrictive Trade Practices Act 1976” and for “section 6(8)” substitute “section 43(1)”.

*Agriculture Act 1967 c. 22*

In section 9(11) of the Agriculture Act 1967 for “Part I of the Restrictive Trade Practices Act 1956” substitute “the Restrictive Trade Practices Act 1976”.

*Livestock Marketing Commission Act (Northern Ireland) 1967 c. 21*

In section 2(6) of the Livestock Marketing Commission Act (Northern Ireland) 1967 for “Part I of the Restrictive Trade Practices Act 1956” substitute “the Restrictive Trade Practices Act 1976”.

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**Changes to legislation:** There are currently no known outstanding effects for the Restrictive Trade Practices Act 1976 (repealed 1.3.2000). (See end of Document for details)

### *Agriculture (Miscellaneous Provisions) Act 1968 c. 34*

In section 45 of the Agriculture (Miscellaneous Provisions) Act 1968—

- (a) in subsection (1)—
  - (i) for “Restrictive Trade Practices Act 1956” substitute “Restrictive Trade Practices Act 1976”; and
  - (ii) for “section 6(8)” substitute “section 43(1)”;
- (b) in subsection (2) for “Part I of the said Act of 1956” substitute “the said Act of 1976”;
- (c) in subsection (3)—
  - (i) for “Part I of the said Act of 1956” substitute “the said Act of 1976”; and
  - (ii) for “said Part I” substitute “said Act of 1976”;
- (d) in subsection (5)—
  - (i) for “Part I of the said Act of 1956” substitute “the said Act of 1976”;
  - (ii) for “section 6” substitute “section 43(1)”; and
  - (iii) for “Part I” substitute “Act of 1976”;
- (e) in subsection (7)—
  - (i) for “Part I of the Restrictive Trade Practices Act 1956” substitute “Restrictive Trade Practices Act 1976”;
  - (ii) for “said Part I” substitute “said Act of 1976”.

### *[<sup>F74</sup> Agriculture Act 1970 c. 40]*

#### **Textual Amendments**

**F74** Entries repealed by [Agriculture Act 1986 \(c. 49, SIF 2:1\), s. 24\(5\)](#), [Sch. 4](#) (the repeal being in force 25.9.1986 unless consequential on sections 8 to 10 of the 1986 Act as mentioned in s. 24 of that Act which latter repeals are *prosp.*)

In the Agriculture Act 1970—

- (a) in section 7(2) for “Part I of the Restrictive Trade Practices Act 1956” substitute “Restrictive Trade Practices Act 1976”; and
- (b) in paragraph 3 of Schedule 1 for “Restrictive Trade Practices Act 1956” substitute “Restrictive Trade Practices Act 1976”; and for “section 6(8)” substitute “section 43(1)”.

### *Fair Trading Act 1973 c. 41*

In the Fair Trading Act 1973—

- (a) in
  - (i) section 10(2);
  - (ii) section 54(5)(b); and
  - (iii) section 78(3);for “Part I of the Act of 1956” substitute “the Act of 1976”;
- (b) in section 133, in subsection (2)(a) and in subsection (3) for “Act of 1956 or the Act of 1968” substitute “Restrictive Trade Practices Act 1956 or the Restrictive Trade Practices Act 1968”;
- (c) in section 137(1) for “ “the Act of 1956” means the Restrictive Trade Practices Act 1956” substitute “ “the Act of 1976” means the Restrictive Trade Practices Act 1976”;

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**Changes to legislation:** There are currently no known outstanding effects for the Restrictive Trade Practices Act 1976 (repealed 1.3.2000). (See end of Document for details)

(d) in subparagraphs (1) and (2) of paragraph 3 of Schedule 8 for “Part I of the Act of 1956” substitute “the Act of 1976”;

## SCHEDULE 6

Section 44.

### REPEALS

#### Modifications etc. (not altering text)

**C33** The text of Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

Chapter	Short Title	Extent of Repeal
4 & 5 Eliz. 2. c. 68.	The Restrictive Trade Practices Act 1956.	Section 1. Sections 6 to 17. Sections 19 to 22. In section 23, in subsection (2), paragraphs (b) to (d). Section 30. In the Schedule, paragraph 9.
1962 c. 29.	The Agricultural and Forestry Associations Act 1962.	The whole Act.
1968 c. 34.	The Agriculture (Miscellaneous Provisions) Act 1968.	Section 44.
1968 c. 66.	The Restrictive Trade Practices Act 1968.	The whole Act, except sections 12, 14, 15, 16(3)(b), 17(1) and Schedule 1.
1972 c. 68.	The European Communities Act 1972.	Section 10.
1973 c. 41.	The Fair Trading Act 1973.	In section 54(5), the words “Part I of” where they appear before the words “that Act”. In section 94(2) the words “the Act of 1956” and the words “and the Act of 1968”. Sections 95 to 106. Part X. Section 128. In section 133, in subsection (1), the words

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“or under or by virtue of the Act of 1956 or the Act of 1968”; and in subsection (4), paragraph (b).

In section 137, in subsection (1), the reference to the “the Act of 1968”; in subsection (2), the words “except in Part X”; in subsection (3), the words “other than Part X (and without prejudice to the construction of that Part in accordance with section 117 of this Act)” and the words “with that exception”; in subsection (4), the words “except Part X”; and in subsection (5) the words “other than Part X”.

In section 140, subsection (2).

Schedule 10.

In Schedule 11, paragraphs 12 and 13.

In Schedule 12, the entries relating to

(a)the Restrictive Trade Practices Act 1956 (except so far as they relate to section 23 of that Act and to the Schedule to that Act);

(b)the Restrictive Trade Practices Act 1968 (except so far as they relate to section 12 of that Act); and

(c)the European Communities Act 1972.

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**Status:**

Point in time view as at 01/09/1995. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Restrictive Trade Practices Act 1976 (repealed 1.3.2000).