



Restrictive Trade Practices Act 1976

1976 CHAPTER 34

PART IV

GENERAL

Enforcement

35 Failure to register

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

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

36 Director's power to obtain information

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

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

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

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

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

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

- (5) In subsection (1) the reference to an agreement subject to registration under this Act shall, in relation to Part II, be construed as including a reference to any agreement which—
- (a) relates to exports from the United Kingdom; and
 - (b) would, but for paragraph 6(1) of Schedule 3 to this Act, be an agreement subject to registration under this Act.
- (6) In subsection (1) the reference to an agreement subject to registration under this Act shall, in relation to Part III, be construed as including a reference to any agreement which would, but for paragraph 9(1) of Schedule 3, be an agreement subject to registration under this Act.

37 Court's power to order examination on oath

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

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- (a) the Director shall take part in the examination and for that purpose may be represented by solicitor or counsel;
 - (b) the person examined shall answer all such questions as the Court may put or allow to be put to him, but may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him;
 - (c) notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him;
 - (d) the Court may require the person examined to produce any such particulars, documents or information in his possession or control as may be specified in the notice given by the Director as aforesaid.
- (3) Where notice under section 36 has been given to a body corporate, an order may be made under this section for the attendance and examination—
- (a) of any director, manager, secretary or other officer of that body corporate ; or
 - (b) of any other person who is employed by the body corporate and appears to the Court to be likely to have particular knowledge of any of the matters in respect of which the notice was given.
- (4) In any case referred to in subsection (3) above—
- (a) the reference in subsection (1) above to matters in respect of which the Director has given notice to the person examined shall be construed as a reference to matters in respect of which notice was given to the body corporate; and
 - (b) in paragraph (d) of subsection (2) above and in paragraph (c) so far as it relates to evidence, references to the person examined shall include references to the body corporate.
- (5) The provisions of subsections (3) and (4) above have effect—
- (a) in relation to a trade association which is not incorporated;
 - (b) in relation to a services supply association which is not incorporated ;
- as those provisions have effect in relation to a body corporate.
- (6) Nothing in this section shall be taken to compel the disclosure by a barrister, advocate or solicitor of any privileged communication made by or to him in that capacity, or the production by him of any document containing any such communication.

38 Offences in connection with registration

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

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

39 Proceedings and venue in respect of offences

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

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

(3) Proceedings in Scotland for an offence against the preceding provisions of this Act may be commenced at any time—

- (a) within three years after the commission of the offence; and
- (b) within twelve months after the date on which evidence sufficient in the Director's opinion to justify a report to the Lord Advocate with a view to consideration of the question of proceedings comes to the Director's knowledge;

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

(4) For the purposes of subsections (2) and (3) above, a certificate of the Director of Public Prosecutions, the Attorney General for Northern Ireland or the Director, as the case may be, as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence.

(5) An offence under section 38 above may be tried by a court having jurisdiction either in the county or place in which the offence was actually committed or in any county or place in which the alleged offender carries on business.

(6) For the purposes of article 7(2) of the Prosecution of Offences (Northern Ireland) Order 1972 (which relates to consents to prosecutions by the Director of Public Prosecutions for Northern Ireland) subsections (1) and (2) above shall be treated as if they were in force before the coming into operation of that order.