



Restrictive Trade Practices Act 1976

1976 CHAPTER 34

PART IV

GENERAL

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 goods or, in relation to an agreement to which this Act applies by virtue of an order under section 11 or section 12 above, as users of any relevant services.
- (4) An order under this section shall continue in force for such period as may be specified therein, which may be extended by subsequent order of the Secretary of State: but the period so specified or extended shall not exceed the period which appears to the Secretary of State sufficient for the purposes for which the order was made.
- (5) An order under this section approving an agreement may be revoked by order of the Secretary of State at any time after the expiry of one year from the day on which the first-mentioned order was made if it appears to him—
- (a) that the object or main object of the agreement has not been or is not likely to be achieved, or that any other condition or exemption is no longer satisfied in respect of the agreement; or
 - (b) that the agreement is used for purposes other than those for which it was approved ;

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

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

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

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

30 Agreements holding down prices

- (1) A competent authority may by order approve for the purposes of this section any agreement made at the request of the competent authority, or any term included at their request in any agreement, being an agreement or term which relates exclusively—
- (a) to the prices to be charged in connection with transactions of any description and is designed either to prevent or restrict increases or to secure reductions in those prices; or
 - (b) in relation to an agreement to which this Act applies by virtue of an order under section 11 or section 12 above, to the charges to be made in connection with transactions of any description and is designed either to prevent or restrict increases or to secure reductions in those charges.

- (2) Where an agreement is approved by order under this section, the agreement shall be exempt from registration under this Act during the continuance in force of the order; and where a term of an agreement is so approved, that term, and any restrictions accepted or information provisions made thereunder, shall during the continuance in force of the order be disregarded for all purposes in determining whether this Act applies to the agreement.
- (3) An order under this section shall continue in force for such period as may be specified therein, which may be extended by subsequent order of the competent authority: but the period so specified shall not exceed two years, and shall not be extended by more than two years at a time.
- (4) An order under this section may at any time be revoked by order of the competent authority if it appears to that authority that the relevant agreement or term is used for purposes other than those for which it was approved.
- (5) A competent authority shall make available for public inspection a copy of any agreement or term of an agreement approved by order under this section.
- (6) The competent authorities for the purposes of this section are the Secretary of State, and the Minister of Agriculture, Fisheries and Food.

31 Supplementary provisions for ss. 29 and 30

- (1) Sections 29 and 30 above apply, with the necessary modifications, in relation to any recommendation made by or on behalf of a trade association or a services supply association as they apply in relation to an agreement; and where any such recommendation is approved by order under either of those sections—
 - (a) subsection (2) or subsection (4) of section 8 above;
 - (b) subsection (3) or subsection (5) of section 16 above;shall not apply in relation to the recommendation during the continuance in force of the order.
- (2) In the case of an order under section 29 approving a recommendation by or on behalf of a trade association or of a services supply association, as the case may be—
 - (a) the requirement of subsection (5) of that section as to the giving of notice of intention to revoke the order shall be treated as a requirement to give such notice as is there mentioned to the association; and
 - (b) any notice under that subsection which is required to be given to a trade association or to a services supply association or to each of the members of such an association shall be treated as duly so given if it is given either—
 - (i) to the association; or
 - (ii) to the secretary, manager or other similar officer of the association.
- (3) An order under section 29 or section 30 made before the conclusion of the agreement or issue of the recommendation to which it relates may be made subject to conditions—
 - (a) as to the time within which the agreement is to be concluded or the recommendation issued ; and
 - (b) as to the furnishing of copies of the agreement or recommendation to the Secretary of State or other competent authority.
- (4) There may be omitted from the copies of any agreement, term of an agreement or recommendation to be laid before Parliament under section 29, and to be made

available for public inspection under that section or section 30, the particulars mentioned in subsection (5) below.

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

32 Wholesale co-operative societies

- (1) The Secretary of State may approve under this section any industrial and provident society which in his opinion fulfils the following conditions—
 - (a) that it carries on business in the production or supply of goods or in the supply of services or in the application to goods of any process of manufacture ;
 - (b) that its shares are wholly or mainly held by industrial and provident societies; and
 - (c) that those societies are retail societies or societies whose shares are wholly or mainly held by retail societies;and a society which is for the time being so approved shall not be treated as a trade association or a services supply association.
- (2) An approval given in respect of a society under this section (if it has not been previously withdrawn) expires at the end of the period of two years beginning with the date on which it was given or, if that period is extended (once or more than once) under subsection (3) below, at the end of that period as so extended, or further extended, as the case may be.

- (3) The Secretary of State may extend or, if it has already been extended under this subsection, may further extend the period of two years referred to in subsection (2) above by such period, not exceeding two years, as he may specify.
- (4) The Secretary of State may at any time withdraw an approval given in respect of a society under this section if it appears to him—
 - (a) that the society has made an agreement which would have been subject to registration under this Act if the approval had not been given, or that such a recommendation as is mentioned in section 8(2) or (4) above has been made by or on behalf of the society; and
 - (b) that the agreement or recommendation has such adverse effects on competition that it should not be precluded from being investigated by the Court under the provisions of this Act.
- (5) In relation to a society which is for the time being approved under this section but which, in consequence of an order made under section 11 or section 12 above, is a society to which the provisions of section 16 above would apply if it were not so approved, subsection (4) above has effect as if in that subsection—
 - (a) any reference to an agreement which would have been subject to registration under this Act if the approval had not been given included a reference to an agreement which would in those circumstances have been subject to such registration by virtue of the order ; and
 - (b) any reference to such a recommendation as is mentioned in section 8(2) or (4) included a reference to such a recommendation as is mentioned in section 16(3) or (5).
- (6) On the expiry or withdrawal of an approval given in respect of a society under this section, the provisions of this Act shall have effect in relation to agreements and recommendations made by the society during the currency of the approval as if the society had not been approved under this section.
- (7) In this section—
 - " industrial and provident society " means a society registered or deemed to be registered under the Industrial and Provident Societies Acts 1965 to 1975 or under the Industrial and Provident Societies Act (Northern Ireland) 1969;
 - " retail society " means a society which carries on business in the sale by retail of goods for the domestic or personal use of individuals dealing with the society, or in the provision of services for such individuals.

33 Agricultural and forestry associations, and fisheries associations

- (1) Subject to the provisions of this section, this Act does not apply to an agreement between members of an association to which this section applies, or between such an association and any other person, whether a member of the association or not, by reason only of any restriction accepted or treated as accepted, or any information provision made or treated as made, by the association, or by members of the association or of any constituent association, for the purposes of or in connection with—
 - (a) the marketing or preparation for market by the association of produce produced by members of the association on land occupied by them and used for agriculture or forestry (with or without similar produce not so produced);or

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- (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 Companies Act 1948, contains in its memorandum or articles of association such provisions as may be prescribed by order of the Ministers with respect to the number of members, numbers of shares held by members, distribution of profits, voting rights or other matters;
- (b) at least 90 per cent. of the voting power is attached to shares held by persons occupying land used for agriculture or forestry or both, or by persons engaged in the business of catching or taking fish or shellfish, as the case may be ; and
- (c) the only business, or the principal business, carried on by the association is one or more of the following—
 - (i) the marketing or preparation for market of produce produced by members of the association on land occupied by them and used for

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- agriculture or forestry or both (with or without similar produce not so produced);
- (ii) the marketing or preparation for market of fish or shellfish caught or taken by members of the association in the course of their business (with or without fish or shellfish not so caught or taken);
- (iii) the supply to the members of goods required for the production of that produce on that land, or for the catching or taking of fish or shellfish in the course of that business, as the case may be;
- (iv) in the case of an association of persons occupying land for forestry, the carrying out of forestry operations for the members on that land.

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

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

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

- (5) In this section—

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

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

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

" the Ministers " means—

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

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

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

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- (b) to affect the power of any Secretary of State to perform any functions of that office in place of the Secretary of State entrusted with the discharge of those functions.

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

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