
Status: Point in time view as at 02/04/2001. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 14. (See end of Document for details)

SCHEDULES

SCHEDULE 14

Section 47(1).

SUPERVISORY AND QUALIFYING BODIES: RESTRICTIVE PRACTICES

[^{F1}PART I

PREVENTION OF RESTRICTIVE PRACTICES

Textual Amendments

- F1** Sch. 14 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 5, [Sch. 2 para. 2\(2\)](#) (with reg. 6(2))

Refusal of recognition on grounds related to competition]

- 1 (1) The Secretary of State shall before deciding whether to make a recognition order in respect of a supervisory body or professional qualification send to the Director General of Fair Trading (in this Schedule referred to as “the Director”) a copy of the rules and of any guidance which the Secretary of State is required to consider in making that decision together with such other information as the Secretary of State considers will assist the Director.
- (2) The Director shall consider whether the rules or guidance have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, and shall report to the Secretary of State; and the Secretary of State shall have regard to his report in deciding whether to make a recognition order.
- (3) The Secretary of State shall not make a recognition order if it appears to him that the rules and any guidance of which copies are furnished with the application have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, unless it appears to him that the effect is reasonably justifiable having regard to the purposes of this Part of this Act.

Notification of changes to rules or guidance

- 2 (1) Where a recognised supervisory or qualifying body amends, revokes or adds to its rules or guidance in a manner which may reasonably be regarded as likely—
- (a) to restrict, distort or prevent competition to any significant extent, or
- (b) otherwise to affect the question whether the recognition order granted to the body should continue in force,
- it shall within seven days give the Secretary of State written notice of the amendment, revocation or addition.

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- (2) Notice need not be given under sub-paragraph (1) of the revocation of guidance not intended to have continuing effect or issued otherwise than in writing or other legible form, or of any amendment or addition to guidance which does not result in or consist of guidance which is intended to have continuing effect and is issued in writing or other legible form.

Continuing scrutiny by the Director General of Fair Trading

- 3 (1) The Director shall keep under review the rules made or guidance issued by a recognised supervisory or qualifying body, and if he is of the opinion that any rules or guidance of such a body have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, he shall report his opinion to the Secretary of State, stating what in his opinion the effect is or is likely to be.
- (2) The Secretary of State shall send to the Director copies of any notice received by him under paragraph 2, together with such other information as he considers will assist the Director.
- (3) The Director may report to the Secretary of State his opinion that any matter mentioned in such a notice does not have, and is not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition.
- (4) The Director may from time to time consider whether—
- (a) any practices of a recognised supervisory or qualifying body in its capacity as such, or
 - (b) any relevant practices required or contemplated by the rules or guidance of such a body or otherwise attributable to its conduct in its capacity as such, have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and, if so, what that effect is or is likely to be; and if he is of that opinion he shall make a report to the Secretary of State stating his opinion and what the effect is or is likely to be.
- (5) The practices relevant for the purposes of sub-paragraph (4)(b) in the case of a recognised supervisory body are practices engaged in for the purposes of, or in connection with, appointment as a company auditor or the conduct of company audit work by persons who—
- (a) are eligible under its rules for appointment as a company auditor, or
 - (b) hold an appropriate qualification and are directors or other officers of bodies corporate which are so eligible or partners in, or employees of, partnerships which are so eligible.
- (6) The practices relevant for the purposes of sub-paragraph (4)(b) in the case of a recognised qualifying body are—
- (a) practices engaged in by persons in the course of seeking to obtain a recognised professional qualification from that body, and
 - (b) practices engaged in by persons approved by the body for the purposes of giving practical training to persons seeking such a qualification and which relate to such training.

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Investigatory powers of the Director

- 4 (1) The following powers are exercisable by the Director for the purpose of investigating any matter in connection with his functions under paragraph 1 or 3.
- (2) The Director may by a notice in writing require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation.
- (3) The Director may by a notice in writing require any person to furnish to the Director such information as may be specified or described in the notice, and specify the time within which and the manner and form in which any such information is to be furnished.
- (4) A person shall not under this paragraph be required to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court or on the grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.
- (5) Subsections (6) to (8) of section 85 of the ^{M1}Fair Trading Act 1973 (enforcement provisions) apply in relation to a notice under this paragraph as they apply in relation to a notice under subsection (1) of that section but as if, in subsection (7) of that section, for the words from “any one” to “the Commission” there were substituted “the Director”.

Marginal Citations

M1 1973 c. 41.

VALID FROM 01/04/2003

Enforcement

- ^{F24A} (1) The court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under paragraph 4.
- (2) An application under sub-paragraph (1) shall include details of the possible failure which the OFT considers has occurred.
- (3) In enquiring into a case under sub-paragraph (1), the court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.
- (4) Sub-paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in sub-paragraph (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under paragraph 4.

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- (5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate, the court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.
- (7) In this section “the court”—
 - (a) in relation to England and Wales, means the High Court, and
 - (b) in relation to Scotland, means the Court of Session.]

Textual Amendments

F2 Sch. 14 para. 4A inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(d); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

VALID FROM 01/04/2003

- F3** 4B (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under paragraph 4.
- (2) A person who commits an offence under sub-paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Textual Amendments

F3 Sch. 14 para. 4B inserted (1.4.2003) by 2002 c. 40, s. 278, Sch. 25 para. 21(4)(d); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

Publication of Director’s reports

- 5 (1) The Director may, if he thinks fit, publish any report made by him under paragraph 1 or 3.
- (2) He shall exclude from a published report, so far as practicable, any matter which relates to the affairs of a particular person (other than the supervisory or qualifying body concerned) the publication of which would or might in his opinion seriously and prejudicially affect the interests of that person.

Powers exercisable by the Secretary of State in consequence of report

- 6 (1) The powers conferred by this section are exercisable by the Secretary of State if, having received and considered a report from the Director under paragraph 3(1) or (4), it appears to him that—

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- (a) any rules made or guidance issued by a recognised supervisory or qualifying body, or
 - (b) any such practices as are mentioned in paragraph 3(4),
- have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is reasonably justifiable having regard to the purposes of this Part of this Act.
- (2) The powers are—
- (a) to revoke the recognition order granted to the body concerned,
 - (b) to direct it to take specified steps for the purpose of securing that the rules, guidance or practices in question do not have the effect mentioned in sub-paragraph (1), and
 - (c) to make alterations in the rules of the body for that purpose.
- (3) The provisions of paragraph 3(2) to (5), (7) and (9) of Schedule 11 or, as the case may be, Schedule 12 have effect in relation to the revocation of a recognition order under sub-paragraph (2)(a) above as they have effect in relation to the revocation of such an order under that Schedule.
- (4) Before the Secretary of State exercises the power conferred by sub-paragraph (2)(b) or (c) above he shall—
- (a) give written notice of his intention to do so to the body concerned and take such steps (whether by publication or otherwise) as he thinks appropriate for bringing the notice to the attention of any other person who in his opinion is likely to be affected by the exercise of the power, and
 - (b) have regard to any representation made within such time as he considers reasonable by the body or any such other person.
- (5) A notice under sub-paragraph (4) shall give particulars of the manner in which the Secretary of State proposes to exercise the power in question and state the reasons for which he proposes to act; and the statement of reasons may include matters contained in any report received by him under paragraph 4.

Supplementary provisions

- 7
- (1) A direction under paragraph 6 is, on the application of the Secretary of State, enforceable by injunction or, in Scotland, by an order under section 45 of the ^{M2}Court of Session Act 1988.
 - (2) The fact that any rules made by a recognised supervisory or qualifying body have been altered by the Secretary of State, or pursuant to a direction of the Secretary of State, under paragraph 6 does not preclude their subsequent alteration or revocation by that body.
 - (3) In determining for the purposes of this Part of this Schedule whether any guidance has, or is likely to have, any particular effect the Secretary of State and the Director may assume that the persons to whom it is addressed will act in conformity with it.

Marginal Citations

M2 1988 c. 36.

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PART II

CONSEQUENTIAL EXEMPTIONS FROM COMPETITION LAW

Fair Trading Act 1973 (c. 41)

- 8 (1) For the purpose of determining whether a monopoly situation within the meaning of the Fair Trading Act 1973 exists by reason of the circumstances mentioned in section 7(1)(c) of that Act (supply of services by or for group of two or more persons), no account shall be taken of—
- (a) the rules of or guidance issued by a recognised supervisory or qualifying body, or
 - (b) conduct constituting such a practice as is mentioned in paragraph 3(4) above.
- (2) Where a recognition order is revoked there shall be disregarded for the purpose mentioned in sub-paragraph (1) any such conduct as is mentioned in that sub-paragraph which occurred while the order was in force.
- (3) Where on a monopoly reference under section 50 or 51 of the Fair Trading Act 1973 falling within section 49 of that Act (monopoly reference not limited to the facts) the [^{F4}Competition Commission] find that a monopoly situation within the meaning of that Act exists and—
- (a) that the person (or, if more than one, any of the persons) in whose favour it exists is—
 - (i) a recognised supervisory or qualifying body, or
 - (ii) a person of a description mentioned in paragraph 3(5) or (6) above, or
 - (b) that any such person's conduct in doing anything to which the rules of such a body relate is subject to guidance issued by the body,
- the Commission in making their report on that reference shall exclude from their consideration the question whether the rules or guidance of the body concerned, or the acts or omissions of that body in its capacity as such, operate or may be expected to operate against the public interest.

Textual Amendments

F4 Words in Sch. 14 para. 8(3) substituted (1.4.1999) by S.I. 1999/506, art.26

[^{F5}The Competition Act 1998]

Textual Amendments

F5 Sch. 14 para. 9 and cross-heading substituted (1.3.2000) by 1998 c. 41, s. 3(1)(b), Sch. 2 Pt. II para. 2(2) (with s. 73); S.I. 2000/344, art. 2, Sch.

- [^{F6}9 (1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised supervisory or qualifying body to the extent to which it relates to—
- (a) rules of, or guidance issued by, the body; and

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- (b) incidental matters connected with the rules or guidance.
- (2) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—
 - (a) a recognised supervisory or qualifying body, or
 - (b) any person mentioned in paragraph 3(5) or (6) above,to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by the rules or guidance of that body.
- (3) The Chapter I prohibition does not apply to the practices mentioned in paragraph 3(4)(a) and (b) above.
- (4) Where a recognition order is revoked, sub-paragraphs (1) to (3) above are to continue to apply for a period of six months beginning with the day on which the revocation takes effect, as if the order were still in force.
- (5) In this paragraph—
 - (a) “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
 - (b) references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice,and expressions used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (6) In the application of this paragraph to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.]

Textual Amendments

F6 Sch. 14 para. 9 and cross-heading substituted (1.3.2000) by 1998 c. 41, s. 3(1)(b), **Sch. 2 Pt. II para. 2(2)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

Competition Act 1980 (c. 21)

^{F7}10

Textual Amendments

F7 Sch. 14 para. 10 repealed (1.3.2000) by S.I. 2000/311, art. 24(a)

Status:

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Changes to legislation:

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