

**1976 No. 1897****RESTRICTIVE TRADE PRACTICES****The Restrictive Practices Court Rules 1976**

*Made* - - - - 10th November 1976

*Laid before Parliament* 22nd November 1976

*Coming into Operation* 15th December 1976

The Lord Chancellor, in exercise of the powers conferred on him by section 9(1) and (2) of the Restrictive Practices Court Act 1976(a) and section 22(1) of the Restrictive Trade Practices Act 1976(b), hereby makes the following Rules:—

*Introductory*

1. These Rules may be cited as the Restrictive Practices Court Rules 1976 and shall come into operation on 15th December 1976.

2.—(1) The Interpretation Act 1889(c) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(2) In these Rules, unless the context otherwise requires—

“the Act” means the Restrictive Trade Practices Act 1976;

“association” means a services supply association or, as the case may be, a trade association as defined in section 43 of the Act;

“final hearing” includes a hearing under rule 43(3);

“judge” means a judge of the Court sitting in the part of the United Kingdom in which the proceedings were instituted or, as the case may be, to which they have been transferred;

“the proper officer of the Court” means the Clerk of the Court or other proper officer at the central office of the Court or at the office of the Court in Scotland or Northern Ireland, as the case may be;

references to a party to an agreement include references to any person deemed to be a party for the purposes of the Act;

expressions used in these Rules which are used in the Act have the same meaning in these Rules as in the Act.

*Institution of proceedings*

3.—(1) Subject to paragraph (7), proceedings under the Act shall be instituted by a notice of reference stating that the agreements to which the notice applies are referred to the Court.

(2) A notice of reference may apply to one agreement or to a number of agreements appearing to the Director to be related in such a way as to make it desirable that they should be considered in the same proceedings.

(a) 1976 c. 33.

(b) 1976 c. 34.

(c) 1889 c. 63.

(3) A notice of reference shall sufficiently identify the agreement or agreements to which it applies.

(4) A notice of reference shall specify the part of the United Kingdom in which the proceedings are to take place and shall be issued out of the central office of the Court or the office of the Court in Scotland or Northern Ireland; as the case may be.

(5) A notice of reference shall be issued by being sealed with the Court's seal by the proper officer of the Court; and when issued the notice shall be returned to the Director who shall leave a copy to be filed by the proper officer.

(6) Subject to rules 5 and 6, the Director shall cause a copy of the notice of reference to be served on all parties to the agreement or agreements to which the notice applies, and all such parties shall be respondents to the notice.

(7) This rule does not apply to applications under sections 3, 4, 26, 35, 37 and 40 of the Act, or to such an application as is mentioned in rule 51.

4.—(1) Where the Director intends to apply for an order under section 2(2) of the Act against an association or any person acting on behalf of an association, he shall serve on the association a copy of the notice of reference and the association, though not itself a party to any relevant agreement, shall be made a respondent to the notice.

(2) The Director may, if he thinks fit, serve a copy of the notice of reference on any association whose members or any of them are parties to any relevant agreement and the association, though not itself a party to any such agreement, shall in that event be made a respondent to the notice.

#### *Representative respondents*

5.—(1) Where, in the case of proceedings to which rule 3 applies, several persons have a common interest in the proceedings by reason that they are all parties to the same agreement or have entered into substantially similar agreements, the Director may, in accordance with paragraph (2), nominate any of those persons (or any association of which any of those persons is a member, whether or not it is itself a party to any such agreement) to represent all or some of them and, subject to rules 6 and 9, those persons shall, for the purpose of the proceedings, be treated as being represented by the person so nominated (hereinafter called a "representative respondent").

(2) In any case such as is mentioned in paragraph (1), the Director shall, after issue but before service of the notice of reference—

- (a) give to each person nominated as a representative respondent notice in writing that he is so nominated, including short particulars of the notice of reference and identifying the persons, or classes of persons, whom it is proposed he shall represent, together with a copy of any statement the Director may propose to have published in pursuance of sub-paragraph (c) below; and
- (b) in so far as may be practicable, give to all, or to all other, parties to the agreement written notice of the action taken under sub-paragraph (a) above; and

- (c) unless he is satisfied that such notice has been given to all such parties, cause a statement containing the particulars referred to in sub-paragraph (a) above (including the name and address of each representative respondent) and setting out the effect of rule 6, to be published in—
  - (i) the London, Edinburgh and Belfast Gazettes, and
  - (ii) at least one daily newspaper circulating throughout the United Kingdom, and
  - (iii) if there is in circulation an appropriate trade journal which is published at intervals not exceeding one month, in such a trade journal; and
- (d) file with the proper officer of the Court an affidavit setting out the names of the persons to whom, and the dates on which, he has given written notice in accordance with sub-paragraphs (a) and (b), together with an extract containing any publication made in accordance with sub-paragraph (c) above.

6.—(1) Any person or association who objects to being made a representative respondent, or to being represented by the representative respondent nominated for that purpose by the Director, may, within 28 days of being given notice in writing under sub-paragraph (a) or (b) of rule 5(2) (or, in the case of a person who has not been given such notice, of the latest publication referred to in sub-paragraph (c) of that rule) apply by notice in writing to the Court for an order revoking or modifying the nomination and containing such other directions as may be specified in the notice.

(2) A person applying under paragraph (1) above shall file his notice of application with the proper officer of the Court, together with an affidavit setting out the facts and matters on which he relies, and shall at the same time serve copies of the notice and affidavit on the Director and (if the applicant is not a person nominated as a representative respondent) on the person nominated to represent him.

(3) On the hearing of an application under this rule, the Court may make such order and give such consequential directions as it may think fit.

(4) Where the Director has nominated a representative respondent, he shall not serve a copy of the notice of reference upon the person so nominated until either—

- (a) the time limited for making an application under paragraph (1) has expired without any such application having been made; or
- (b) if such an application has been made, it has been disposed of by the Court.

#### *Entry of appearance*

7. Every respondent who wishes to be heard in the proceedings shall, within 14 days of the service upon him of the copy of the notice of reference, enter an appearance in the office of the Court out of which the notice issued by delivering to the proper officer of the Court two copies of a memorandum stating that the respondent wishes to be heard in the proceedings and containing the name of his solicitor (if any) and an address in the United Kingdom at which documents may be served on him; and the proper officer shall thereupon send one copy of the memorandum, sealed with the seal of the Court, to the Director.

*Alteration of scope of proceedings, parties and venue*

8. Where a notice of reference applies to a number of agreements, any respondent may, within 14 days of entering an appearance to the notice, apply to the Court to exclude from the notice any agreement to which he is a party on the ground that the agreement is not related to the other agreements to which the notice applies, or is not related to some of those agreements, in such a way as to make it desirable that they should all be considered in the same proceedings; and the Court may, on the hearing of the application, amend the notice by excluding any agreement or agreements therefrom, and shall give all such consequential directions as it considers necessary, including a direction that any respondent who is a party to the agreement in question be treated as if he had not entered an appearance.

9. Without prejudice to the operation of rule 6, the Director, or any person or association who falls to be treated as being, or as being represented by, a representative respondent, may at any time apply to the Court for an order such as is mentioned in rule 6(1).

10. The Director, any respondent, and any person or association represented by a representative respondent, may apply to the Court for the transfer of the proceedings to another part of the United Kingdom named in the application; and on the hearing of the application the Court may order that all further proceedings shall take place in the part of the United Kingdom named in the order.

*Statement of case, answer, reply, etc.*

11.—(1) Every respondent who has entered an appearance shall, within three months of his entry of appearance, deliver to the Director, and file with the proper officer of the Court, a statement of his case, which shall include—

- (a) particulars of the provisions of section 10(1) or 19(1) of the Act on which he intends to rely;
- (b) particulars of the facts and matters alleged by him to entitle him to rely on those provisions;

and shall be accompanied by a list of all the documents relevant to the proceedings which are or have been in his possession or power, indicating for which (if any) of those documents he claims privilege and the grounds of the claim.

(2) Without prejudice to the provisions of these Rules relating to discovery, every respondent shall, within seven days after receiving notice in that behalf from the Director, produce for the Director's inspection the documents specified in his list or such of them as may be specified in the notice, and shall permit the Director to make copies thereof:

Provided that nothing in this paragraph shall affect the right of a respondent to claim privilege for any document.

12.—(1) Where a statement of case is delivered, the Director shall deliver an answer within three months after the expiry of the time limited for the delivery of a statement of case by every respondent who has entered an appearance.

(2) Where there is more than one respondent, the Director may deliver a joint answer, or separate answers to each or to some only of the respondents, with or without a joint answer to the remainder.

(3) A copy of every answer shall be delivered to the respondent or respondents to whose statement it is directed and shall be filed with the proper officer of the Court.

13. In proceedings in England and Wales or in Northern Ireland where a respondent intends to rely on facts or matters which, if not raised, would be likely to take the Director by surprise or would raise issues of fact not arising out of the statement of case or answer, he shall, within six weeks of the delivery of the answer, deliver a reply to the Director and file a copy thereof with the proper officer of the Court.

14.—(1) Every allegation of fact in a statement of case shall be deemed to be admitted unless in the answer it is denied specifically or by necessary implication, or is stated not to be admitted.

(2) Subject to paragraph (3), in proceedings in England and Wales or in Northern Ireland, where a reply is delivered, every allegation of fact in the answer shall be deemed to be admitted unless in the reply it is denied specifically or by necessary implication or is stated not to be admitted.

(3) A respondent in his reply may join issue on the answer and in that case he shall be deemed to deny every material allegation of fact in the answer except any which he specifically admits.

15. If a respondent fails to deliver a statement of his case or to comply with any order of the Court within the time limited for doing so, the Court may, on the application of the Director, direct that the respondent be debarred from taking any further part in the proceedings (save for the purpose of being heard on any application by the Director for discovery, or the answering of interrogatories or a statement of facts by that respondent, or for a final order under rule 45 or 46) or make such other order as the Court may think just.

16. In proceedings in England and Wales or in Northern Ireland, any party may apply to any opposite party for further and better particulars of the notice of reference, or of any statement of case, answer or reply, as the case may be, and, if such particulars are not supplied within 14 days or such further time as may be agreed, he may apply to the Court, which may order the delivery of such further and better particulars as it considers necessary.

17. In proceedings in England and Wales or in Northern Ireland, the Court may, on the application of any party, strike out the whole or any part of a statement of case, answer or reply which appears to the Court to be frivolous, vexatious or irrelevant and may in that event allow further time for the delivery of a fresh or amended statement of case, answer or reply.

18. In proceedings in England and Wales or in Northern Ireland, a notice of reference, statement of case, answer or reply may be amended—

(a) at any time by leave of the Court;

(b) without leave at any time before the hearing of the application for directions, if—

(i) in the case of a notice of reference or answer, the Director and all respondents who have entered an appearance or, as the case may be, to whose statement of case the answer is directed, agree; or

(ii) in the case of a statement of case or reply, the Director and all respondents seeking to amend agree;  
and a copy of the notice or other document as amended shall be delivered to all opposite parties and filed with the proper officer of the Court within such time as may be allowed by the Court or agreed between the parties concerned.

**19. In proceedings in Scotland—**

- (a) the Director shall, within seven days after the expiration of the time limited for filing answers, make up an open record consisting of the notice of reference, the statement or statements of case and the answer or answers, and file two copies thereof with the proper officer of the Court, at the same time delivering a copy thereof to each of the respondents; and thereafter the parties shall forthwith proceed to adjust their pleadings;
- (b) upon the expiration of 28 days from the filing of the open record, or of such period of continuation as may be allowed by the Court on cause shown, the record shall be deemed to be closed, and thereafter no amendment of the pleadings shall be made except by leave of the Court; and
- (c) within 14 days after the closing of the record the Director shall file two copies of the closed record with the proper officer of the Court, and shall at the same time deliver 15 copies thereof to each of the respondents.

*Joinder of parties and consolidation*

**20.—(1)** The Director, and any respondent who has entered an appearance, may at any time apply to the Court for an order that any person not already a party be added as a respondent to the proceedings, and shall give notice of the application to all other parties and to the person sought to be added.

(2) Any person who is not a party to the proceedings may apply to the Court for an order adding him as a respondent and shall give notice of the application to all parties to the proceedings.

(3) A copy of the notice of reference and, in Scotland, a copy of the closed record or, as the case may be, of the open record as adjusted to date shall within 14 days after the making of the order be served by the Director on every person added as a respondent under paragraph (1) or (2), and these Rules shall thereafter apply to such person as if he had been made a respondent under rule 3(6).

**21.—(1)** The Director, and any respondent who has entered an appearance, may at any time apply to the Court for an order that any proceedings pending before the Court in the same part of the United Kingdom be consolidated and heard together.

(2) On making an order adding a respondent or an order for the consolidation of any proceedings, the Court shall give all such consequential directions as it considers necessary.

*Application for directions*

**22.** As soon as practicable after every respondent to whom the Director has delivered an answer has delivered his reply or after the time for his doing so has expired, or in Scotland as soon as practicable after the closing of the

record, the Director shall make an application to the Court for directions, with a view to providing an occasion for the consideration of the preparations for the final hearing so that—

- (a) all matters which can be dealt with on interlocutory application and have not already been dealt with (including, in Scotland, any preliminary question of relevance or sufficiency of specification arising on the pleadings) may, so far as possible, be dealt with; and
- (b) such directions may be given as to the future course of the proceedings as appear best adapted to secure the just, expeditious and economical disposal thereof;

and the Court shall fix a date for the hearing of the application.

**23.**—(1) Not less than 21 days before the application for directions is due to be heard, the Director shall serve notice of the application on every respondent who has entered an appearance (with the exception of any respondent who has been debarred under rule 15 from taking any further part in the proceedings) and shall set out in his notice full particulars of the directions for which he intends to apply, and a copy of the notice shall at the same time be filed with the proper officer of the Court.

(2) Every respondent on whom notice is served under paragraph (1) shall, within 14 days of service of the notice, serve on the Director a notice specifying any directions which he may desire in so far as they differ from those applied for by the Director, and shall at the same time file a copy of the notice with the proper officer of the Court.

(3) On the hearing of the application the Court shall give such directions as it considers necessary to secure the purposes mentioned in rule 22 and, without prejudice to the generality of the foregoing, may give such directions as it may think fit as to—

- (a) the amendment of the notice of reference or any statement of case, answer or reply;
- (b) the delivery of further and better particulars or, in Scotland, the further specification, of the notice of reference or of any statement of case, answer or reply;
- (c) the delivery of interrogatories or, in Scotland, the answering of any statement of facts;
- (d) the admission of any facts or documents;
- (e) the discovery or further discovery of any documents;
- (f) the admission in evidence of any documents;
- (g) the mode in which evidence is to be given at the final hearing;
- (h) the taking and recording of any evidence before the final hearing, including the appointment of an examiner or, in Scotland, a commissioner for that purpose;
- (i) the reference to the Court for determination in a summary way of any issue arising in relation to any agreement to which the notice of reference applies;
- (j) the disposal of a preliminary point of law (including, in Scotland, any preliminary question of relevancy or sufficiency of specification arising on the pleadings);
- (k) an investigation of the cost incurred by any respondent (or, as the case may be, any person or association represented by a representative respondent) in producing or supplying any goods or in applying any

process of manufacture to goods, or in supplying any services, and the manner in which the result of such investigation is to be brought before the Court at the final hearing;

- (l) the consolidation of the proceedings with any other proceedings pending before the Court in the same part of the United Kingdom;
- (m) the place and date of the final hearing.

**24.** Any application subsequent to the application for directions and before the final hearing as to any matter capable of being dealt with on an interlocutory application shall be made under the application for directions by two clear days' notice to the opposite party stating the grounds on which it is made.

*Notice to produce documents and to admit documents and facts*

**25.** Any party may give to any opposite party notice to produce at the final hearing any relevant documents specified in the notice which are in the possession or power of the opposite party and, if such notice is not complied with, secondary evidence of the contents of the documents may be given by the party who gave the notice.

**26.** Any party may, not less than 21 days before the date fixed for the final hearing, serve notice on any opposite party requiring him to admit (saving all just exceptions) the authenticity of any document specified in the notice and, unless the opposite party within seven days of service of the notice upon him gives notice requiring the document to be proved at the hearing or unless the Court otherwise directs, he shall be deemed to have admitted its authenticity.

**27.** Any party may, not less than 21 days before the date fixed for the final hearing, give to any opposite party notice to admit, for the purpose of the proceedings, any facts specified in the notice, and the Court shall, in exercising its discretion as to making an order for costs under rule 58(1), take into consideration any unreasonable failure to admit, or delay in admitting, such facts.

*Discovery of documents and interrogatories*

**28.—(1)** In proceedings in England and Wales or in Northern Ireland any party may apply to the Court for an order directing any opposite party to make discovery, or further discovery, either on oath or otherwise, of the documents relating to the proceedings which are or have been in his possession or power, and on the hearing of the application the Court may make such order, either generally or limited to certain classes of documents or to particular documents, as it thinks fit, including an order for the production or inspection of any documents.

(2) In proceedings in Scotland any party may apply to the Court for a commission and diligence for the recovery of documents, and for this purpose the provisions of rules 95 to 99 of the Rules of the Court of Session<sup>(a)</sup> shall apply with the necessary modifications; and any reference in these Rules to discovery, or further discovery, of documents shall be construed as a reference to the recovery of documents under a commission and diligence granted under this paragraph.

**29.** If it appears to the Court on the application of the Director (which may be made at any time after a respondent has delivered a statement of his case or after the time for doing so has expired) that the cost incurred by the respondent in producing or supplying any goods, or in applying any process of

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(a) S.I. 1965/321 (1965 I, p. 803).



manufacture to goods, or in supplying any services is a material fact in the proceedings, the Court may authorise the Director to investigate such cost and may require the respondent concerned to afford to the Director all such facilities as may be necessary for the investigation, and may give directions as to the manner in which the result of the investigation is to be brought before the Court at the final hearing.

**30.**—(1) Subject to paragraph (2), in proceedings in England and Wales or in Northern Ireland any party may apply to the Court for an order requiring any opposite party to answer interrogatories on oath within such time as the Court may direct, and in proceedings in Scotland any party may apply to the Court for an order requiring any opposite party to answer a statement of facts; and copies of the interrogatories or statement of facts shall, unless the Court otherwise directs, be delivered to the opposite party and filed with the proper officer of the Court not less than two days before the day fixed for the hearing of the application.

(2) An application by any party for an order requiring a respondent to answer interrogatories or a statement of facts may be made only after that respondent has delivered a statement of his case or after the time for his doing so has expired; and a respondent may apply for an order to answer interrogatories or a statement of facts only after he has delivered a statement of his case.

(3) The Director may answer any interrogatories or statement of facts by himself or by any officer nominated by him for that purpose, and a body corporate or an association shall answer by a director, manager, secretary or other officer.

**31.** An application may be made by the Director under rules 28 to 30 against any person or association represented by a representative respondent as if that person or association were a respondent to the proceedings and had delivered a statement of his case at or within such time as the representative respondent did or might have done so.

*Interlocutory applications*

**32.**—(1) Except where these Rules otherwise provide or the Court otherwise directs, every interlocutory application shall be made on not less than seven days' notice to the Director or, as the case may be, to every respondent concerned in the subject matter of the application, and the notice shall include particulars of the directions or order sought.

(2) Except where the President of the Court or a judge, whether generally or in any particular case, otherwise directs, every interlocutory application (including an application under rules 33(4) and 49) shall be made to a judge, who may—

- (a) dispose of it himself; or
- (b) refer it in whole or in part to a Court consisting of a presiding judge and at least two other members; or
- (c) (except in the case of an application under rules 33(4) and 49) refer it in whole or in part to the Clerk of the Court, or officer acting as Clerk of the Court in Scotland or Northern Ireland, as the case may be;

and references in these Rules to the Court shall be construed accordingly.

(3) Where an application is made or referred to the Clerk of the Court or officer acting as Clerk of the Court in Scotland or Northern Ireland, as the case may be, any party aggrieved by his decision may appeal to a judge within seven days of the decision on giving notice to all parties concerned and to the proper officer of the Court; and in that case the judge may dispose of the appeal himself, or refer it in whole or in part to a Court consisting of a presiding judge and at least two other members.

(4) For the hearing of any interlocutory application or appeal, the Court or judge may sit either in private or in public.

*Application for interim order*

33.—(1) At any time after the issue of a notice of reference, and notwithstanding that it has not been served, the Director may apply to the Court for an interim order under section 3 of the Act by a notice of application issued out of the office of the Court out of which the notice of reference was issued.

(2) In addition to the matters required by section 3(2) of the Act to be specified in the application the notice shall specify the persons (including any association, whether or not it is itself a party to the agreement to which the notice applies) against whom an interim order is sought.

(3) The notice of application shall be issued by being sealed with the Court's seal by the proper officer of the Court, and when issued shall be returned to the applicant who shall—

- (a) leave a copy to be filed by the proper officer; and
- (b) at the same time file with the proper officer an affidavit setting out the facts and matters on which he relies in support of the application.

(4) Where the case is one of urgency the application may be made *ex parte*, but in any other case the Director shall serve a copy of the notice of application and of the affidavit on the persons (including any association) against whom an interim order is sought and those persons shall be made respondents to the notice.

(5) Where the application is made *ex parte*, the Court may make such interim order, and give such directions as to the service of notice of the application, the joinder of parties, or the further hearing of the application as the Court thinks fit.

(6) Any respondent who wishes to oppose the application shall within seven days of service upon him of notice of the application file with the proper officer of the Court an affidavit setting out the grounds of his objection and the facts and matters on which he relies and shall at the same time serve a copy thereof on the Director.

(7) Not later than seven days after every respondent has filed an affidavit or the time for doing so has expired the Director shall apply to the Court for directions.

(8) The provisions of these Rules relating to a reference to the Court by the Director (other than rule 23(1) and (2)) shall apply with the necessary modifications to directions under paragraph (5) and paragraph (7) and to all further proceedings on the application.

(9) An application under section 3(5) of the Act for a fresh interim order in substitution for an earlier one may be made by notice of application specifying the interim order to which the application relates, and paragraph (3) shall apply to a notice under this paragraph as it applies to the original application.

(10) A notice under paragraph (9) shall be served on all those persons who were parties to the proceedings relating to the previous interim order, and such persons shall be respondents to the notice.

(11) Paragraphs (6), (7) and (except for the words “paragraph (5) and”) (8) shall apply to an application under paragraph (9) as they apply to an application by the Director under paragraph (1).

#### *Evidence*

**34.** Subject to these Rules, and to any enactment relating to evidence, any fact required to be proved at the hearing of the reference shall be proved by the oral examination of the witnesses.

**35.** The Court may, on the hearing or adjourned hearing of the application for directions or at the final hearing, order that all or any of the evidence at the final hearing shall be given by affidavit, and may make such order on such terms as to the filing and giving of copies of the affidavits or proposed affidavits and as to the production of the deponents for cross-examination as the Court may think fit.

**36.** Without prejudice to rule 35, the Court may order that evidence of any particular fact shall be given at the final hearing in such manner as may be specified in the order and in particular—

- (a) by statement on oath of information or belief;
- (b) by the production of documents or entries in books;
- (c) by copies of documents or entries in books;
- (d) in the case of scientific, technical or statistical information relevant to the proceedings, by the production of specified scientific, technical, economic or trade publications or works of reference containing such information.

**37.** Where it appears to the Court, on the hearing or adjourned hearing of the application for directions or at the final hearing, that the Court would be assisted in determining any issue in the proceedings by the admission of evidence (whether oral or documentary) which would not otherwise be admissible under the law relating to evidence, the Court may make an order allowing the admission of such evidence.

**38.** Any order under rules 35 to 37 made before the final hearing may be revoked or varied by a subsequent order made at or before the final hearing.

**39.** The Court may, on the application of any party, make an order for the examination on oath of any witness before such examiner as the Court may direct, and may give such directions as the Court may think fit as to the taking and recording of such evidence and its reception at the final hearing, and at the examination of the witness the same practice shall be followed as on the examination of a witness before an examiner of the Supreme Court or, in proceedings in Scotland, before a commissioner appointed by the Court of Session to take evidence.

40. Where a witness is required to attend before the Court to give oral evidence or to produce any document in his possession or power, the proper officer of the Court shall issue a summons ordering the attendance of the witness, which shall be served personally on him a reasonable time before he is required to attend, and there shall at the same time be paid or tendered to the witness a sum sufficient to cover his reasonable expenses for travelling to and from, and his attendance at, the Court.

*Final hearing*

41. Subject to the provisions of section 7(1) of the Restrictive Practices Court Act 1976, the final hearing of any proceedings shall take place before such members of the Court as the President thereof may nominate for the purpose.

42. The final hearing shall take place in public:

Provided that if the Court is satisfied that it is in the public interest that the hearing or part thereof should not take place in public or that evidence may be given as to a secret process of manufacture or as to the presence, absence or situation of any mineral or other deposits or as to any similar matter the publication of which would substantially damage the legitimate business interests of any person, it shall, and may in any other case in which it appears proper to the Court to do so, order that the hearing, or such part thereof as the Court may direct, shall take place in private.

*Summary determination of issues and preliminary points of law*

43.—(1) In the Director's application for directions and in any notice given by a respondent under rule 23(2) there may be included an application for the determination in a summary way of any issue arising in relation to any agreement to which the notice of reference applies, and any such application shall state the issue to be determined and shall include particulars of any relevant matters considered in previous proceedings before the Court, and of the judgment or order given or made in those proceedings.

(2) If, on the hearing of the application, it appears to the Court that the relevant provisions of the agreement and the circumstances of the case are substantially similar to those considered in previous proceedings before the Court, it may direct that the issue be referred for determination in a summary way.

(3) Where a direction has been given under paragraph (2), the Court may at the hearing, unless it is satisfied that the relevant provisions of the agreement or the circumstances of the case differ in some material respect from the provisions and circumstances considered in the previous proceedings—

- (a) determine the issue in a summary way without hearing evidence, or on such evidence, whether oral or documentary, as it may think fit; and
- (b) make any declaration or order which the Court could have made under section 1(3) or 2 of the Act if the issue had been determined after a final hearing in the ordinary way, or defer the making of any such declaration or order until all other issues in the proceedings have been disposed of.

44. The Director, and any respondent who has entered an appearance, may apply to the Court at any time for an order that a point of law arising on the notice of reference, or on any statement of case, answer or reply, be determined

before the final hearing of the proceedings and the Court may, if it thinks fit, dispose of the point of law on the hearing of the application or at any later stage in the proceedings.

*Procedure on summary application for final order*

45. If at any time before the final hearing every respondent who has entered an appearance (with the exception of any respondent who has been debarred under rule 15 from taking any further part in the proceedings) notifies the Director that he is willing to submit to a declaration that the restrictions in the agreement to which the notice of reference applies are contrary to the public interest or, as the case may be, to such a declaration and to an order under section 1(3) or 2 of the Act, the Director shall apply to the Court for such a declaration and, where appropriate, for such an order within 28 days after being so notified by every such respondent.

46. Where no appearance has been entered or where, after entry of an appearance, no statement of case has been delivered, the Director may apply to the Court for a declaration that the restrictions in the agreement to which the notice of reference applies are contrary to the public interest and, where appropriate, for an order under section 1(3) or 2 of the Act; and any such application may be made—

- (a) where no appearance has been entered, not earlier than 28 days after the expiration of the time limited for entry of appearance by the respondent on whom the notice of reference was last served;
- (b) where no statement of case has been delivered, not earlier than 28 days after the expiration of the time limited for delivery of a statement of case by the respondent who last entered an appearance.

47. Not later than 21 days before an application under rule 45 or 46 is due to be heard the Director shall file with the proper officer of the Court a draft of the declaration and of any order for which he intends to apply and shall at the same time serve a copy of the draft on every respondent, whether he has entered an appearance or not, together with notice of the time and place appointed for the hearing of the application.

48. Every respondent shall be entitled to be heard on the application as to whether the restrictions set out in the draft declaration are restrictions accepted by the parties to the agreement to which the notice of reference applies and as to any other matters which the Court considers can properly be raised on the hearing of the application, not being matters which, in the opinion of the Court, ought to have been raised in a statement of case.

*Applications under section 4 of the Act*

49.—(1) An application for leave to apply under section 4 of the Act for the discharge of any declaration made by the Court in any proceedings, and of any order made in pursuance thereof, shall be made to the Court in the part of the United Kingdom in which the previous proceedings took place and shall be supported by evidence on affidavit of the matters on which the applicant relies.

(2) Unless the Court otherwise directs, notice of the application for leave, together with copies of the affidavits in support thereof, shall be served on every party who appeared on the hearing of the previous proceedings and every such party shall be entitled to be heard on the application.

**50.** If leave is granted under rule 49, the Court shall give such directions as it thinks fit as to the delivery by the applicant of a statement of his case and by the Director (if he is not the applicant) and by any other party of an answer, and, subject to any directions so given, the provisions of these Rules relating to a reference to the Court by the Director shall apply with the necessary modifications to all further proceedings on the application.

*Applications to discharge orders made by other courts or for declarations under section 40 of the Act*

**51.** Any person who wishes to apply to the Court for the discharge of an order made under section 18(2) of the Restrictive Trade Practices Act 1956(a) by the High Court, the Court of Session or the High Court in Northern Ireland may do so by a notice of application which shall—

- (a) be issued out of the office of the Court situate in that part of the United Kingdom in which the order was made; and
- (b) contain—
  - (i) particulars of the order which the applicant seeks to have discharged and of the grounds on which he alleges that the order ought to be discharged;
  - (ii) particulars of the provisions of section 10(1) or 19(1) of the Act on which he intends to rely;
  - (iii) particulars of the facts and matters alleged by him to entitle him to rely on those provisions; and
- (c) be accompanied by a list of all the documents relevant to the application which are or have been in the possession or power of the applicant, indicating for which (if any) of those documents he claims privilege and the grounds of the claim.

**52.—(1)** Any person who wishes to apply to the Court for a declaration under section 40(1) of the Act may do so by a notice of application issued out of the central office of the Court, or the office of the Court in Scotland or Northern Ireland.

(2) A notice of application under paragraph (1) shall—

- (a) contain—
  - (i) particulars of the agreement which the applicant desires to make and of the order in force under section 56 of the Fair Trading Act 1973(b) or having effect as if made under that section, by virtue of which the making of the agreement is unlawful, or of any relevant undertaking or assurance given to the appropriate Minister within the meaning of the said section 56;
  - (ii) particulars of the provisions of section 10(1) or 19(1) of the Act on which the applicant intends to rely; and
  - (iii) particulars of the facts and matters alleged by him to entitle him to rely on those provisions; and
- (b) be accompanied by a list of all the documents relevant to the application which are or have been in the possession or power of the applicant, indicating for which (if any) of those documents he claims privilege and the grounds of the claim.

(a) 1956 c. 68.

(b) 1973 c. 41.

**53.**—(1) A notice of application under rule 51 or 52 shall be issued by being sealed with the Court's seal by the proper officer of the Court; and when issued the notice shall be returned to the applicant who shall leave a copy to be filed by the proper officer and shall serve a copy on the Director, who shall be the respondent to the notice.

(2) Without prejudice to the provisions of these Rules relating to discovery, the applicant shall within seven days after receiving notice in that behalf from the Director produce for his inspection the documents specified in the applicant's list of documents, or such of them as may be specified in the notice, and shall permit the Director to make copies thereof:

Provided that nothing in this paragraph shall affect the applicant's right to claim privilege for any document.

(3) If the Director wishes to oppose the application, he shall, within six weeks of the service upon him of the copy of the notice of application, deliver an answer to the applicant and file a copy thereof with the proper officer of the Court.

(4) The provisions of these Rules relating to a reference to the Court by the Director shall apply with the necessary modifications to all further proceedings on the application.

(5) Where an order is made for the discharge of an order made under section 18(2) of the Restrictive Trade Practices Act 1956, the proper officer of the Court shall send a copy of the first-mentioned order to the Chief Registrar of the Chancery Division of the High Court, the Principal Clerk of Session in Scotland or the Registrar of the Supreme Court of Northern Ireland, as the case may be.

*Applications under section 26 or 35 of the Act*

**54.**—(1) An application to the Court under section 26 or 35 of the Act shall be made by notice in writing issued out of the central office of the Court, or the office of the Court in Scotland or Northern Ireland, as the case may be, specifying the part of the United Kingdom in which the hearing is to take place and containing particulars of any order or declaration sought and identifying the agreement to which the application relates.

(2) A notice under paragraph (1) shall be issued by being sealed with the Court's seal by the proper officer of the Court and when issued shall be returned to the applicant who shall—

- (a) leave a copy to be filed by the proper officer; and
- (b) at the same time file with the proper officer an affidavit setting out the facts and matters on which he relies in support of the application.

**55.**—(1) Where an application under section 26 of the Act is made by a person other than the Director, the applicant shall serve a copy of the notice and affidavit on the Director, who shall be made a respondent to the application.

(2) Where an application is made by the Director under section 26 or 35 of the Act, the Director—

- (a) shall, unless all the parties to the agreement are treated under subparagraph (c) as represented by an association, serve copies of the notice and affidavit on one or more parties to the agreement, who shall be made respondents to the application and (subject to any directions of the Court) be treated as representing such other parties, if any, to the agreement as the Director may specify; and

- (b) shall, in any case where he intends to apply for an order under section 35(3) of the Act against an association or any person acting on behalf of an association, serve such copies on the association, which shall be made a respondent to the application; and
  - (c) may, if he thinks fit, serve such copies on any association whose members include parties to the agreement (notwithstanding that the association is not itself a party thereto), and that association shall thereupon be made a respondent to the application and be treated as representing such other parties, if any, to the agreement as the Director may specify.
- (3) Where, by virtue of paragraph (2), any parties to an agreement fall to be treated as being represented by a respondent to the application—
- (a) the Director shall—
    - (i) inform them of the proceedings by notice in writing and, unless he is satisfied that such notice has been given to all of them, by advertisement in the manner described in rule 5(2)(c); and
    - (ii) file with the proper officer of the Court an affidavit such as is referred to in rule 5(2)(d); and
  - (b) the provisions of rule 6 (except paragraph (4) thereof) shall apply with the necessary modifications.

**56.—**(1) Any respondent who wishes to oppose an application made under section 26 or 35 of the Act shall, within six weeks of service upon him of notice of the application (or, if his representing, or being represented by, any other person has been the subject of an objection, within such further time as the Court may direct) file with the proper officer of the Court an affidavit setting out the grounds of his objection and the facts and matters on which he relies and shall at the same time serve a copy thereof on the applicant.

(2) Not later than 21 days after every respondent has filed an affidavit in accordance with paragraph (1), or after the time for doing so has expired, the Director shall apply to the Court for directions and the provisions of these Rules relating to a reference to the Court by the Director shall apply with the necessary modifications to such directions and to all further proceedings on the application.

#### *Applications under section 37 of the Act*

**57.—**(1) An application by the Director to the Court under section 37 of the Act shall be made *ex parte* by notice in writing issued out of the central office of the Court, or the office of the Court in Scotland or Northern Ireland, as the case may be, specifying the persons against whom the order is sought.

(2) A notice under paragraph (1) shall be issued by being sealed with the Court's seal by the proper officer of the Court and, when issued, shall be returned to the Director, who shall—

- (a) leave a copy to be filed with the proper officer; and
  - (b) at the same time file with the proper officer an affidavit setting out the information the Director requires, the steps he has taken under section 36 of the Act to obtain that information from the persons specified in the notice and the facts and matters relied on in support of the application.
- (3) If the Director is seeking an order against any person in his capacity as an officer of, or person employed by, a body corporate or an unincorporated



association, the affidavit referred to in paragraph (2) shall state the office or post held by that person.

(4) The notes of the examination of any person taken in pursuance of an order under section 37 of the Act shall be filed with the proper officer of the Court.

#### *Costs*

**58.**—(1) Where it appears to the Court that any party has been guilty of unreasonable delay, or of improper, vexatious, prolix or unnecessary steps in any proceedings under section 1, 2 or 4 of the Act or of other unreasonable conduct (including, but without prejudice to the generality of the foregoing, a refusal to make any admission or agreement as to the conduct of the proceedings which he ought reasonably to have made), the Court may make an order for costs against him.

(2) Where an order is made under paragraph (1) or under the powers conferred on the Court by section 22(2)(b) of the Act (which enables the Court to make an order for costs in proceedings under section 26, 35 or 37 of the Act) the Court may direct that the party against whom the order is made shall pay to any other party—

- (a) a lump sum by way of costs; or
- (b) such costs or such proportion of the costs as may be just.

(3) Where the Court gives a direction under paragraph (2)(b) it may—

- (a) itself assess the sum to be paid; or
- (b) direct that it be assessed by the proper officer of the Court; or
- (c) direct that the proper officer of the Court refer the costs to be taxed or assessed by a Master of the Supreme Court (Taxing Office) or by the Auditor of the Court of Session in Scotland or by the Taxing Master of the Supreme Court of Northern Ireland.

(4) Where a direction is given under paragraph (3)(b) or (c), any party aggrieved by the taxation or assessment may appeal to a judge within seven days of the taxation or assessment on giving notice to all parties concerned and to the officer who made the taxation or assessment; and the judge may dispose of the appeal himself, or refer it in whole or in part to a Court consisting of a presiding judge and at least two other members, and, in either event, rule 32(4) shall apply to the hearing of the appeal.

#### *Drawing up and enforcement of orders*

**59.** The proper officer of the Court shall deliver or send to the Director a copy, sealed with the seal of the Court, of every declaration or order made by the Court as soon as may be after it has been drawn up.

**60.** Any clerical mistake in any declaration or order of the Court, or error therein arising from any accidental slip or omission, may at any time be corrected by the Court on the application of any party.

**61.** Every order of the Court may be enforced in the same way as an order of the High Court, the Court of Session or the High Court in Northern Ireland is enforceable in England and Wales, Scotland or Northern Ireland respectively, and the practice of those Courts in regard to the enforcement of their orders shall apply to the enforcement of orders of the Court.

62.—(1) The judgment of the Court shall, in so far as facts are stated therein, be deemed to be a case stated for the purpose of any appeal on a question of law to which those facts give rise, so, however, that any party may, at or before the conclusion of the hearing, request the Court to find in its judgment the facts giving rise to any specific question of law.

(2) Any party to such proceedings who wishes to appeal shall, within 21 days after the judgment has been delivered, apply in writing to the proper officer of the Court for a copy of the judgment and the proper officer shall thereupon send him a copy of the judgment signed by the presiding judge.

(3) If such party considers that the facts found in the judgment are not sufficient to enable the question of law to be fully argued, he may, within seven days after receiving the copy of the judgment, apply to the Court for it to be amplified or amended.

#### *Service of documents*

63.—(1) Every notice or other document required by these Rules to be served on or delivered to any person may be sent to that person by prepaid post at his address for service or, where no address for service has been given, at his registered office, principal place of business or last known address in the United Kingdom, and every notice or other document required to be delivered to or filed with the proper officer of the Court may be sent by prepaid post to the Clerk of the Court at the Royal Courts of Justice, Strand, London, WC2A 2LL, or to the officer acting as Clerk of the Court at 2, Parliament Square, Edinburgh, EH1 1RF, or at the Royal Courts of Justice (Ulster), Chichester Street, Belfast, BT1 3JF, as the case may require.

(2) Any notice or other document required to be served on or delivered to an association may, if the association is not a body corporate, be sent to its secretary, manager or other similar officer.

64. The Court may on the application of the Director, which may be made *ex parte*, give leave for the service of a notice of reference outside the United Kingdom and may in that event give directions as to the mode of service and as to the extension of the time within which the respondent may enter an appearance and deliver a statement of his case.

65. The Court may on the application of any party, which may be made *ex parte*, direct that service of any document be dispensed with or effected otherwise than in the manner provided by these Rules, including (without prejudice to the generality of the foregoing) the publication of notice thereof in such trade journal or other newspaper as the Court may direct.

#### *Miscellaneous*

66. The time prescribed by these Rules or by order of the Court for doing any act may be extended (whether it has already expired or not) or abridged by the Court or, except where the Court otherwise directs, by consent in writing.

67. Unless the Court otherwise directs, the months of August and September shall be excluded in calculating time under these Rules for the delivery of any statement of case, answer or reply, or for the making of any application to the Court.

68. The central office of the Court shall be open at such times as the President of the Court may direct, and the offices of the Court in Scotland and Northern Ireland shall be open at such times as may be directed by the judge of the Court in Scotland or Northern Ireland, as the case may be.

69. Where the last day for the doing of any act falls on a day on which the appropriate office of the Court is closed and by reason thereof the act cannot be done on that day, it may be done on the next day on which the office is open.

70. Failure to comply with any requirement of these Rules shall not invalidate any proceedings unless the Court so directs and, subject to the provisions of the Act, of the Restrictive Practices Court Act 1976 and of these Rules, the Court shall have power to regulate its own procedure.

*Revocation of Rules*

71. The Restrictive Practices Court Rules 1957(a), the Restrictive Practices Court (Amendment) Rules 1962(b), the Restrictive Practices Court (Amendment) Rules 1965(c), the Restrictive Practices Court (Amendment) Rules 1968(d), and the Restrictive Practices Court (Amendment) Rules 1973(e) are hereby revoked.

Dated 10th November 1976.

*Elwyn-Jones. C.*

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EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

These Rules, which come into operation on the same day as the Restrictive Practices Court Act 1976 and the Restrictive Trade Practices Act 1976, consolidate and replace the Restrictive Practices Court Rules 1957 and the amending Rules of 1962, 1965, 1968 and 1973, with changes consequential upon the consolidation of the enactments relating to restrictive trade practices.

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(a) S.I. 1957/603 (1957 II, p. 1955).  
(c) S.I. 1965/22 (1965 I, p. 14).  
(e) S.I. 1973/1653 (1973 III, p. 5112).

(b) S.I. 1962/2705 (1962 III, p. 3662).  
(d) S.I. 1968/1802 (1968 III, p. 4819).

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