1974 No. 1836

RESTRICTIVE TRADE PRACTICES

The Agricultural and Forestry Associations Order 1974

Made - - - -	*5th November* 1974
Laid before Parliament	14*th November* 1974
Coming into Operation	1*st March* 1975

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for Northern Ireland (being the Secretaries of State respectively concerned with agriculture in Scotland and in Northern Ireland), acting jointly, in exercise of the powers conferred on them by section 1(1)(*a*) and (3) of the Agricultural and Forestry Associations Act 1962**(a)** as amended and extended by section 44 of the Agriculture (Miscellaneous Provisions) Act 1968**(b)** and of all other powers enabling them in that behalf, hereby make the following order:—

Citation and commencement

1. This order may be cited as the Agricultural and Forestry Associations Order 1974 and shall come into operation on the 1st March 1975.

Revocation of previous orders

2. The Agricultural and Forestry Associations (Exceptions) Order 1962**(c)** and the Agricultural and Forestry Associations (Exceptions) Amendment Order 1964**(d)** are hereby revoked.

Interpretation

3.—(1) In this order, unless the context otherwise requires—

"the Act" means the Agricultural and Forestry Associations Act 1962 as amended and extended by section 44 of the Agriculture (Miscellaneous Provisions) Act 1968;

"association" means a co-operative association formed for the purposes of agriculture or forestry or both to which section 1 of the Act applies, not being a federal as hereinafter defined;

"federal" means an association of associations, being an association to which section 1 of the Act applies;

"member", in relation to a federal, means a constituent association of that federal or a member of such constituent association.

(a) 1962 c. 29.
(b) 1968 c. 34.
(c) S.I. 1962/1892 (1962 II, p. 2345).
(d) S.I. 1964/14 (1964 I, p. 7).

(2) The Interpretation Act 1889**(a)** shall apply to the interpretation of this order as it applies to the interpretation of an Act of Parliament and as if this order and the orders hereby revoked were Acts of Parliament.

Provisions to be contained in memorandum or articles of association

4. For the purposes of section 1(1)(*a*) of the Act the following provisions are hereby prescribed as those to be contained in the memorandum or articles of association of an association or a federal which is a company within the meaning of the Companies Act 1948**(b)** or the Companies Act (Northern Ireland) 1960**(c)** that is to say—

(*a*) a provision that the profits of the association or federal, after provision has been made for the payment of such rate of interest, on share capital and on loan capital provided by its members, for any financial year of the association or federal as shall be consistent with its co-operative nature but does not exceed either—

(i) a rate 2 per cent. above the highest rate at which the Minimum Lending Rate of the Bank of England has been fixed at any time during that year, or

(ii) in the case of share capital, 7½ per cent. and in the case of loan capital, 10 per cent.,

whichever shall be the greater, shall, if and so far as they are divided among its members, be divided in proportion to the use made, during the period in respect of which such interest is paid, by members of the facilities provided by the association or federal or of such of those facilities as may be specified, the extent of such use being determined in such manner as may be specified, and that any reserves which are distributed shall be divided in the like proportion;

(*b*) in the case of an association, a provision that a member shall be entitled either to one vote only or to a vote or votes in accordance with a method which includes a provision whereby no member shall be entitled to more than a fraction, which shall not exceed one-tenth, of the votes capable of being then cast, but for such provision, by all the members entitled to vote but which does not make the right of a member to vote in respect of a particular matter dependent on his use of the facilities provided by the association in relation to that matter:

Provided that, subject as aforesaid, where a right to vote is restricted to those members who have made use of any of the facilities provided by the association, the use to be taken into account shall be that extending over a specified period of at least two but not more than three years (or, where the circumstances so permit, a period of less than two years beginning with the date of the incorporation of the association) immediately preceding the taking of the vote;

(*c*) in the case of a federal, a provision that a constituent association shall be entitled either to one vote only or to a vote or votes in accordance with a method which includes a provision whereby no constituent association shall be entitled to more than the number (rounded up, if necessary, to the nearest whole number, fractions of less than one-half being disregarded) of votes resulting from dividing the total number of votes capable of being then cast, but for such provision, by a fraction, which shall not be less than one-half, of the number of constituent associations then entitled to vote:

(a) 1889 c. 63. (b) 1948 c. 38. (c) 1960 c. 22 (N.I.).

Provided that where the right of members of all the constituent associations to vote is restricted in the like manner in respect of all or any particular matters in accordance with such a method as is referred to in the last preceding paragraph and where the memorandum or articles of association of the federal so provide, the number of votes to which a constituent association is entitled in respect of the like matters shall bear the same proportion to the total number of votes which may be cast by all the constituent associations entitled to vote in respect of such matters as the number of its members who are for the time being entitled to vote in respect of those matters bears to the total number of such members of all the said constituent associations.

Application of section 1(2) *of the Act*

5.—(1) Subject to paragraph (2) of this Article, section 1(2) of the Act (which provides that Part I of the Restrictive Trade Practices Act 1956 **(a)** shall not apply to certain agreements) shall not apply in relation to an agreement, whether made before or after the coming into operation of this order, made (with or without other parties) between two or more associations, between two or more federals or between one or more associations and one or more federals.

(2) There shall be excepted from the operation of paragraph (1) of this Article—

(*a*) an agreement for the supply of goods made (with or without one other party) between two or more associations, between two or more federals or between one or more associations and one or more federals under which no restrictions are accepted other than such as relate exclusively to the goods supplied in pursuance of the agreement;

(*b*) an agreement made between two or more associations which is contained in the rules or in the memorandum or articles of association of a federal of which they are members;

(*c*) an agreement made (with or without other parties) between two or more constituent associations of the same federal under which restrictions are accepted only by virtue of one or more of the following undertakings, that is to say—

(i) an undertaking by an association that the produce, or a specified kind, quantity or proportion thereof, produced by the association or by its members on land occupied by them and used for agriculture or forestry shall be sold to or marketed by or through the agency of the federal of which the association is a member;

(ii) an undertaking by an association to obtain from or through the agency of the federal of which the association is a member goods of a specified kind required by the association or by its members for the production of produce on land occupied by them and used for agriculture or forestry;

(iii) an undertaking by an association that produce produced by the association or by its members on land occupied by them and used for agriculture or forestry shall be produced, prepared for market or delivered in accordance with the requirements of the federal of which the association is a member, but, except where required for the purpose of obtaining a benefit under any instrument of the European Economic Community, without any term limiting the quantity so produced by them;

(a) 1956 c. 68.

(*d*) an agreement made (with or without other parties) between a federal and one or more of its constituent associations under which restrictions are accepted only by virtue of one or more of the following undertakings, that is to say—

(i) an undertaking by a federal that the produce, or a specified kind, quantity or proportion thereof, purchased or marketed by or through the agency of the federal shall be produce produced by its members on land occupied by them and used for agriculture or forestry, with or without a further undertaking by the federal that such produce shall be purchased or marketed by or through the agency of the federal on specified terms, including terms as to price;

(ii) an undertaking by a federal to supply only to its members goods of a specified kind required by those members for the production of produce on land occupied by them and used for agriculture or forestry;

(iii) in the case of an agreement made in pursuance of such an undertaking as is referred to in sub-paragraph (*c*)(ii) of this paragraph, an undertaking by a federal that the goods shall be supplied on specified terms, including terms as to price;

(iv) one or more of the undertakings referred to in sub-paragraph (*c*)(i), (ii) and (iii) of this paragraph;

(*e*) an agreement for the supply of goods between two parties, being an agreement to which no other person is a party, under which—

(i) the party supplying the goods undertakes not to supply goods of the same description to any other person, and

(ii) the party acquiring the goods undertakes not to acquire other goods of the same description from any other person,

no other restrictions being accepted.

6.—(1) Section 1(2) of the Act shall not apply to any agreement, whether made before or after the coming into operation of this order and whether or not an agreement otherwise excepted from the operation of paragraph (1) of Article 5 of this order, to which at least one of the parties is an association or a federal which markets produce, supplies goods or provides services for or to persons other than its members unless the agreement—

(*a*) is in force during any part of a financial year of any such association or federal immediately following a period of three consecutive financial years, taken together, during which the revenue accruing to the association or federal from any of the respective sources described in sub-paragraphs (*a*) to (*d*) of paragraph (2) of this Article exceeds two-thirds of the sum of the revenue accruing to the association or federal from such source and (disregarding the origin of any produce or the purpose for which any goods are required) from like transactions with persons who are not members of the association or federal, the proportion in each case being determined by reference to the records of the association or federal, or being certified by the auditor or auditors of its accounts or by an accountant, and,

(*b*) except where the agreement was made before the coming into operation of this order, contains an undertaking by the association or federal forthwith to inform the other parties to the agreement of any determination made or certificate issued in accordance with sub-paragraph (*a*) of this paragraph.

(2) For the purposes of paragraph (1) of this Article the revenue accruing to an association or federal in relation to transactions with its members shall be that accruing—

(*a*) in respect of the marketing by the association or federal, as principal, of produce produced by its members on land in their occupation and used for agriculture or forestry or both, after deducting the sums paid or payable to such members in respect of such produce;

(*b*) by way of payments received or receivable from its members for the marketing by the association or federal, as agent, of produce produced by such members on land in their occupation and used for agriculture or forestry or both;

(*c*) by way of sums paid or payable to the association or federal for the supply to its members of goods required by them for the production of produce on land in their occupation and used for agriculture or forestry or both, after deducting the cost to the association or federal of such goods; and

(*d*) by way of sums paid or payable for services rendered to its members.

(3) Paragraph (1) of this Article shall not take effect in relation to any agreement until the expiration of two months from the date on which an auditor has signed his report on the accounts for the last of the three consecutive financial years mentioned in that paragraph, or two months from the date on which the accounts for that year have been presented to members of the association or to constituent associations of the federal, as the case may be.

(4) Paragraph (1) of this Article shall not apply to any association or federal registered under the Industrial and Provident Societies Acts 1965 to 1968**(a)** or the Industrial and Provident Societies Act (Northern Ireland) 1969**(b)**.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 1st November 1974.

(L.S.)

Frederick Peart,
Minister of Agriculture, Fisheries and Food.

4th November 1974.

William Ross,
Secretary of State for Scotland.

5th November 1974.

Merlyn Rees,
Secretary of State for Northern Ireland.

(a) 1965 c. 12, 1967 c. 48 and 1968 c. 55. (b) 1969 c. 24 (N.I.).

EXPLANATORY NOTE

(This Note is not part of the order.)

The Agricultural and Forestry Associations Act 1962 provides that Part I of the Restrictive Trade Practices Act 1956, which requires restrictive trading agreements to be registered, shall not apply to agreements made by certain associations and their members in connection with the marketing, or preparation for market, of members' produce or the supply of requisites for the production of such produce. Ministers were given power by the 1962 Act to prescribe the provisions which, as a condition of benefit under the 1962 Act, must be included in the memorandum or articles of association of associations registered under the Companies Acts, and to exclude certain agreements from that benefit. Section 44(2) and (3) of the Agriculture (Miscellaneous Provisions) Act 1968 widened the effect of the 1962 Act by enabling other associations, with the approval of the Ministers, to benefit and by bringing in agreements made by associations in connection with the production and supply of produce by their members.

The associations which benefit from the 1962 Act, as modified by the 1968 Act, include agricultural and forestry associations and associations of such associations, the latter being referred to in this order as "federals". This order re-enacts, with modifications and extensions, an earlier order of 1962 which is now revoked, and sets out the provisions to be included in the memorandum or articles of association of an association or federal registered under the Companies Acts if it is to benefit under the 1962 Act. By these provisions, first, limits must be set on the rates of interest which may be paid on share capital or on loan capital provided by members, and, secondly, voting rights in associations and in federals respectively must be distributed in prescribed ways.

The order excludes from the benefit of the 1962 Act agreements made between two or more associations, between two or more federals or between one or more associations and one or more federals (with or without other parties) unless they are of particular kinds defined in this order. These protected kinds of agreement are:—

(*a*) an agreement for the supply of goods to which any number of associations or federals may be parties provided that there is no more than one other party and none of the parties accepts restrictions which do not relate exclusively to the goods supplied in pursuance of the agreement;

(*b*) an agreement between two or more associations which is contained in the rules or in the memorandum or articles of association of a federal of which they are members;

(*c*) an agreement under which a federal accepts responsibility for marketing the produce of constituent associations and their members, or supplying requisites for their use in production, and the constituent associations agree to accept the rulings of the federal on such matters as the quality and quantity of goods to be supplied for marketing by the federal, and the sources from which they will obtain requisites;

(*d*) an exclusive dealing and sole agency agreement made between two associations, two federals or one association and one federal.

Finally, provision is included to ensure that only associations and federals which do at least two-thirds of their business with members shall benefit under the 1962 Act. If this condition is not satisfied over any period of three years, then any agreements to which the association or federal is a party are excluded from benefit thereafter.

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