Resale Prices Act 1964

1964 CHAPTER 58

An Act to restrict the maintenance by contractual and other means of minimum resale prices in respect of goods supplied for resale in the United Kingdom; and for purposes connected therewith. [16th July 1964]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Restriction of contractual and other means of maintaining minimum resale prices

Avoidance of conditions for maintaining resale prices.

1.—(1) Subject to the provisions of this Act with respect to registration and to the powers of the Restrictive Practices Court thereunder, any term or condition of a contract for the sale of goods by a supplier to a dealer, or of any agreement between a supplier and a dealer relating to such a sale, shall be void in so far as it purports to establish or provide for the establishment of minimum prices to be charged on the resale of the goods in the United Kingdom; and it shall be unlawful for any supplier of goods (or for any association or person acting on behalf of such suppliers)—

(*a*) to include in any contract of sale or agreement relating to the sale of goods any term or condition which is void by virtue of this section;

(*b*) to require, as a condition of supplying goods to a dealer, the inclusion in any contract or agreement of any such term or condition, or the giving of any undertaking to the like effect;

(*c*) to notify to dealers, or otherwise publish on or in relation to any goods, a price stated or calculated to be understood as the minimum price which may be charged on the resale of the goods in the United Kingdom.

(2) This section applies to patented articles (including articles made by a patented process) as it applies to other goods; and notice of any term or condition which is void by virtue of this section, or which would be so void if included in a contract of sale or agreement relating to the sale of any such article, shall be of no effect for the purpose of limiting the right of a dealer to dispose of that article without infringement of the patent:

Provided that nothing in this section shall affect the validity, as between the parties and their successors, of any term or condition of a licence granted by the proprietor of a patent or by a licensee under any such licence, or of any assignment of a patent, so far as it regulates the price at which articles produced or processed by the licensee or assignee may be sold by him.

(3) Nothing in subsection (1)(*a*) of this section affects the enforceability of a contract of sale or other agreement, except in respect of the term or condition which is void by virtue of this section.

(4) Nothing in subsection (1)(*c*) of this section shall be construed as precluding a supplier, or any association or person acting on behalf of a supplier, from notifying to dealers or otherwise publishing prices recommended as appropriate for the resale of goods supplied or to be supplied by the supplier.

(5) References in subsection (2) of this section to patented articles shall include references to articles protected by the registration of a design and articles protected by plant breeders' rights or a protective direction under Schedule 1 to the Plant Varieties and Seeds Act 1964, and references in that subsection to a patent shall be construed accordingly.

Prohibition of other measures for maintaining resale prices.

2.—(1) Subject to the provisions of this Act with respect to registration, to the powers of the Restrictive Practices Court thereunder and to the next following section, it shall be unlawful for any supplier to withhold supplies of any goods from a dealer seeking to obtain them for resale in the United Kingdom on the ground that the dealer—

(*a*) has sold in the United Kingdom at a price below the resale price goods obtained, either directly or indirectly, from that supplier, or has supplied such goods, either directly or indirectly, to a third party who had done so: or

(*b*) is likely, if the goods are supplied to him, to sell them in the United Kingdom at a price below that price, or supply them, either directly or indirectly, to a third party who would be likely to do so.

(2) In this section "the resale price", in relation to a sale of any description, means any price notified to the dealer or otherwise published by or on behalf of a supplier of the goods in question (whether lawfully or not) as the price or minimum price which is to be charged on or is recommended as appropriate for a sale of that description, or any price prescribed or purporting to be prescribed for that purpose by any contract or agreement between the dealer and any such supplier.

(3) For the purposes of this Act a supplier of goods shall be treated as withholding supplies of goods from a dealer—

(*a*) if he refuses or fails to supply those goods to the order of the dealer;

(*b*) if he refuses to supply those goods to the dealer except at prices, or on terms or conditions as to credit, discount or other matters, which are significantly less favourable than those at or on which he normally supplies those goods to other dealers carrying on business in similar circumstances; or

(*c*) if, although he contracts to supply the goods to the dealer, he treats him in a manner significantly less favourable than that in which he normally treats other such dealers in respect of times or methods of delivery or other matters arising in the execution of the contract.

(4) For the purposes of this Act a supplier shall not be treated as withholding supplies of goods on any such ground as is mentioned in subsection (1) of this section if, in addition to that ground, he has other grounds which, standing alone, would have led him to withhold those supplies.

(5) In any case where, by virtue of this section, it would be unlawful for a supplier to withhold supplies of goods, it shall also be unlawful for him to cause or procure any other supplier to do so.

Exception for measures against loss leaders.

3.—(1) It shall not be unlawful by virtue of section 2 of this Act for a supplier to withhold supplies of any goods from a dealer, or to cause or procure another supplier to do so, if he has reasonable cause to believe that within the previous twelve months the dealer or any other dealer to whom the dealer supplies goods has been using as loss leaders any goods of the same or a similar description, whether obtained from that supplier or not.

(2) The reference in this section to the use of goods as loss leaders is a reference to a resale of the goods effected by the dealer, not for the purpose of making a profit on the sale of those goods, but for the purpose of attracting to the establishment at which the goods are sold customers likely to purchase other goods or otherwise for the purpose of advertising the business of the dealer:

Provided that a sale of goods shall not be treated for the purposes of this section as the use of those goods as loss leaders—

(*a*) where the goods are sold by the dealer at a genuine seasonal or clearance sale, not having been acquired by the dealer for the purpose of being resold as mentioned in this section; or

(*b*) where the goods are resold as mentioned in this section with the consent of the manufacturer of the goods or, in the case of goods made to the design of a supplier or to the order and bearing the trade mark of a supplier, of that supplier.

Civil remedies for breach of restrictions.

4.—(1) No criminal proceedings shall lie against any person on the ground that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit or incited others to commit, any contravention of the foregoing provisions of this Act.

(2) The obligation to comply with the said provisions is a duty owed to any person who may be affected by a contravention of them, and any breach of that duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

(3) Without prejudice to the right of any person to bring civil proceedings by virtue of subsection (2) of this section, compliance with the foregoing provisions of this Act shall be enforceable by civil proceedings on behalf of the Crown for an injunction or other appropriate relief.

(4) If in proceedings brought against a supplier of goods in respect of a contravention of section 2 of this Act it is proved that supplies of goods were withheld by the supplier from a dealer, and it is further proved—

(*a*) that down to the time when supplies were so withheld the supplier was doing business with the dealer or was supplying goods of the same description to other dealers carrying on business in similar circumstances; and

(*b*) that the dealer, to the knowledge of the supplier, had within the previous six months acted as described

in paragraph (*a*) of subsection (1) of that section, or had indicated his intention to act as described in paragraph (*b*) of that subsection in relation to the goods in question,

it shall be presumed, unless the contrary is proved, that the supplies were withheld on the ground that the dealer had so acted or was likely so to act:

Provided that this subsection shall not apply where the proof that supplies were withheld consists only of evidence of requirements imposed by the supplier in respect of the time at which or the form in which payment was to be made for goods supplied or to be supplied.

Provision for exemption of particular classes of goods

Power of Court to exempt classes of goods.

5.—(1) Subject to the provisions of this Act, the Restrictive Practices Court may, on a reference made by the Registrar of Restrictive Trading Agreements, by order direct that goods of any class specified in the order (being goods of which particulars are entered in the register kept in accordance with those provisions) shall be exempted goods for the purposes of this Act; and where such an order is made—

(*a*) section 1 of this Act shall not apply in relation to any contract of sale or other agreement relating to exempted goods of the class specified in the order, or anything done in relation to such goods; and

(*b*) section 2 of this Act shall apply in relation to the withholding of supplies of such goods as if paragraph (*b*) of subsection (1) were omitted, and as if the reference in paragraph (*a*) of that subsection to goods obtained from the supplier did not include any exempted goods so obtained.

(2) An order under this section directing that goods of any class shall be exempted goods may be made by the Restrictive Practices Court if it appears to the Court that in default of a system of maintained minimum resale prices applicable to those goods—

(*a*) the quality of the goods available for sale, or the varieties of the goods so available, would be substantially reduced to the detriment of the public as consumers or users of those goods; or

(*b*) the number of establishments in which the goods are sold by retail would be substantially reduced to the detriment of the public as such consumers or users; or

(*c*) the prices at which the goods are sold by retail would in general and in the long run be increased to the detriment of the public as such consumers or users; or

(*d*) the goods would be sold by retail under conditions likely to cause danger to health in consequence of their misuse by the public as such consumers or users; or

(*e*) any necessary services actually provided in connection with or after the sale of the goods by retail would cease to be so provided or would be substantially reduced to the detriment of the public as such consumers or users,

and in any such case that the resulting detriment to the public as consumers or users of the goods in question would outweigh any detriment to them as such consumers or users (whether by the restriction of competition or otherwise) resulting from the maintenance of minimum resale prices in respect of the goods.

(3) On a reference under this section in respect of goods of any class which have been the subject of proceedings in the Court under Part I of the Restrictive Trade Practices Act 1956 the Court may treat as conclusive any finding of fact made in those proceedings, and shall do so unless prima facie evidence is given of a material change in the relevant circumstances since those proceedings.

(4) In this section "necessary services", in relation to goods, means services which, having regard to the character of the goods, are required to guard against the risk of injury, whether to persons or to premises, in connection with the consumption, installation or use of the goods, or are otherwise reasonably necessary for the benefit of consumers or users; and "consumers" and "users" include persons consuming or using for the purpose or in the course of trade or business or for public purposes.

Registration of goods for exemption.

6.—(1) It shall be the duty of the Registrar to prepare, compile and maintain for the purposes of this Act a register of goods in respect of which notices are given to him under this section, and to make reference to the Court under section 5 of this Act (subject to such directions as may be given by the Board of Trade with respect to the order in which such references are to be made) in respect of all goods of which particulars are for the time being entered in the register.

(2) Within the period of three months from the commencement of this section, any supplier who supplies goods under arrangements for maintaining minimum prices on resale, or any trade association whose members consist of or include such suppliers, may give notice to the Registrar in respect of goods of any description so supplied by that supplier or those suppliers claiming registration in respect of those goods.

(3) Where a notice under this section is duly given in respect of goods of any description, the Registrar shall cause particulars of the goods, of the person giving the notice and of the arrangements described in the notice to be entered in the register; and until the Court makes or refuses to make an order under section 5 of this Act in respect of a class of goods consisting of or comprising the goods of which particulars are so entered the foregoing provisions of this Act shall apply in relation to those goods as if such an order had been made.

(4) The Registrar shall from time to time publish lists of the classes of goods of which particulars are entered in the register kept by him under this section; and in any legal proceedings (including proceedings under this Act)—

(*a*) the fact that goods of any description are included in a class specified in a list so published shall be conclusive evidence that they are goods of which particulars are so entered; and

(*b*) the fact that goods of any description are not included in any such class shall be prima facie evidence that they are not goods of which particulars are so entered.

(5) The Registrar shall also from time to time publish lists of the classes of goods in respect of which the Court has made, refused to make or discharged orders under this Act, and any such list may be combined with a list published under subsection (4) of this section.

(6) For the purpose of compiling the lists described in subsection (4) of this section and, subject to rules made by virtue of section 8(2) of this Act, for the purpose of making references to the Court under the said section 5 the Registrar may combine or divide the goods in respect of which notice is given to him under this section into such classes as appear to him to be appropriate.

Late applications to, and review of decisions by, the Court.

7.—(1) The Restrictive Practices Court may, upon application made under this subsection at any time after the expiration of the period mentioned in section 6(2) of this Act, make such an order as is described in section 5(1) of this Act in respect of goods of any class, not being goods of which particulars are entered in the register kept under the said section 6 or goods in respect of which a previous application has been made under this subsection.

(2) The Restrictive Practices Court may, upon application made under this subsection—

(*a*) discharge any order previously made by the Court directing that goods of any class shall be exempted goods;

(*b*) make such an order in respect of any class of goods in respect of which the Court has previously refused to make such an order or has previously discharged such an order.

(3) An application under this section may be made by the Registrar, by any supplier of goods of the class in question or by any trade association whose members consist of or include suppliers of such goods.

(4) No application shall be made under this section except with the leave of the Court; and such leave shall not be granted—

(*a*) in the case of an application under subsection (1) of this section, except upon prima facie evidence of facts upon which an order could be made in accordance with section 5(2) of this Act in respect of the goods in question, or could be so made if any detriment to the public resulting from the maintenance of minimum resale prices were disregarded;

(*b*) in the case of an application under subsection (2) of this section, except upon prima facie evidence of a material change in the relevant circumstances since the last decision of the Court in respect of the goods in question under the said section 5 or subsection (1) or (2) of this section.

(5) The provisions of section 5(2) and (3) of this Act shall apply with the necessary modifications in relation to proceedings on an application under this section as they apply in relation to proceedings on a reference by the Registrar under that section.

Supplementary provisions as to registration, references and applications.

8.—(1) The Registrar may make regulations for the purposes of registration under section 6 of this Act and for purposes connected therewith, and in particular—

(*a*) for prescribing the manner in which notice claiming registration in respect of goods is to be given under that section;

(*b*) for prescribing the particulars to be included in any such claim of the descriptions of goods to which it relates, and of any arrangements for maintaining minimum resale prices in respect of those goods, and the documents to be furnished in support of any such particulars;

(*c*) for applying in relation to the register kept under the said section 6, subject to such modifications as may be prescribed by the regulations, any of the provisions

of section 11 of the Restrictive Trade Practices Act 1956 (general provisions as to the register under that Act);

and subsections (2) to (4) of section 19 of the said Act of 1956 (supplementary provisions as to regulations) shall apply to regulations under this subsection as they apply to regulations under that section.

(2) The Schedule to the said Act of 1956 (proceedings of the Restrictive Practices Court) and, so far as applicable, section 23 of that Act (rules of procedure) shall apply in relation to proceedings before the Court on a reference or application under this Act as they apply in relation to proceedings on an application under Part I of that Act, and as if references to agreements in the said section 23 included references to classes of goods:

Provided that notwithstanding anything in the said Schedule the Court may order the payment by the Registrar of all or any of the following costs incurred by any other party, that is to say—

(*a*) costs incurred on a reference under section 5 of this Act, or on an application under section 7(1) of this Act, in respect of any issue determined in favour of that party, being an issue which in the opinion of the Court substantially corresponds with an issue so determined in proceedings under Part I of the said Act of 1956; or

(*b*) costs incurred on an application under section 7(2) of this Act in respect of an issue determined in favour of that party.

(3) Rules made by virtue of subsection (2) of this section shall include provisions—

(*a*) for enabling the Court, on the application of the Registrar or of any party interested, to give directions with respect to the goods to be included in or excluded from any reference or application under section 5 or section 7 of this Act;

(*b*) for securing that retailers, and trade associations representing employees in the distributive trades, who have given notice to the Registrar within such time and in such manner as may be prescribed by the rules shall, if they have an interest in any such reference or application, be entitled, whether in consequence of a representation order or otherwise, to be represented before the Court in the proceedings.

(4) In section 1(5) of the said Act of 1956 (authentication and proof of documents issued by the Registrar) the reference

to Part I of that Act, and in section 34 of that Act (proceedings of the Board of Trade) the reference to that Act, shall include references to this Act.

Supplementary

Additional judges.

9.—(1) The maximum number of puisne judges of the High Court shall be increased by three, and accordingly in section 2(1) of the Supreme Court of Judicature (Consolidation) Act 1925 (as amended by the Criminal Justice Administration Act 1962) for the word "fifty-three" there shall be substituted the word "fifty-six".

(2) The maximum number of judges of the Court of Session shall be increased by one, and accordingly in section 1(1) of the Administration of Justice (Scotland) Act 1948 (as amended by the Criminal Justice (Scotland) Act 1963) for the word "seventeen" there shall be substituted the word "eighteen".

Expenses.

10.—(1) There shall be defrayed out of moneys provided by Parliament any expenses of the Registrar under this Act, and any increase attributable to this Act in the sums required to be so defrayed under section 35(1) of the Restrictive Trade Practices Act 1956.

(2) There shall be defrayed out of the Consolidated Fund and out of moneys provided by Parliament respectively any increase attributable to section 9 of this Act in the sums required to be so defrayed.

Interpretation.

11.—(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

"dealer" means a person carrying on a business of selling goods, whether by wholesale or by retail;

"the Registrar" means the Registrar of Restrictive Trading Agreements;

"supplier" means a person carrying on a business of selling goods other than a business in which goods are sold only by retail;

"trade association" means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or the persons represented by its members.

(2) Where the dealer referred to in section 2(1)(*a*) or section 3(1) of this Act, or the supplier referred to in the said section 2(1)(*a*), is one of a group of inter-connected bodies corporate within the meaning of the Restrictive Trade Practices Act 1956,

the reference shall include a reference to any other dealer or, as the case may be, any other supplier who is also a member of that group.

Application to Scotland and Northern Ireland.

12.—(1) In its application to Scotland this Act shall have effect as if for references to an assignment and to an injunction there were substituted references respectively to an assignation and to an interdict.

(2) It is hereby declared that this Act extends to Northern Ireland, but the Parliament of Northern Ireland shall have the same power to pass Acts with respect to any matter as they would have had if this Act had not passed and, in the event of any inconsistency between any Act of the Parliament of Northern Ireland duly passed after the passing of this Act and any provision of or any regulation, rule or other instrument under this Act, the Act of the Parliament of Northern Ireland shall, in Northern Ireland, prevail.

Saving for statutory schemes.

13. Nothing in this Act shall apply to any agreement which is expressly authorised by any enactment, or by any scheme, order or other instrument made under any enactment, or to anything done pursuant to any such agreement, scheme, order or instrument.

Short title, commencement and transitional provisions.

14.—(1) This Act may be cited as the Resale Prices Act 1964.

(2) The provisions of this Act shall come into force as follows, that is to say—

(*a*) section 8(1)and (4), sections 9 to 13 and this section, on the date of the passing of this Act;

(*b*) sections 5 to 7 and section 8(2) and (3) on the expiration of the period of one month beginning with that date;

(*c*) sections 1 to 4, on such date (not less than three months after the expiration of the last-mentioned period) as the Board of Trade may, by order made by statutory instrument, appoint.

(3) The transitional provisions set out in the Schedule to this Act shall have effect in relation to the coming into force of section 1 of this Act.

SCHEDULE

TRANSITIONAL PROVISIONS

1. Section 1 of this Act, so far as it affects the validity of any term or condition of a contract or agreement for or relating to the sale of any goods, or the effect of notice of any term or condition so relating, shall apply to contracts and agreements made and notices given before, as well as after, the commencement of that section, and accordingly,—

(*a*) for the purposes of the jurisdiction of any court to grant an injunction in proceedings pending at the commencement of the said section 1, that section shall be treated as if it had come into force before the cause of action arose; and

(*b*) any injunction granted or undertaking given before the commencement of that section in or for the purposes of any proceedings shall be of no effect in so far as it would operate to require compliance with any term or condition which is void, or notice of which is invalidated, by virtue of that section.

2. Subsection (1)(*c*) of the said section 1 shall not apply to a publication consisting of the issue of goods having any such price as is therein mentioned marked on the goods or their container if that price was so marked before the date of the commencement of that section and the issue is made within the period of twelve months beginning with that date.

3. In relation to any goods, references in this Schedule to the commencement of section 1 of this Act are references to the time at which, by virtue of section 14(2)(*c*) of this Act or of any decision of the Court under section 5 or section 7 of this Act, the said section 1 takes effect in relation to those goods; and the reference in paragraph 1(*a*) of this Schedule to the said section 1 having come into force shall be construed accordingly.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Supreme Court of Judicature (Consolidation) Act 1925	15 & 16 Geo. 5. c. 49.
Administration of Justice (Scotland) Act 1948 ...	12, 13 & 14 Geo. 6. c. 10.
Restrictive Trade Practices Act 1956	4 & 5 Eliz. 2. c. 68.
Criminal Justice Administration Act 1962 ...	10 & 11 Eliz. 2. c. 15.
Criminal Justice (Scotland) Act 1963	1963. c. 39.