STATUTORY INSTRUMENTS

1968 No. 1802

RESTRICTIVE TRADE PRACTICES

The Restrictive Practices Court (Amendment) Rules 1968

Made - - - -	12*th November* 1968
Laid before Parliament	18*th November* 1968
Coming into Operation	25*th November* 1968

The Lord Chancellor, in exercise of the powers conferred on him by section 23 of the Restrictive Trade Practices Act 1956(**a**) (as amended by section 16(1) of, and schedule 2 to, the Restrictive Trade Practices Act 1968(**b**)), hereby makes the following Rules:—

Introductory

1. These Rules may be cited as the Restrictive Practices Court (Amendment) Rules 1968 and shall come into operation on 25th November 1968.

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

3. In these Rules, unless the context otherwise requires—

"the principal Rules" means the Restrictive Practices Court Rules 1957(**d**), as amended by the Restrictive Practices Court (Amendment) Rules 1962(**e**) and the Restrictive Practices Court (Amendment) Rules 1965(**f**), and a rule referred to by number means the rule so numbered in the principal Rules; and

expressions defined by the principal Rules have the same meanings in these Rules.

Amendments to the Principal Rules

4. In rule 3, after the definition of "the Act", there shall be inserted the following definition:—

' "the Act of 1968" means the Restrictive Trade Practices Act 1968;'

5. In rule 4 (which relates to the institution of proceedings), for the words in parentheses, there shall be substituted the following words:—

"(other than applications under section 13, section 15, section 20(2)(*b*), section 22 or section 30 of the Act, or under section 7 of the Act of 1968)".

6. In rule 9 (which relates to service of notice of reference), for the words "rule 13", there shall be substituted the words "rules 11 to 13".

(**a**) 1956 c. 68.
(**b**) 1968 c. 66.
(**c**) 1889 c. 63.
(**d**) S.I. 1957/603 (1957 II, p. 1955).
(**e**) S.I. 1962/2705 (1962 III, p. 3662).
(**f**) S.I. 1965/22 (1965 I, p. 14).

7. The following rules shall be substituted for rules 11 to 13 (which relate to representation orders):—

"*Representative Respondents*

11. Where, in the case of proceedings to which rule 4 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 Registrar may, in accordance with rule 12, nominate any of those persons (or any trade 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 13 and 16, those persons shall, for the purpose of the proceedings, be treated as being represented by the person so nominated (hereinafter called a "representative respondent").

12. In any case such as is mentioned in rule 11, the Registrar 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 Registrar may propose to have published in pursuance of 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 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 paragraph (*a*) above (including the name and address of each representative respondent) and setting out the effect of rule 13, 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 paragraphs (*a*) and (*b*), together with a copy of any publication made in accordance with paragraph (*c*) above.

13—(1) Any person or trade association who objects to being made a representative respondent, or to being represented by the representative respondent nominated for that purpose by the Registrar, may, within 28 days of being given notice in writing under paragraph (*a*) or (*b*) of rule 12 (or, in the case of a person who has not been given such notice, of the latest publication referred to in 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 Registrar 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 Registrar 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) above 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."

8. For rule 16 (which relates to representation orders), there shall be substituted the following rule:—

"16. Without prejudice to the operation of rule 13, the Registrar, or any person or trade 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 13(1)."

9. In rules 64A and 64B (which relate to summary applications for final orders), the words "under subsection (3) or subsection (4) of" shall be omitted.

10. In rule 65 (which relates to applications under section 22 of the Act), after the word "relies", there shall be inserted the words "or, as the case may be, of the matters by reason of which the applicant contends, in relation to a declaration made before the commencement of the Act of 1968, that he is entitled to rely on the amendment made by section 10(1) of that Act to section 21 of the Act."

11. The following rules shall be inserted after rule 75:—

"*Applications under section* 13 *of the Act or section* 7 *of the Act of* 1968

75A—(1) An application to the Court under section 13 of the Act or section 7 of the Act of 1968 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) above 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.

75B—(1) Where an application under section 13 of the Act is made by a person other than the Registrar, the applicant shall serve a copy of the notice and affidavit on the Registrar, who shall be made a respondent to the application.

(2) Where an application is made by the Registrar either under the said section 13 or under section 7 of the Act of 1968, the Registrar—

(*a*) shall serve a copy 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 Registrar may specify; and

(*b*) may, if he thinks fit, serve such copies on any trade association any of whose members are parties to the agreement (notwithstanding that the association is not itself a party thereto), which shall thereupon be made a respondent to the application and be treated as representing such other parties, if any, to the agreement as the Registrar may specify:

Provided that, if, by virtue of sub-paragraph (*b*) above, all the parties to the agreement fall to be treated as being represented by a trade association which is not itself a party thereto, it shall not be necessary for the Registrar to comply with sub-paragraph (*a*) above.

(3) Where, by virtue of paragraph (2) above, any parties to an agreement fall to be treated as being represented by a respondent to the application—

(*a*) the Registrar 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 12; and

(ii) file with the proper officer of the Court an affidavit such as is referred to in rule 12(*d*); and

(*b*) the provisions of rule 13 (except paragraph (4) thereof) shall apply with the necessary modifications.

75C—(1) Any respondent who wishes to oppose an application made under section 13 of the Act or section 7 of the Act of 1968 shall, within 6 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) above, or after the time for doing so has expired, the Registrar shall apply to the Court for directions and the provisions of the principal Rules relating to a reference to the Court by the Registrar shall apply with the necessary modifications to such directions and to all further proceedings on the application.

Applications under section 15 *of the Act*

75D—(1) An application by the Registrar to the Court under section 15 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) above 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 Registrar, 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 Registrar requires, the steps he has taken under

section 14 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 Registrar is seeking an order against any person in his capacity as an officer of a body corporate, the affidavit referred to in paragraph (2) above shall state the office held by that person in that body.

(4) The notes of the examination of any person taken in pursuance of an order under section 15 of the Act shall be filed with the proper officer of the Court.

12. In rule 76 (which relates to costs), after the word "proceedings", where it first appears, there shall be inserted the words "under section 20 or 22 of the Act".

13. In rule 77 (which relates to costs), after the words "the last foregoing rule", there shall be inserted the words "or under the powers conferred on the Court by section 13 of the Act of 1968 (which enables the court to make an order for costs in proceedings under section 13 or 15 of the Act, or section 7 of the Act of 1968)".

Savings

14. Nothing in these Rules shall affect any order made or other thing done before their commencement.

Dated 12th November 1968.

Gardiner, C.

EXPLANATORY NOTE

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

These Rules make amendments to the Restrictive Practices Court Rules 1957 which are consequential upon the coming into force on 25th November 1968 of the Restrictive Trade Practices Act 1968. The new Rules 75A to 75D provide for the procedure to be followed in applications to the Restrictive Practices Court for rectification of the Register of restrictive agreements, for an injunction in respect of an agreement which has not been duly registered and for order for the examination of persons whom the Registrar has reasonable cause to believe to be parties to an agreement subject to registration.

In addition, the new rules substituted for rules 11 to 13 of the 1957 Rules make fresh provision for the nomination of representative respondents in proceedings under the Restrictive Trade Practices Act 1956.