STATUTORY INSTRUMENTS

1973 No. 1653

RESTRICTIVE TRADE PRACTICES

The Restrictive Practices Court (Amendment) Rules 1973

Made - - -	*3rd October* 1973
Laid before Parliament	*10th October* 1973
Coming into Operation	*1st November* 1973

The Lord Chancellor, in exercise of the power conferred on him by section 23 of the Restrictive Trade Practices Act 1956(**a**), as amended by section 16 of, and Schedule 2 to, the Restrictive Trade Practices Act 1968(**b**) and extended by section 116(1) of the Fair Trading Act 1973(**c**), hereby makes the following Rules:—

1. These Rules may be cited as the Restrictive Practices Court (Amendment) Rules 1973 and shall come into operation on 1st November 1973.

2.—(1) In these Rules, unless the context otherwise requires, "the principal rules" means the Restrictive Practices Court Rules 1957(**d**), as amended(**e**), and a rule referred to by number means the rule so numbered in the principal rules.

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

3. In the principal rules—

(*a*) for the words "the Registrar" in each place where they appear there shall be substituted the words "the Director";

(*b*) for the words "trade association" in each place where they appear there shall be substituted the word "association".

4. Rule 3 shall be amended as follows:—

(1) After the definition of "the Act of 1968" there shall be inserted:—

" "the Act of 1973" means the Fair Trading Act 1973".

(2) After the definition of "agreement" there shall be inserted:—

" "association" means—

(*a*) in relation to agreements subject to registration by virtue of section 6 of the Act, a trade association as defined by section 6(8) of the Act;

(**a**) 1956 c. 68.
(**b**) 1968 c. 66.
(**c**) 1973 c. 41.
(**d**) S.I. 1957/603 (1957 II, p. 1955).
(**e**) S.I. 1962/2705, 1965/22, 1968/1802 (1962 III, p. 3662; 1965 I, p. 14; 1968 III, p.4819).
(**f**) 1889 c. 63.

(*b*) in relation to agreements subject to registration by virtue of an order made under section 107 or section 108 of the Act of 1973, any such association as is mentioned in section 112(1) of that Act".

(3) After the definition of "the Court" there shall be inserted—

" "the Director" means the Director General of Fair Trading".

(4) The definition of "the Registrar" shall be omitted.

5. For rule 4 there shall be substituted the following rule:—

"4.—(1) Subject to paragraph (2), proceedings under the Restrictive Trade Practices Acts 1956 to 1973 shall be instituted by a notice of reference, stating that the agreements to which the notice applies are referred to the court.

(2) Paragraph (1) does not apply to—

(*a*) applications under section 13, section 15, section 20(2)(*b*), section 21A, section 22 or section 30 of the Act;

(*b*) applications under section 7 of the Act of 1968."

6. For rule 10 there shall be substituted the following rule:—

"10.—(1) Where the Director intends to apply for an order under section 20(3) of the Act against an association or any person acting on behalf of an association, he shall serve a copy of the notice of reference on the association, which shall be made a respondent to the notice of reference although the association is not itself a party to any agreement to which the notice applies.

(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 agreement to which the notice applies, notwithstanding that the association is not itself a party to any such agreement, and the association shall in that event be made a respondent to the notice of reference.

(3) Nothing in this rule shall prevent the nomination of an association under rule 11 as a representative respondent."

7. In paragraph (*d*) of rule 12, for the words "a copy of" there shall be substituted the words "an extract containing".

8. In Rule 17, for the words "who is a member of a class" there shall be substituted the words "or association".

9. Paragraph (*k*) of rule 36 shall be amended as follows:—

(1) For the words "member of a class" there shall be substituted the words "person or association".

(2) After the words "to goods" there shall be inserted the words "or in supplying any services".

10. In rule 43, after the words "to goods" there shall be inserted the words "or in supplying any services".

11. In rule 47, for the words "member of a class" and "member" there shall be substituted in each case the words "person or association".

12. In rule 49, for the words "rule 65" there shall be substituted the words "rules 51A(4) and 65".

13. After rule 51 there shall be inserted the following new rule:—

"Application for Interim Order

51A.—(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 21A 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 21A(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 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 rules 34 and 35) 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 21A(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) of this rule 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)."

14. Rule 75B shall be amended as follows:—

(1) In paragraph (2), after the words "section 13 or" there shall be inserted the words ", subject to paragraph (4),".

(2) After paragraph (3) there shall be added the following new paragraph:—

"(4) Without prejudice to the powers conferred on the Director under paragraph (2)(*b*), in any case where he intends to apply for an order under section 7(3) of the Act of 1968 against an association or any person acting on behalf of an association, he shall serve a copy of the notice and affidavit on the association, which shall be made a respondent to the application."

15. In rule 75D, for paragraph (3) there shall be substituted the following paragraph:—

"(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) above shall state the office or post held by that person."

16. For rule 77 there shall be substituted the following rule:—

"77.—(1) Where an order is made under the last foregoing rule 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) 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.

(2) Where the Court gives a direction under paragraph (1)(*b*) it may—

(*a*) itself assess the sum to be paid, or

(*b*) direct that it is 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 appropriate officer of the Court of Session in Scotland or of the Supreme Court of Northern Ireland, as the case may be.

(3) Where a direction is given under paragraph (2)(*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 con-

sisting of a presiding Judge and at least two other members, and, in either event, rule 51 shall apply to the hearing of the appeal.".

Dated 3rd October 1973.

Hailsham of St. Marylebone, C.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules, which amend the Restrictive Practices Court Rules 1957, are consequential on the coming into operation of Parts IX and X of, and Schedules 10 and 12 to, the Fair Trading Act 1973.

Rule 5 excludes applications for an interim order under section 21A of the Act of 1956 (added by section 105 of the Act of 1973) from the proceedings required to be begun by notice of reference. The procedure on an application for an interim order is prescribed by rule 13.

Rule 6 makes provision for the joining of associations as respondents to a notice of reference notwithstanding that the association is not a party to the agreement which is the subject of the reference. Rule 14 makes similar provision in relation to applications under section 7(3) of the Act of 1968.

Rule 16 enables the Court to direct that costs be assessed by a taxing officer as an alternative to assessment by the proper officer of the Court.

Rules 9 and 10 make changes in the Rules consequential on the extension of Part I of the Act of 1956 to agreements relating to services.

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