STATUTORY INSTRUMENTS

# 1973 No. 2010

# FAIR TRADING

# RESTRICTIVE TRADE PRACTICES

## The Restrictive Practices Court (Protection of Consumers) Rules 1973

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| *Made* - - - | *28th November* 1973 |
| *Laid before Parliament* | *7th December* 1973 |
| *Coming into Operation* | *1st January* 1974 |

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**), and section 139(1)(*a*) of, and Schedule 12 to, the Fair Trading Act 1973(**c**), hereby makes the following Rules:—

*Introductory*

**1.** These Rules may be cited as the Restrictive Practices Court (Protection of Consumers) Rules 1973 and shall come into operation on 1st January 1974.

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

"the Act" means the Fair Trading Act 1973;

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

"the principal rules" means the Restrictive Practices Court Rules 1957(**d**), as amended (**e**);

expressions defined by the principal rules (except the expression "the Act") have the same meanings in these 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.

(**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, 1973/1653 (1962 III, p. 3662; 1965 I, p. 14; 1968 III p. 4819; 1973 III, p. 5112).
(**f**) 1889 c. 63.

*Notice of application under section* 35 *or* 38 *of Fair Trading Act* 1973

**3.**—(1) Proceedings before the Court under section 35 and section 38 of the Act shall be instituted 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, as the case may be, specifying the part of the United Kingdom in which the hearing is to take place and the persons against whom an order is sought, and containing the particulars and other information required by this rule.

(2) Every notice of application shall contain particulars—

(*a*) of the person carrying on a business;

(*b*) of the course of conduct complained of;

(*c*) of the ground or grounds upon which it is alleged that the course of conduct is—

(i) detrimental to the interests of consumers in the United Kingdom, and

(ii) to be regarded as unfair to consumers;

(*d*) of the facts and matters on which the Director intends to rely in order to show that the person carrying on a business—

(i) has persisted in the course of conduct, and

(ii) has so persisted in the course of that business.

(3) A notice of application under section 35 of the Act shall further state—

(*a*) that the Director is unable, despite his best endeavours (of which particulars shall be given), to obtain a satisfactory written assurance from the person carrying on a business that he will refrain from continuing the course of conduct complained of and from carrying on any similar course of conduct in the course of that business; or

(*b*) the facts and matters from which it appears to the Director that the person who has given such an assurance has failed to observe it.

(4) A notice of application under section 38 of the Act shall further state—

(*a*) the name and address of each alleged accessory;

(*b*) except where the same notice of application relates to proceedings under section 35 as well as under section 38, whether or not proceedings have been commenced under section 35 against the body corporate, and if so where and when they were commenced and what stage they have reached;

(*c*) the facts and matters from which it appears to the Director that each alleged accessory—

(i) consented to or connived at the course of conduct,

(ii) fulfilled at a material time, which shall also be stated, the relevant conditions in relation to the body corporate;

(*d*) in relation to each alleged accessory, the particulars corresponding to those required by paragraph (3) of this rule in relation to a person carrying on a business.

(5) If the Director, in reliance on section 11 of the Civil Evidence Act 1968(**a**), section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968(**b**), section 7 of the Civil Evidence Act (Northern Ireland) 1971(**c**) or section 36(2) of the Act, intends to adduce evidence of a conviction or a finding of breach of contract or breach of duty in civil proceedings he must include in the notice of application under this rule a statement of his intention with particulars of—

(*a*) the conviction or finding and the date thereof;

(*b*) the court which made the conviction or finding and, in the case of a finding, the proceedings in which it was made;

(*c*) the person or persons convicted or, as the case may be, against whom the finding was made; and

(*d*) the issue in the proceedings to which the conviction or finding is relevant.

(6) A notice of application shall be accompanied by a list of all documents relevant to the application which are or have been in the Director's possession or power.

**4.** A notice of application shall be issued by being sealed with the Court's seal by the proper officer of the Court with whom a copy of the notice shall be left to be filed by him.

**5.** The Director shall serve a copy of the notice of application and of the list referred to in rule 3(6) on all persons or bodies against whom an order is sought, and those persons or bodies shall be respondents to the proceedings.

*Entry of appearance*

**6.** Every respondent who wishes to be heard in the proceedings shall within fourteen days of service upon him of a copy of the notice of application enter an appearance in accordance with rule 14 of the principal rules.

*Delivery of answer*

**7.** Every respondent who has entered an appearance shall, within four weeks of his entry of appearance, deliver to the Director and file with the proper officer of the Court an answer which 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.

**8.** Every allegation of fact in a notice of application 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, and any respondent who wishes to allege that a conviction or finding referred to in the notice was erroneous or irrelevant must do so in his answer.

(a) 1968 c. 64. (b) 1968 c. 70. (c) 1971 c. 36 (N.I.).

**9.** No reply or further pleading may be filed without leave.

*Inspection of documents*

**10.** Without prejudice to the provisions of these Rules relating to discovery, the Director and any respondent shall within seven days after receiving notice in that behalf from any opposite party, provide for his inspection the documents specified in the list referred to in rule 3(6) or rule 7 or such of them as may be specified in the notice, and shall permit that party to take copies thereof:

Provided that nothing in this rule shall affect the right of a respondent to claim privilege for any of the said documents.

*Particulars*

**11.**—(1) 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 application, answer or reply and, if such particulars are not supplied within fourteen 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.

(2) In proceedings in Scotland—

(*a*) the Director shall, within seven days after the expiration of the time limited for filing an answer, make up an open record consisting of the notice of application and the answer 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 expiration of twenty-eight 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 fourteen 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 fifteen copies thereof to each of the respondents.

*Amendment of pleadings*

**12.** In proceedings in England and Wales or in Northern Ireland a notice of application, answer or reply may be amended—

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

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

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

(ii) in the case of an answer, the Director and all respondents seeking to amend agree;

and a copy of the pleading 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.

*Application for directions*

**13.**—(1) 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 applications 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,

the Director shall, as soon as practicable after every respondent has delivered an answer or after the time for doing so has expired (or in Scotland as soon as practicable after the closing of the record), make an application to the Court for directions and shall serve notice of the application on every respondent who has entered an appearance.

(2) The proper officer of the Court shall fix a date for the hearing of the application for directions and serve notice of the time and place of the hearing on every respondent who has entered an appearance and rule 36 of the principal rules (except paragraph (*k*)) shall apply, with the necessary modifications, to the application for directions as if—

(*a*) references to the notice of reference or to any statement of case were references to the notice of application; and

(*b*) for the word "agreement" in paragraph (*i*) there were substituted the words "course of conduct".

*Application of principal rules*

**14.** Rule 17, rules 28 to 32, rules 37 to 58 (except rules 43 and 47) and rule 64 of the principal rules shall apply, with the necessary modifications, to proceedings instituted by a notice of application under these Rules as they apply to proceedings instituted by a notice of reference under the principal rules.

*Final hearing*

**15.** Subject to the provisions of paragraph 4 of the Schedule to the Restrictive Trade Practices Act 1956 the final hearing shall take place in open court before such members of the Court as the President thereof may nominate for the purpose.

*Interconnected bodies corporate*

**16.**—(1) Where in any proceedings under section 35 or section 38 of the Act the Director intends to apply for a direction under section 40 thereof that any

order made against a body corporate which is a member of a group of interconnected bodies corporate shall be binding on all members of the group, he shall serve a notice to that effect on each of them and shall file a copy thereof with the proper officer of the Court.

(2) As soon as a date and place have been fixed for the final hearing of the proceedings or for any hearing under rule 20(4), the Director shall give notice thereof to each of the bodies corporate other than the respondent on which notice under paragraph (1) was served.

(3) Every body corporate on which notice is served under paragraph (1) may appear at the final hearing or at any hearing under rule 20(4) notwithstanding that it is not a respondent to the proceedings and may be heard on the question whether any order made under section 37 or section 39 of the Act should be directed to be binding on each member of the group.

(4) The respondent may at any time serve on the Director and file with the proper officer of the Court a notice containing particulars of any other interconnected body corporate not mentioned in a notice served under paragraph (1), and thereupon paragraph (3) shall apply to that other body as if it had been served with notice under paragraph (1).

(5) With a view to deciding whether or on whom to serve notice under paragraph (1) the Director may, at any time before applying for directions under rule 14 or rule 20(2), serve on the respondent a notice requiring it to give to the Director within fourteen days after service of the notice particulars of any interconnected bodies corporate which are members of a group of which the respondent is a member and shall file a copy of any such notice with the proper officer of the Court.

(6) The respondent shall comply with any notice served under paragraph (5) by delivering to the Director and filing with the proper officer of the Court the particulars required by the notice within the time thereby prescribed.

**17.** Any directions given by the Court under section 40(2) of the Act shall be contained in an order of the Court which shall be drawn up in accordance with rule 21.

*Applications under section* 40(3) *of the Act of* 1973

**18.**—(1) An application by the Director for a direction under section 40(3) of the Act may 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 bodies corporate against which the order was made and the bodies corporate in respect of which a direction is sought.

(2) The notice of application shall be issued by being sealed with the Court's seal by the proper officer of the Court with whom a copy of the notice shall be left to be filed by him.

(3) The Director shall serve a copy of the notice on every body corporate specified therein and those bodies shall be respondents to the notice.

(4) The provisions of these Rules shall apply, with the necessary modifications, to all further proceedings on an application under this rule as they apply to an application under rule 3.

*Costs*

**19.**—(1) In exercising its discretion as to costs the Court shall, subject to paragraph (2), have regard to the practice observed in civil proceedings in the High Court, the Court of Session or the High Court in Northern Ireland, as the case may be, and, without prejudice to the generality of the foregoing, may order the payment by any party of costs incurred by any person entitled under these Rules to be heard in the proceedings.

(2) Where the Court makes an order for the payment of costs by any party it may 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.

(3) Where the Court gives a direction under paragraph (2) in proceedings in England and Wales, the provisions of Order 62 of the Rules of the Supreme Court 1965(**a**) shall apply, with the necessary modifications, to the taxation of the costs as if the proceedings in the Court were a cause or matter in the Supreme Court.

(4) Where the Court gives a direction under paragraph (2) in proceedings in Northern Ireland, the provisions of Order 65 of the Rules of the Supreme Court (Northern Ireland) 1936(**b**) shall apply, with the necessary modifications, to the taxation of the costs as if those proceedings were a cause or matter in the High Court in Northern Ireland.

*Discontinuance and summary application for final order*

**20.**—(1) The Director may at any time discontinue the proceedings against any or all of the respondents without the leave of the Court, on giving notice to every respondent who has entered an appearance and on his undertaking to pay the costs incurred by any respondent against whom the proceedings are discontinued.

(2) If at any time before the final hearing any respondent informs the Director that he is willing to submit to an order under section 37 or section 39 of the Act or to give an undertaking under either of those sections, the Director shall apply to the Court for directions and shall serve notice on every other party that he has done so.

(3) On receipt of an application under paragraph (2) the proper officer of the Court shall fix a date for the hearing of the application and serve notice of the time and place of the hearing on all respondents who have entered an appearance.

(4) On the hearing of the application the Court may take such steps as it thinks fit for disposing of the proceedings against any respondent who is willing to submit to an order or to give such an undertaking as aforesaid and for continuing the proceedings against any other respondent, and, without prejudice to the generality of the foregoing, may—

(*a*) make and record any finding against any respondent if he consents;

(*b*) make an order that the proceedings against any respondent be stayed,

(a) S.I. 1965/1776 (1965 III, p. 4995). (b) S.R. & O. 1936/70 (1936 II, p. 2559)

except for the purpose of carrying into effect the agreed terms on which the proceedings are stayed; and

(*c*) make such order as to costs as it thinks fit.

*Drawing up and enforcement of orders*

**21.**—(1) The proper officer of the Court shall deliver or send to the Director a copy, sealed with the seal of the Court, of every order made under section 37 or section 39 of the Act or containing directions given under section 40(2) thereof as well as of any order made under rule 20(4) as soon as may be after the order has been drawn up.

*Supplementary*

**22.** Rules 79 to 90 (except rule 81) of the principal rules shall apply, with the necessary modifications, to proceedings instituted by a notice of application under these Rules as they apply to proceedings instituted by a notice of reference under the principal rules.

*Hailsham of St. Marylebone,* C.

Dated 28th November 1973.

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

These Rules prescribe the procedure to be followed in proceedings before the Restrictive Practices Court under Part III of the Fair Trading Act 1973.

Proceedings will be begun by a notice of application issued by the Director General of Fair Trading and served by him on all the persons against whom an order is sought (Rules 3 to 5). Every respondent who wishes to be heard must within four weeks of entering an appearance deliver an answer (Rules 6 to 8). The Director must then apply for directions for the future conduct of the proceedings (Rule 13). The wide powers of direction conferred on the Court by the Restrictive Practices Court Rules 1957 will be available in these proceedings for the purposes of which many of those Rules are also attracted (Rules 14 and 22). When a case is ready for hearing it will be heard in open court (Rule 15).

Provision is made for notifying members of a group of interconnected bodies corporate in cases where an order made against a body corporate may be directed to be binding on all members of the group of which it is a member (Rules 16 and 18).

Rule 20 provides for discontinuance of proceedings by the Director and for a summary procedure for determining proceedings against any respondent who is willing to submit to an order or to give an undertaking under section 37 or 39 of the Act.

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