1965 No. 236

RESTRICTIVE TRADE PRACTICES

The Restrictive Practices Court (Resale Prices) Rules 1965

Made - - - -	*17th February* 1965
Laid before Parliament	*24th February* 1965
Coming into Operation	*1st March* 1965

I, Gerald, Baron Gardiner, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by section 23 of the Restrictive Trade Practices Act 1956(a) and section 8 of the Resale Prices Act 1964(b), hereby make the following Rules:—

Introductory

1. These Rules may be cited as the Restrictive Practices Court (Resale Prices) Rules 1965 and shall come into operation on 1st March 1965.

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 Act" means the Resale Prices Act 1964;

"the principal Rules" means the Restrictive Practices Court Rules 1957(d) as amended(e) and any Rules amending or replacing those Rules;

"registered supplier" means a supplier who has duly given notice to the Registrar under section 6(2) of the Act in respect of goods of a class to which the relevant notice of reference applies;

"resale prices reference" means a reference to the Court by the Registrar under section 5 of the Act;

"supplier" and "retailer", in relation to any class of goods, include trade associations consisting of or including suppliers and retailers respectively of that class of goods;

"unregistered supplier" means a supplier of goods of a class to which the relevant notice of reference applies who supplies such goods under arrangements for maintaining minimum prices on resale but who has not duly given notice to the Registrar under section 6(2) of the Act in respect of such goods;

and expressions defined by the principal Rules (except the expression "the Act") have the same meaning in these Rules.

Issue of Notice of Reference

4. A resale prices reference shall be instituted by a notice of reference stating that the class of goods to which the notice applies is referred to the Court.

(a) 4 & 5 Eliz. 2. c. 68. (b) 1964 c. 58. (c) 52 & 53 Vict. c. 63.
(d) S.I. 1957/603 (1957 II, p. 1955).
(e) S.I. 1962/2705, 1965/22 (1962 III, p. 3662; 1965 I, p. 14).

5. A notice of reference may apply to one class of goods, or to a number of classes of goods appearing to the Registrar to be related in such a way as to make it desirable that they should be considered in the same proceedings; and the class or classes of goods to which the notice of reference applies must be sufficiently identified in the notice.

6. A notice of reference shall specify the part of the United Kingdom in which the proceedings are to take place and shall be 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.

7. A notice of reference shall be issued by being sealed with the Court's seal by the proper officer of the Court; and when issued the notice shall be returned to the Registrar who shall leave a copy to be filed by the proper officer.

Preliminary Application for Directions

8. The Registrar shall, not later than 14 days after the institution of a resale prices reference, cause notice of the reference to be published in the London Gazette, the Edinburgh Gazette and the Belfast Gazette, and in at least one daily newspaper circulating throughout the United Kingdom.

9. The notice referred to in the last foregoing rule shall include a statement that—

(*a*) any unregistered supplier,

(*b*) any retailer of goods of a class to which the notice of reference applies, and

(*c*) any trade association representing employees in the distributive trades,

who wishes to be represented before the Court in the proceedings must notify the Registrar in writing within 28 days after the publication of the notice, stating the nature of his interest and whether he supports or opposes the maintenance of minimum resale prices in respect of all or any of the goods to which the notice of reference applies, and giving the name of his solicitor (if any) and an address in the United Kingdom at which documents may be served on him.

10. Not later than 28 days after the expiration of the time limited for notifying an interest under the last foregoing rule the Registrar shall apply to the Court to fix a date for the hearing of a preliminary application for directions, and shall give not less than 28 days' notice of the date so fixed and of the directions which he seeks (including any application for a representation order or for directions with respect to the goods to be included in or excluded from the reference) to—

(*a*) every registered supplier; and

(*b*) every unregistered supplier, retailer and trade association from whom notification has been received under the last foregoing rule;

and the Registrar shall include with his notice a list containing the names and addresses of the persons to whom the notice is given and particulars of the interest notified and other information supplied by the persons mentioned in paragraph (*b*) of this rule, and shall file a copy of the list with the proper officer of the Court.

11. Any person to whom notice of the preliminary application for directions is given who intends to apply for a representation order or for directions with respect to the goods to be included in or excluded from the notice of reference shall give to the Registrar and all other persons to whom notice of the application was given not less than 7 days' notice of his intention, specifying the directions for which he intends to ask.

12. On the hearing of the preliminary application for directions the Court—

(*a*) shall determine which (if any) of the unregistered suppliers, retailers and trade associations from whom notification was received by the Registrar under rule 9 has such an interest as to entitle him to be represented before the Court in the proceedings;

(*b*) may order that some or all of the suppliers (whether registered or unregistered), retailers and trade associations who are before the Court shall be represented by such representative respondent as the Court may direct (any order made under this paragraph being referred to in these Rules as a " representation order ");

(*c*) may direct that the notice of reference be amended by including therein or excluding therefrom any goods; and

(*d*) may give such consequential directions as it thinks fit.

13. An application for the revocation or modification of a representation order may be made—

(*a*) by the Registrar; or

(*b*) by a representative respondent or by any supplier, retailer or trade association representing employees in the distributive trades;

and the Court may revoke or modify the representation order accordingly, and shall give all such consequential directions as it considers necessary.

Service of Notice of Reference

14. Subject to rule 15, the Registrar shall serve a copy of the notice of reference on every registered supplier and on every unregistered supplier, retailer and trade association entitled to take part in the proceedings by virtue of directions given under rule 12(*a*); and every supplier, retailer and trade association on whom a copy of the notice of reference is served shall be a respondent to the reference.

15. Where the Court makes a representation order, then, unless the Court otherwise directs—

(*a*) a copy of the notice of reference and of the representation order shall be served on each representative respondent;

(*b*) a copy of the notice of reference shall also be served on—

(i) any registered supplier, and

(ii) any unregistered supplier, retailer or trade association entitled to take part in the proceedings by virtue of directions given under rule 12(*a*),

to whom the representation order does not extend; and

(*c*) short particulars of the notice of reference and of the representation order shall be published in such trade journal or other newspaper as the Court may direct;

but (subject to rule 13) no other supplier, retailer or trade association shall be served with the notice of reference or made a respondent.

Entry of Appearance

16. Every respondent who wishes to be heard in the proceedings shall, within 14 days after service on him of a copy of the notice of reference, enter an appearance in the office of the Court out of which the notice was issued by delivering to the proper officer of the Court two copies of a memorandum

stating that the respondent wishes to be heard in the proceedings and containing the name of his solicitor (if any) and an address in the United Kingdom at which documents may be served on him; and the proper officer shall thereupon send one copy of the memorandum, sealed with the seal of the Court, to the Registrar.

Subsequent Proceedings on Reference

17. Rules 17 to 64 of the principal Rules shall apply, with the necessary modifications, to all subsequent proceedings on a resale prices reference in any part of the United Kingdom as they apply to proceedings instituted by a notice of reference under the principal Rules in that part as if—

(*a*) references to an agreement were references to the class of goods to which the resale prices reference applies; and

(*b*) references to section 20 or section 21 of the Restrictive Trade Practices Act 1956 were references to section 5 of the Act.

18. Where a respondent is a trade association consisting of or including suppliers or retailers, as the case may be, the Registrar may apply for an order for discovery under rule 41 of the principal Rules or for an order for an investigation under rule 43 of those Rules against any member of the association who supplies or retails any goods to which the notice of reference applies under arrangements for maintaining minimum prices on resale; and on the hearing of the application for directions mentioned in rule 33 of the principal Rules the Court may give directions for discovery of documents by any such member or for an investigation of the cost incurred by him in producing, supplying or retailing any goods or in applying any process of manufacture to goods.

In the application of this rule to proceedings in Scotland there shall be substituted for any reference to rule 41 of the principal Rules a reference to rule 42 of those Rules and for any reference to discovery of documents a reference to recovery of documents under a commission and diligence.

Settlement of Issues

19. On the hearing of the application for directions mentioned in rule 33 of the principal Rules or at any time thereafter, the Court may, either on the application of any party or of its own motion, give such directions as it thinks fit as to the formulation by the parties of the issues of fact and law which fall to be determined by the Court at the final hearing.

20. The Court shall settle the issues formulated by the parties in accordance with directions given under the last foregoing rule and the issues so settled (or as amended in pursuance of the next following rule) shall, unless the Court otherwise directs, be those to be determined at the final hearing.

21. Any party may apply to the Court for amendment of the issues as settled by the Court and shall, except where the application is made at the final hearing, give all other parties not less than 7 days' notice of the date fixed for the hearing of the application and of the amendments for which he asks, and the Court may on such application make such amendment of the issues as it thinks just.

Summary Application for Final Order

22. Where no appearance has been entered or where, after entry of appearance, no statement of case has been delivered, the Registrar may apply to the Court for a declaration that it refuses to make an order under section 5 of the Act in respect of the class of goods to which the notice of reference applies.

23. An application under the last foregoing rule may be made—

(*a*) where no appearance has been entered, not earlier than 28 days after the expiration of the time limited for entry of appearance by the respondent on whom the notice of reference was last served ; and

(*b*) where no statement of case has been delivered, not earlier than 28 days after the expiration of the time limited for delivery of a statement of case by the respondent who last entered an appearance.

24. If every supplier who has delivered a statement of case notifies the Registrar that he no longer seeks to obtain exemption under section 5 of the Act in respect of any of the classes of goods to which the notice of reference applies, the Registrar may apply to the Court for a declaration that it refuses to make an order under the said section 5 in respect of that class of goods.

25. Not later than 21 days before an application under rule 22 or rule 24 is due to be heard, the Registrar shall file with the proper officer of the Court a draft of the declaration for which he intends to apply, and shall at the same time serve a copy of the draft on every respondent (whether he has entered an appearance or not), together with notice of the time and place appointed for the hearing of the application ; and every respondent shall be entitled to be heard thereon.

Applications under Section 7(1)

26. An applicant who wishes to obtain leave to apply under section 7(1) of the Act for an order in respect of goods of any class must apply for leave by notice issued out of the central office of the Court, or the office of the Court in Scotland or Northern Ireland.

27. A notice under the last foregoing rule shall be accompanied by a copy of the intended application, which shall state the class of goods to which it relates and the provisions of section 5(2) of the Act on which the applicant intends to rely, and shall be supported by evidence on affidavit of the facts alleged by the applicant to justify the making of an order under section 7(1) of the Act ; and a copy of the notice and of the intended application and every affidavit shall be served on the Registrar not less than 6 weeks before the date fixed by the Court for the hearing of the application for leave, and the Registrar shall be entitled to be heard thereon.

28. If leave is granted, the applicant shall, not later than 14 days thereafter, cause notice of the application to be published in the same manner as notice of a resale prices reference is required to be published under rule 8, so, however, that the statement to be included in the notice shall require the notification of an interest mentioned in rule 9 to be given to the applicant as well as to the Registrar.

29. Any supplier or retailer of goods of a class to which the application relates, and any trade association representing employees in the distributive trades, who wishes to be represented before the Court on the application must notify the applicant and the Registrar in writing within 28 days after the publication of the notice, stating the nature of his interest and whether he supports or opposes the maintenance of minimum resale prices in respect of all or any of the goods to which the application relates, and giving the name of his solicitor (if any) and an address in the United Kingdom at which documents may be served on him.

30. Not later than 28 days after the expiration of the time limited for notifying an interest under the last foregoing rule, the applicant shall apply to the Court to fix a date for the hearing of a preliminary application for directions, and shall give not less than 28 days' notice of the date so fixed to

the Registrar as well as to every supplier, retailer and trade association who has notified an interest, and shall include with his notice a list containing the names and addresses of the persons to whom the notice is given and particulars of the interest notified and other information supplied by each such person other than the Registrar, and shall file a copy of the list with the proper officer of the Court.

31. On the hearing of the preliminary application for directions, the Court shall give such directions as it thinks fit as to—

(*a*) the representation of any supplier, retailer or trade association representing employees in the distributive trades appearing to the Court to have an interest in the proceedings;

(*b*) the delivery of a statement of case by the applicant and by any supplier, retailer or trade association; and

(*c*) the inclusion of any goods in, or their exclusion from, the application under section 7(1) of the Act;

and, subject to any such directions, the provisions of these Rules relating to a resale prices reference shall apply with the necessary modifications to all further proceedings on the application, so, however, that the application for directions under rule 33 of the principal Rules (as applied by rule 17 of these Rules) shall be made by the applicant and not by the Registrar.

Applications under Sections 7(2)(a) and 7(2)(b)

32. An applicant who wishes to obtain leave to apply under section 7(2)(*a*) or section 7(2)(*b*) of the Act for such an order as is therein mentioned must apply for leave by notice issued out of the office of the Court in that part of the United Kingdom in which the previous proceedings relating to the class of goods which are the subject of the application took place.

33. A notice under the last foregoing rule shall be accompanied by a copy of the intended application and be supported by evidence on affidavit of the material change in the relevant circumstances on which the applicant relies; and, unless the Court otherwise directs, a copy of the notice and every affidavit shall be served on every party who appeared on the hearing of the previous proceedings not less than 6 weeks before the date fixed by the Court for the hearing of the application for leave, on which every person on whom the notice is served shall be entitled to be heard.

34. If leave is granted, the Court shall give such directions as it thinks fit as to—

(*a*) the delivery of a statement of case by the applicant and of an answer by the parties to the previous proceedings on whom notice was served under the last foregoing rule; and

(*b*) the inclusion in or exclusion from the application of any goods;

and, subject to any such directions, the provisions of these Rules relating to a resale prices reference shall apply with the necessary modifications to all further proceedings on the application as if the Court had given any directions which it has power to give under rule 12, so, however, that the application for directions under rule 33 of the principal Rules (as applied by rule 17 of these Rules) shall be made by the applicant.

Costs

35. Where the Court makes an order for the payment of costs by the Registrar under the powers conferred on it by section 8(2) of the Act, the costs or such of the costs as the Court orders to be paid by the Registrar shall in default of agreement be taxed by the proper officer of the Court; and any party dissatisfied with the proper officer's decision to allow or

disallow any item of costs in whole or in part, or with the amount allowed in respect of any item, may apply to a Judge to review the taxation as to that item or part of an item.

36. An application for review under the last foregoing rule may be made at any time within 7 days after the conclusion of the taxation by the proper officer.

Enforcement of Orders, Appeals, Service, etc.

37. Rules 76 to 90 of the principal Rules shall apply with the necessary modifications to proceedings under the Act as they apply to proceedings under the Restrictive Trade Practices Act 1956.

Dated 17th February 1965.

Gardiner, C.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

These Rules prescribe the procedure to be followed in proceedings before the Restrictive Practices Court under the Resale Prices Act 1964.

Proceedings under section 5 of the Act will be begun by a notice of reference issued by the Registrar of Restrictive Trading Agreements. The reference will be advertised, and suppliers who have not applied for registration of their goods under section 6(2) of the Act ("unregistered suppliers"), as well as retailers and any trade association representing employees in the distributive trades, may notify the Registrar of their wish to be represented before the Court in the proceedings. On a preliminary application for directions the Court will decide who is entitled to be represented in addition to the suppliers who have applied for registration of their goods under section 6(2), and may modify the scope of the notice of reference and make any necessary representation orders.

Subject to any representation order, the notice of reference will be served on all registered suppliers, and on every unregistered supplier, retailer or trade association entitled to be represented. Further proceedings on the reference will follow the same course as proceedings under the Restrictive Trade Practices Act 1956.

Provision is made by rules 19 to 21 for the formulation and settlement of the issues to be determined at the final hearing.

The procedure on applications under section 7 of the Resale Prices Act is dealt with by rules 26 to 34.