

1989 No. 1082

RESTRICTIVE TRADE PRACTICES

**The Restrictive Trade Practices (Services) (Amendment)
Order 1989**

Made - - - - 29th June 1989

Coming into force 30th June 1989

Whereas a notice has been published by the Secretary of State complying with the terms of section 15(2) of the Restrictive Trade Practices Act 1976 (a) and all the representations made with respect thereto have been taken into consideration;

And whereas a draft of this Order has been approved by resolution of each House of Parliament pursuant to section 15(1) of the said Act of 1976;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 11 and 14(2)(b) of that Act, hereby makes the following Order:

1. This Order may be cited as the Restrictive Trade Practices (Services) (Amendment) Order 1989 and shall come into force on the day after the day on which it is made.

2. The articles set out in the Schedule to this Order shall be added to the Restrictive Trade Practices (Services) Order 1976(c) and shall apply to agreements made on or after the date on which this Order comes into force.

29th June 1989

Francis Maude
Parliamentary Under Secretary of State for Corporate Affairs,
Department of Trade and Industry

(a) 1976 c.34.

(b) Section 14(2) was amended by section 1(1) of the Restrictive Trade Practices Act 1977 (c. 19).

(c) S.I. 1976/98, as amended by section 1 of the Restrictive Trade Practices Act 1977, section 115 of the Transport Act 1985 (c.67), S.I. 1985/2044 and 1986/2204.

ARTICLES ADDED TO RESTRICTIVE TRADE PRACTICES (SERVICES) ORDER 1976

5.—(1) This article applies to an agreement made on or after the date on which the Restrictive Trade Practices (Services) (Amendment) Order 1989 came into force (a)—

- (a) the parties to which include a person (the “vendor”) who agrees to transfer shares in a company or the whole of his interest in a business to a purchaser;
- (b) under which, in the case of an agreement for the transfer of shares in a company, more than 50 per cent in nominal value of the issued share capital of that company is transferred or agreed to be transferred to one purchaser or to more than one purchaser each of which is a member of the same group;
- (c) under which no relevant restriction in respect of any of the matters specified in article 3(2)(a) of this Order is accepted by a person; and
- (d) under which no relevant restriction in respect of any of the matters specified in article 3(2)(b) to (e) of this Order is accepted by a person other than such a person as is described in paragraph (2) below.

(2) Persons by whom a relevant restriction may be accepted for the purpose of paragraph (1)(d) above are—

- (a) any vendor;
- (b) any member of the same group as any vendor; and
- (c) any individual;

other than a body corporate or unincorporate which is also a purchaser under the agreement in question, or a member of the same group as such a body.

6.—(1) In determining whether an agreement to which article 5 applies is an agreement to which the Act of 1976 applies by virtue of this Order, no account shall be taken of any relevant restriction—

- (a) which is accepted for a period not exceeding that permitted under paragraph (2) below; and
- (b) which limits the extent to which the person accepting the restriction may compete with the acquired enterprise, or may be engaged or interested in, disclose information to, or otherwise assist any business which so competes.

(2) For the purpose of paragraph (1)(a) above, a permitted period is:—

- (a) a period of 5 years beginning with the date of the agreement; or
- (b) in the case of restrictions accepted by an individual who is to have a contract of employment with or a contract for the supply of services to the acquired enterprise, the purchaser, or a member of the same group as the purchaser, a period beginning with the date of the agreement and ending 2 years after the date of expiry or termination of the contract,

whichever ends the later.

7. This article applies to an agreement made on or after the date on which the Restrictive Trade Practices (Services) (Amendment) Order 1989 came into force (a)—

- (a) which provides for a person (the “subscriber”) to subscribe (whether or not in cash) for shares in a company (the “issuing company”);
- (b) under which no relevant restriction in respect of any of the matters specified in article 3(2)(a) of this Order is accepted by a person; and
- (c) under which no relevant restriction in respect of any of the matters specified in article 3(2)(b) to (e) of this Order is accepted by a body corporate or unincorporate.

8.—(1) In determining whether an agreement to which article 7 applies is an agreement to which the Act of 1976 applies by virtue of this Order, no account shall be taken of any relevant restriction—

- (a) which is accepted for a period not exceeding that permitted under paragraph (2) below; and
- (b) which limits the extent to which the person accepting the restriction may compete with the issuing company, or may be engaged or interested in, disclose information to, or otherwise assist any business which so competes.

(a) The Restrictive Trade Practices (Services) (Amendment) Order 1989 came into force on 30th June 1989.

- (2) For the purpose of paragraph (1)(a) above, a permitted period is:-
- (a) a period of 5 years beginning with the date of the agreement; or
 - (b) in the case of restrictions accepted-
 - (i) by a member of the issuing company, a period beginning with the date of the agreement and ending 2 years after the date on which that person ceases to be a member; or
 - (ii) by an individual who is to have a contract of employment with or a contract for the supply of services to the issuing company, a period beginning with the date of the agreement and ending 2 years after the expiry or termination of the contract,
- whichever ends the later.

9. In articles 5 to 8 above-

“the Act of 1976” means the Restrictive Trade Practices Act 1976;

“acquired enterprise” means a company in which shares are acquired or a business an interest in which is acquired;

“business” means any undertaking which is, or any part of an undertaking which part is-

(a) carried on as a going concern for gain or reward; or

(b) carried on as a going concern in the course of which goods or services are supplied otherwise than free of charge;

“company” means a company as defined in section 735 of the Companies Act 1985 (a) and an oversea company as defined in section 744 of that Act;

“contract of employment” means a contract of service whether it is express or implied and (if it is express) whether it is oral or in writing;

“goods” has the same meaning as in section 43(1) of the Act of 1976;

“group” means a group of interconnected bodies corporate within the meaning of section 43(1) of the Act of 1976;

“member of the issuing company” is to be construed in accordance with section 22 of the Companies Act 1985;

“purchaser” means a person acquiring shares in a company, or acquiring an interest in a business, whether for cash or otherwise;

“relevant restriction” means a restriction in respect of the matters specified in article 3(2) of this Order;

“services” has the same meaning as in section 20 of the Act of 1976.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Restrictive Trade Practices (Services) Order 1976 (“the 1976 Order”) which applied Part I of the Restrictive Trade Practices Act 1956 (c.68) (now consolidated in the Restrictive Trade Practices Act 1976) to restrictive agreements in the supply and acquisition of services.

The amendments made by the Order exempt from the registration requirements of the 1976 Act agreements for the sale and purchase of shares in a company or of a business (“sale and purchase agreements”) and agreements for the subscription of shares in a company (“share subscription agreements”) provided that the agreements satisfy certain conditions.

In the case of sale and purchase agreements the main conditions are (new articles 5 and 6 to be added to the 1976 Order)-

- (a) that more than 50 per cent in nominal value of the issued share capital of the company be transferred to one purchaser or to more than one where they are all members of the same group of companies, or (as the case may be) that the whole of the vendor’s interest in a business be transferred to one or more purchasers;

(a) 1985 c.6.

- (b) that the agreements only contain registrable restrictions of the type specified in article 3(2)(b) to (e) of the 1976 Order;
- (c) that such restrictions only be accepted by vendors, their associated companies, or by individuals (save that bodies corporate or unincorporate cannot accept such restrictions where they are also purchasers under the agreement in question);
- (d) that the restrictions to be disregarded only limit the extent to which the persons accepting them may compete with the company or business which is the subject of the sale, or be involved in or assist any business which so competes; and
- (e) that the restrictions to be disregarded only be operative for a period not exceeding 5 years beginning with the date of the agreement or a period beginning with the date of the agreement and ending 2 years after the date of expiry or termination of the relevant employment or services contract, whichever is the later.

In the case of share subscription agreements the main conditions are (new articles 7 and 8 to be added to the 1976 Order)–

- (a) that the agreements only contain registrable restrictions of the type specified in article 3(2)(b) to (e) of the 1976 Order;
- (b) that such restrictions only be accepted by individuals;
- (c) that the restrictions to be disregarded only limit the extent to which the persons accepting them may compete with the issuing company, or be involved in or assist any business which so competes; and
- (d) that the restrictions to be disregarded only be operative for a period not exceeding 5 years beginning with the date of the agreement or a period beginning with the date of the agreement and ending 2 years after the relevant person ceases to be a member of the issuing company or after the date of expiry or termination of the relevant employment or services contract, whichever is the later.

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