



Isle of Man

Ellan Vannin

AT 15 of 1996

FAIR TRADING ACT 1996



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**Isle of Man***Ellan Vannin*

FAIR TRADING ACT 1996

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AN ACT to enable action to be taken against conduct detrimental to consumers and anti-competitive practices; to enable prices to be investigated; and for connected purposes.

PART 1 – CONDUCT AFFECTING CONSUMERS’ INTERESTS

Conduct detrimental to consumers’ interests

1 Action with respect to course of conduct detrimental to consumers’ interests

[P1973/41/34 and 38]

- (1) Where it appears to the Isle of Man Office of Fair Trading (in this Act called “OFT”) that the person carrying on a business has in the course of that business behaved in a manner which –
- (a) is detrimental to the interests of consumers in the Island, whether those interests are economic interests or interests in respect of health, safety or other matters, and
 - (b) in accordance with the following provisions of this section is to be regarded as unfair to consumers,

OFT shall use its best endeavours, by communication with that person or otherwise, to obtain from him such an assurance as is mentioned in subsection (2).¹

- (2) The assurance referred to in subsection (1) is a satisfactory written assurance given by the person concerned that he will refrain from –
- (a) behaving in that manner;
 - (b) behaving in any similar manner in the course of any business which may at any time be carried on by him; and

- (c) if he is an individual, consenting to or conniving at such behaviour by any body corporate in relation to which, at any time when it so behaves, he fulfils the condition specified in subsection (3)(a) or (b).
- (3) The condition referred to in subsection (2)(c) is that the person either —
- (a) is at that time a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in any such capacity, or
- (b) whether being an individual or a body of persons, corporate or unincorporate, has at that time a controlling interest in that body corporate.
- (4) For the purposes of subsection (1)(b) behaviour shall be regarded as unfair to consumers if it consists of contraventions of one or more enactments which impose duties, prohibitions or restrictions enforceable by criminal proceedings, whether any such duty, prohibition or restriction is imposed in relation to consumers as such or not and whether the person carrying on the business has or has not been convicted of any offence in respect of any such contravention.
- (5) Behaviour on the part of the person carrying on a business shall also be regarded for those purposes as unfair to consumers if it consists of things done, or omitted to be done, in the course of that business in breach of contract or in breach of a duty (other than a contractual duty) owed to any person by virtue of any enactment or rule of law and enforceable by civil proceedings, whether (in any such case) civil proceedings in respect of the breach of contract or breach of duty have been brought or not.
- (6) For the purpose of determining whether it appears to it that a person has behaved in such a manner as is mentioned in subsection (1), OFT shall have regard to either or both of the following —
- (a) complaints received by it, whether from consumers or from other persons;
- (b) any other information collected by or furnished to OFT, whether by virtue of this Act or otherwise.^{2 3}
- (7) For the purposes of this section a person (whether being an individual or a body of persons, corporate or unincorporate) has a controlling interest in a body corporate if (but only if) that person can, directly or indirectly, determine the manner in which one-half of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.

2 Legal proceedings

[P1973/41/35 and 36]

- (1) If, in the circumstances specified in section 1(1), —

- (a) OFT is unable to obtain from the person in question such an assurance as is mentioned in section 1(2), or⁴
 - (b) that person has given such an assurance and it appears to OFT that he has failed to observe it,⁵
- the Attorney General may, at the request of OFT, bring proceedings against him before the High Court.⁶
- (2) For the purposes of section 11 of the *Civil Evidence Act 1973* (convictions as evidence in civil proceedings), proceedings under this section shall (without prejudice to the generality of section 18(1) of that Act) be taken to be civil proceedings within the meaning of that Act.
 - (3) Where in any proceedings under this section such a breach of contract or breach of duty as is mentioned in section 1(5) is alleged, a judgment of any court given in civil proceedings, which includes a finding that the breach of contract or breach of duty in question was committed, —
 - (a) shall be admissible in evidence for the purpose of proving the breach of contract or breach of duty, and
 - (b) shall, unless the contrary is proved, be taken to be sufficient evidence that the breach of contract or breach of duty was committed.
 - (4) For the purposes of subsection (3) no account shall be taken of a judgment given in any civil proceedings if it has subsequently been reversed on appeal, or has been varied on appeal so as to negative the finding referred to in that subsection.

3 Order of, or undertaking given to, Court in proceedings under s 2

[P1973/41/37]

- (1) Where in any proceedings before the High Court under section 2 —
 - (a) the Court finds that the person against whom the proceedings are brought (in this section referred to as “the respondent”) has in the course of a business carried on by him behaved in such a manner as is mentioned in section 1(1), and
 - (b) the respondent does not give an undertaking to the Court under subsection (3) which is accepted by the Court, and
 - (c) it appears to the Court that, unless an order is made against the respondent under this section, he is likely to continue to behave in that manner or in a similar manner,

the Court may make an order against the respondent under this section.
- (2) An order of the Court under this section shall (with such degree of particularity as appears to the Court to be sufficient for the purposes of the order) indicate the nature of the behaviour to which the finding of the Court under subsection (1)(a) relates, and shall direct the respondent —

- (a) to refrain from behaving in that manner;
 - (b) to refrain from behaving in any similar manner in the course of any business which may at any time be carried on by him; and
 - (c) if he is an individual, to refrain from consenting to or conniving at such behaviour by any body corporate in relation to which, at any time when it so behaves, he fulfils the condition specified in section 1(3)(a) or (b).
- (3) Where in any proceedings under section 2 the Court makes such a finding as is mentioned in subsection (1)(a), and the respondent offers to give to the Court an undertaking either –
- (a) to refrain as mentioned in subsection (2)(a), (b) and (c), or
 - (b) to take particular steps which, in the opinion of the Court, would suffice to prevent the behaviour to which the complaint relates continuing, and to prevent the respondent behaving in any similar manner in the course of any business carried on by him,
- the Court may, if it thinks fit, accept that undertaking instead of making an order under this section.

4 Accessories to course of conduct detrimental to consumers' interests

[P1973/41/38]

- (1) This section applies where it appears to OFT –
- (a) that a body corporate has in the course of a business carried on by that body behaved in such a manner as is mentioned in section 1(1), and
 - (b) that it has so behaved with the consent or connivance of a person (in this section and section 5 called “**the accessory**”) who at a material time fulfilled the condition specified in section 1(3)(a) or (b) in relation to that body.⁷
- (2) If, in the circumstances specified in subsection (1), –
- (a) OFT has used its best endeavours to obtain from the accessory such an assurance as is mentioned in subsection (3) and has been unable to obtain such an assurance from him, or⁸
 - (b) the accessory has given such an assurance to OFT and it appears to OFT that he has failed to observe it,⁹
- the Attorney General may, at the request of OFT, bring proceedings against the accessory before the High Court.¹⁰
- (3) The assurance referred to in subsection (2) is a satisfactory written assurance given by the accessory that he will refrain from –
- (a) continuing to consent to or connive at the behaviour in question;
 - (b) behaving in a similar manner in the course of any business which may at any time be carried on by him; and

- (c) consenting to or conniving at such behaviour by any other body corporate in relation to which, at any time when it so behaves, he fulfils the condition specified in section 1(3)(a) or (b).
- (4) Proceedings may be brought against the accessory under this section whether or not any proceedings are brought under section 2 against the body corporate referred to in subsection (1).
- (5) Section 2(2) to (4) has effect in relation to proceedings under this section as it has effect in relation to proceedings under section 2(1).

5 Order of, or undertaking given to, Court in proceedings under s 4

[P1973/41/39]

- (1) Where in any proceedings brought against the accessory before the High Court under section 4 —
 - (a) the Court finds that the conditions specified in section 4(1)(a) and (b) are fulfilled in the case of the accessory, and
 - (b) the accessory does not give an undertaking to the Court under subsection (3) which is accepted by the Court, and
 - (c) it appears to the Court that, unless an order is made against the accessory under this section, it is likely that he will not refrain from acting in one or more of the ways mentioned in 4(3)(a) to (c),the Court may make an order against the accessory under this section.
- (2) An order of the Court under this section shall (with such degree of particularity as appears to the Court to be sufficient for the purposes of the order) indicate the nature of the behaviour to which the finding of the Court under subsection (1)(a) relates, and shall direct the accessory, in relation to the behaviour so indicated, to refrain from acting in any of the ways mentioned in section 4(4)(a) to (c).
- (3) Where in any proceedings under section 4 the Court makes such a finding as is mentioned in subsection (1)(a), and the accessory offers to give to the Court an undertaking either —
 - (a) to refrain from acting in any of the ways mentioned in section 4(3)(a) to (c), or
 - (b) to take particular steps which, in the opinion of the Court, would suffice to prevent him from acting in any of those ways,the Court may, if it thinks fit, accept that undertaking instead of making an order under this section.

6 Interpretation of ss 1-5

[P1973/41/137]

- (1) In sections 1 to 5 “**consumer**” (subject to subsection (2)) means any person who is either —

- (a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them, or
- (b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them,

and who does not receive or seek to receive the goods or services in the course of a business carried on by him.

- (2) For the purposes of the application of any provision of sections 1 to 5 and this section in relation to goods or services of a particular description, “**consumers**” means persons who are consumers (as defined by subsection (1)) in relation to goods or services of that description.
- (3) For the purposes of sections 1 to 5 and this section it is immaterial whether any person supplying goods or services has a place of business in the Island or not.
- (4) For the purposes of sections 1 to 5 and this section any goods or services supplied wholly or partly outside the Island, if they are supplied in accordance with arrangements made in the Island, whether made orally or by one or more documents delivered in the Island or by correspondence posted from and to addresses in the Island, shall be treated as goods supplied to, or services supplied for, persons in the Island.
- (5) In relation to the supply of goods under a hire-purchase agreement or any other any agreement under which the price or other money consideration is payable by instalments, the person conducting any antecedent negotiations, as well as the owner or seller, shall for the purposes of sections 1 to 5 and this section be treated as a person supplying or seeking to supply the goods; and in this subsection “hire-purchase agreement” and “antecedent negotiations” have the same meanings as in Part 1 of the *Supply of Goods and Services Act 1996*.
- (6) In sections 1 to 5 and this section —
 - (a) any reference to a person to or for whom goods or services are supplied shall be construed as including a reference to any guarantor of such a person, and
 - (b) any reference to the terms or conditions on or subject to which goods or services are supplied shall be construed as including a reference to the terms or conditions on or subject to which any person undertakes to act as such a guarantor;

and in this subsection “guarantor”, in relation to a person to or for whom goods or services are supplied, includes a person who undertakes to indemnify the supplier of the goods or services against any loss which he may incur in respect of the supply of the goods or services to or for that person.

- (7) For the purposes of any provisions to which this section applies goods or services supplied by a person carrying on a business shall be taken to be supplied in the course of that business if payment for the supply of the goods or services is made or (whether under a contract or by virtue of an enactment or otherwise) is required to be made.

Consumer trade practices

7 [Repealed]¹¹

PART 1A - TRADING SCHEMES¹²

7A Trading schemes to which this Part applies

[P1973/41/118; P1996/32/1]

- (1) This Part applies to any trading scheme if —
- (a) the prospect is held out to participants of receiving payments or other benefits in respect of any of the matters specified in subsection (2); and
 - (b) (subject to subsection (7)) either or both of the conditions in subsections (3) and (4) are fulfilled in relation to the scheme.
- (2) The matters referred to in subsection (1)(a) are —
- (a) the introduction by any person of other persons who become participants in a trading scheme;
 - (b) the continued participation of participants in a trading scheme;
 - (c) the promotion, transfer or other change of status of participants within a trading scheme;
 - (d) the supply of goods or services by any person to or for other persons;
 - (e) the acquisition of goods or services by any person.
- (3) The condition in this subsection is that —
- (a) goods or services, or both, are to be provided by the person promoting the scheme (“the promoter”) or, in the case of a scheme promoted by 2 or more persons acting in concert (“the promoters”), by one or more of those persons; and
 - (b) the goods or services so provided —
 - (i) are to be supplied to or for other persons under transactions effected by participants (whether in the capacity of agents of the promoter or of one of the promoters or in any other capacity), or

- (ii) are to be used for the purposes of the supply of goods or services to or for other persons under such transactions.
- (4) The condition in this subsection is that goods or services, or both, are to be supplied by the promoter or any of the promoters to or for persons introduced to him or any of the other promoters (or an employee or agent of his or theirs) by participants.
- (5) For the purposes of this Part a prospect of a kind mentioned in subsection (1)(a) shall be treated as being held out to a participant whether it is held out so as to confer on him a legally enforceable right or not.
- (6) This Part does not apply to any trading scheme —
- (a) under which the promoter or any of the promoters or participants is to carry on, or to purport to carry on, investment business or services to collective investment schemes in the Island (falling under the *Financial Services Act 2008*); or¹³
- (b) which otherwise falls within a description prescribed by regulations made by the Department for Enterprise (“**the Department**”).¹⁴
- (7) The Department may by order —
- (a) disapply subsection (1)(b) in relation to a trading scheme of a kind specified in the order; or
- (b) amend or repeal subsection (6)(a).
- (8) In this Part —
- “**goods**” includes property of any description and a right to, or interest in, property;
- “**participant**” means, in relation to a trading scheme, a person (other than the promoter or any of the promoters) participating in the scheme;
- “**trading scheme**” includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not;
- and any reference to the provision or supply of goods shall be construed as including a reference to the grant or transfer of a right or interest.
- (9) In this section any reference to the provision or supply of goods or services by a person shall be construed as including a reference to the provision or supply of goods or services under arrangements to which that person is a party.¹⁵

7B Regulations relating to such trading schemes

[P1973/41/119; P1996/32/2(1)]

- (1) The Department may by regulations

- (a) make provision with respect to the issue, circulation or distribution of any form of advertisement, prospectus, circular or notice which contains any information calculated to lead directly or indirectly to persons becoming participants in a trading scheme to which this Part applies; and
 - (b) prohibit any such advertisement, prospectus, circular or notice from being issued, circulated or distributed unless it complies with such requirements as to the matters to be included or not included in it as may be prescribed by the regulations.
- (2) The Department may by regulations prohibit the promoter or any of the promoters of, or any participant in, a trading scheme to which this Part applies from —
- (a) supplying any goods to a participant in the trading scheme, or
 - (b) supplying any training facilities or other services for such a participant, or
 - (c) providing any goods or services under a transaction effected by such a participant, or
 - (d) being a party to any arrangements under which goods or services are supplied or provided as mentioned in paragraph (a), (b) or (c), or
 - (e) accepting from any such participant any payment, or any undertaking to make a payment, in respect of any goods or services supplied or provided as mentioned in any of paragraphs (a) to (d) or in respect of any goods or services to be so supplied or provided, unless (in any such case) such requirements as are prescribed by the regulations are complied with.
- (3) Any requirements prescribed by regulations under subsection (2) shall be such as the Department considers necessary or expedient for the purpose of preventing participants in trading schemes to which this Part applies from being unfairly treated; and, without prejudice to the generality of this subsection, any such requirements may include provisions —
- (a) requiring the rights and obligations of every participant under such a trading scheme to be set out in full in an agreement in writing made between the participant and the promoter or (if more than one) each of the promoters;
 - (b) specifying rights required to be conferred on every such participant, and obligations required to be assumed by the promoter or promoters, under any such trading scheme; or
 - (c) imposing restrictions on the liabilities to be incurred by such a participant in respect of any of the matters mentioned in subsection (2)(a) to (e).
- (4) Regulations under subsection (2) —

- (a) may include provision for enabling a person who has made a payment as a participant in a trading scheme to which this Part applies, in circumstances where any of the requirements prescribed by the regulations were not complied with, to recover the whole or part of that payment from any person to whom or for whose benefit it was paid, and
 - (b) subject to any provision made in accordance with paragraph (a), may prescribe the degree to which anything done in contravention of the regulations is to be treated as valid or invalid for the purposes of any civil proceedings.
- (5) Regulations and orders under this Part shall not have effect unless they are approved by Tynwald.¹⁶

7C Offences

[P1973/41/120; P1996/32/2(2)]

- (1) Subject to section 7D, any person who issues, circulates or distributes, or causes another person to issue, circulate or distribute, an advertisement, prospectus, circular or notice in contravention of any regulations under section 7B(1) is guilty of an offence
- (2) Any person who contravenes any regulations under section 7B(2) is guilty of an offence.
- (3) If any person who is a participant in a trading scheme to which this Part applies, or has applied or been invited to become a participant in such a trading scheme, —
 - (a) makes any payment to or for the benefit of the promoter or (if there is more than one) any of the promoters, or to or for the benefit of a participant in the trading scheme, and
 - (b) is induced to make that payment by reason that the prospect is held out to him of receiving payments or other benefits in respect of the introduction of other persons who become participants in the trading scheme,any person to whom or for whose benefit that payment is made is guilty of an offence.
- (4) If the promoter or any of the promoters of a trading scheme to which this Part applies, or any other person acting in accordance with such a trading scheme, by holding out to any person such a prospect as is mentioned in subsection (3)(b), attempts to induce him —
 - (a) if he is already a participant in the trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in the trading scheme, or

- (b) if he is not already a participant in the trading scheme, to become such a participant and to make any such payment as is mentioned in paragraph (a),
- the person attempting to induce him to make that payment is guilty of an offence.
- (5) In determining, for the purposes of subsection (3) or subsection (4), whether an inducement or attempt to induce is made by holding out such a prospect as is therein mentioned, it shall be sufficient if such a prospect constitutes or would constitute a substantial part of the inducement.
- (6) Where the person by whom an offence is committed under subsection (3) or (4) is not the sole promoter of the trading scheme in question, any other person who is the promoter or (as the case may be) one of the promoters of the trading scheme is, subject to section 7D, also guilty of that offence.
- (7) Nothing in subsections (3) to (6) shall be construed as limiting the circumstances in which the commission of any act may constitute an offence under subsection (1) or (2).
- (8) In this section any reference to the making of a payment to or for the benefit of a person shall be construed as including the making of a payment partly to or for the benefit of that person and partly to or for the benefit of one or more other persons.¹⁷

7D Offences – supplemental

[P1973/41/121-123]

- (1) A person guilty of an offence under section 7C is liable –
- (a) on summary conviction, to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months or to both;
- (b) on conviction on information, to a fine or to custody for a term not exceeding 2 years or to both.
- (2) Where a person is charged with an offence under section 7C(1) in respect of an advertisement, it shall be a defence for him to prove that –
- (a) he is a person whose business it is to publish or arrange for the publication of advertisements,
- (b) he received the advertisement for publication in the ordinary course of business, and
- (c) he did not know, and had no reason to suspect, that its publication would amount to an offence under section 7C(1).
- (3) Where a person is charged with an offence by virtue of section 7C(6), it shall be a defence for him to prove –
- (a) that the trading scheme to which the charge relates was in operation before the commencement of this Part, and

- (b) that the act constituting the offence was committed without his consent or connivance.
- (4) The following provisions of the *Consumer Protection (Trade Descriptions) Act 1970* apply in relation to the enforcement of regulations under section 7B by OFT as they apply in relation to the enforcement of that Act –
- section 27 (power to make test purchases);
 - section 28 (power to enter premises and inspect and seize goods and documents);
 - section 29 (obstruction of inspectors);
 - section 30(1) (notice of test); and
 - section 33 (compensation for loss etc. of goods seized).¹⁸
- (5) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the said Act of 1970 shall apply as if regulations under section 7B were contained in that Act, and as if the functions of any person in relation to the enforcement of those regulations were functions under that Act.¹⁹

PART 2 – ANTI-COMPETITIVE PRACTICES AND PRICES

Investigation of anti-competitive practices

8 Meaning of “anti-competitive practice”

[P1980/21/2]

- (1) For the purposes of this Part a person engages in an anti-competitive practice if, in the course of business, he pursues a course of conduct which, of itself or when taken together with a course of conduct pursued by another person or other persons, has or is intended to have or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in the Island or the supply or securing of services in the Island. This is subject to subsections (2) and (4A).²⁰
- (2) For the purposes of this Part, a course of conduct does not constitute an anti-competitive practice if it is excluded for those purposes by an order made by the Council of Ministers.
- (3) An order under subsection (2) –
- (a) may limit the exclusion conferred by it by reference to a particular class of persons or to particular circumstances;
 - (b) without prejudice to the generality of paragraph (a), may exclude the conduct of any person by reference to the size of his business, whether expressed by reference to turnover, as defined in the

order, or to his share of a market, as so defined, or in any other manner; and

- (c) shall not have effect unless it is approved by Tynwald.
- (4) For the purpose only of enabling the Council of Ministers to establish whether any person's course of conduct is excluded by virtue of any such provision of an order under subsection (2) as is referred to in subsection (3)(a), the order may provide for the application, with appropriate modifications, of paragraph 6 of Schedule 3 (provision of information).
- (4A) A breach of the relevant competition provisions applied to the Island by the Payment Services (Competition) Regulations 2015¹ constitutes an anti-competitive practice for the purposes of subsection (1) above.²¹
- (5) and (6) [Repealed]²²
- (7) In this section "the supply or securing of services" includes providing a place or securing that a place is provided other than on a highway for the parking of a motor vehicle (within the meaning of the *Road Traffic Act 1985*).
- (8) For the purposes of this Part any question whether, by pursuing any course of conduct in connection with the acquisition of goods or the securing of services by it, a public authority is engaging in an anti-competitive practice shall be determined as if the words "in the course of business" were omitted from subsection (1).

9 Preliminary report on anti-competitive practice

[P1980/21/3; P1994/40/12]

- (1) If it appears to OFT that any person has been or is pursuing a course of conduct which may amount to an anti-competitive practice, OFT may investigate and report the question whether that person has been or is pursuing a course of conduct which does amount to such practice.²³
- (2) A report of OFT under this section shall be published in accordance with Schedule 3.²⁴

10 Undertakings relating to anti-competitive practices

[P1980/21/4; P1994/40/12]

- (1) Where it appears to OFT —
 - (a) that there are reasonable grounds for believing that any person is pursuing, or has pursued, a course of conduct which constitutes an anti-competitive practice,
 - (b) that the practice may operate, now or in future, or have operated, against the public interest, and

¹ SD 2015/0205

- (c) that an undertaking offered to be given to OFT by that person, or by any other person, would remedy or prevent effects adverse to the public interest which the practice may now or in future have,²⁵

OFT may, at any time before a reference is made under section 11(1)(a) in relation to the course of conduct in question, accept the undertaking by giving notice to the person by whom it is offered.²⁶

- (2) OFT may not accept an undertaking under subsection (1) unless it has —
 - (a) arranged for the publication of a notice complying with subsection (3), and
 - (b) considered any representations made to it in accordance with the notice.²⁷
- (3) A notice under subsection (2)(a) shall —
 - (a) state that OFT is proposing to exercise its power under subsection (1),²⁸
 - (b) identify the course of conduct whose pursuit prompts the exercise of that power,
 - (c) identify the person who OFT believes is pursuing, or has pursued that course of conduct,²⁹
 - (d) identify the goods or services in relation to which OFT believes that person is pursuing, or has pursued, that course of conduct,³⁰
 - (e) specify the effects which OFT has identified as effects adverse to the public interest which that course of conduct may now or in future have,³¹
 - (f) set out the terms of the undertaking which OFT is proposing to accept,³²
 - (g) identify the person by whom the undertaking is to be given, and
 - (h) specify a deadline for the making to OFT of representations about what it proposes to do.³³
- (4) Once OFT has considered any representation made to it in accordance with a notice under paragraph (a) of subsection (2), that subsection shall not apply to the acceptance of a modified version of the undertaking set out in the notice.³⁴
- (5) OFT shall —
 - (a) arrange for any undertaking accepted by it under this section to be published in such manner as appears to it to be appropriate,
 - (b) keep under review the carrying out of any such undertaking and from time to time consider whether, by reason of any change of circumstances, the undertaking is no longer appropriate and either the person concerned can be released from the undertaking or the

- undertaking needs to be varied or superseded by a new undertaking, and
- (c) if it appears to it that the person by whom an undertaking was given has failed to carry it out, give that person notice of that fact.³⁵
- (6) If at any time OFT concludes under subsection (5)(b) —
- (a) that any person can be released from an undertaking, or
 - (b) that an undertaking needs to be varied or superseded by a new undertaking,
- it shall give notice to that person stating that he is so released, or specifying the variation or, as the case may be, the new undertaking which in its opinion is required.³⁶
- (7) Where a notice is given under subsection (6) specifying a variation or new undertaking, the notice shall state the change of circumstances by virtue of which the notice is given.
- (8) Subject to subsection (9), OFT may at any time, by notice given to the person concerned —
- (a) agree to the continuation of an undertaking in relation to which it has given notice under subsection (6) specifying a variation or new undertaking, or
 - (b) accept a new or varied undertaking which is offered by that person as a result of such a notice.³⁷
- (9) If a reference is made under section 11 in relation to a notice under subsection (5), OFT shall not, after the reference has been made, agree to the continuation of the undertaking in relation to which that notice was given or accept a new or varied undertaking which is offered as a result of that notice.³⁸
- (10) Section 8(5) and (6) applies for the purposes of this section as it applies for the purposes of section 8.

Competition references

11 Competition references

[P1980/21/5-7; P1994/40/12]

- (1) In any case where —
- (a) it appears to the Council of Ministers, after considering a report of OFT on an investigation under section 9, that any person is pursuing, or has pursued, a course of conduct which constitutes an anti-competitive practice,³⁹
 - (b) OFT has given notice to any person under section 10(5)(c) with respect to an undertaking given by that person, or⁴⁰

- (c) OFT has given notice to any person under section 10(6) specifying either a variation of an undertaking or a new undertaking which is required and has neither accepted a new or varied undertaking from that person nor agreed upon the continuation of the original undertaking,⁴¹

then, subject to the following provisions of this section, the Council of Ministers may refer to such Department or Statutory Board, or such other person or persons, as the Council of Ministers thinks appropriate (“the commission”), the questions specified in subsection (6) for investigation and report.⁴²

- (2) [Repealed]⁴³
- (3) In a competition reference the Council of Ministers shall specify —
 - (a) the person or persons subject to the reference, that is, whose activities are to be investigated by the commission,
 - (b) the goods or services to which the investigation is to extend, and
 - (c) the course or courses of conduct to be investigated.
- (4) The Council of Ministers may not under subsection (3) specify in a competition reference any person who is not specified in the relevant report nor any goods or services which are not so specified nor any course of conduct which is not described in that report but, subject to that and to subsection (5), the Council of Ministers may under subsection (3) specify such person or persons, such goods or services and such course or courses of conduct as it considers appropriate.
- (5) Where OFT has accepted an undertaking under section 10 with respect to the pursuit by any person of a course of conduct in relation to any goods or services, the Council of Ministers may not, while the undertaking is in force, make a competition reference by virtue of subsection (1)(a) with respect to the pursuit by that person of a course of conduct in relation to those goods or services.⁴⁴
- (6) Subject to subsection (7), on a competition reference the commission shall investigate and report to the Council of Ministers on the following questions —
 - (a) whether any person subject to the reference was at any time during the period of 12 months ending on the date of the reference pursuing, in relation to goods or services specified in the reference, a course of conduct so specified or any other course of conduct which appears to be similar in form and effect to the one so specified; and
 - (b) whether, by pursuing any such course of conduct, a person subject to the reference was at any time during that period engaging in an anti-competitive practice; and

- (c) whether, if any person was so engaging in an anti-competitive practice, the practice operated or might be expected to operate against the public interest.
- (7) The Council of Ministers may at any time, by notice given to the commission, restrict the scope of a competition reference by excluding from the reference —
 - (a) some or all of the activities of any person subject to the reference,
 - (b) any goods or services specified in the reference, or
 - (c) any course of conduct so specified,and on the receipt of such notice the commission shall discontinue its investigation so far as it relates to any matter so excluded and shall make no reference to any such matter in its report.
- (8) Where the Council of Ministers makes a competition reference or varies such a reference under subsection (7) the Chief Secretary shall arrange for the reference or, as the case may be, the variation to be published in such manner as he considers most suitable for bringing it to the attention of persons who, in his opinion, would be affected by it or be likely to have an interest in it.

12 Report on competition reference

[P1980/21/8]

- (1) A report of the commission on a competition reference shall be made to the Council of Ministers, and shall be published in accordance with Schedule 3.
- (2) Subject to section 11(7), a report on a competition reference shall state, with reasons, the conclusions of the commission with respect to the following matters —
 - (a) whether any person whose activities were investigated was at any time during the period of 12 months referred to in paragraph (a) of section 11(6) pursuing any such course of conduct as is referred to in that paragraph; and
 - (b) if so, whether by pursuing such a course of conduct any such person was at any time during that period engaging in an anti-competitive practice; and
 - (c) if so, whether that anti-competitive practice operated or might be expected to operate against the public interest; and
 - (d) if so, what are, or are likely to be, the effects adverse to the public interest.
- (3) If, on a competition reference, the commission concludes that any person was at any time during the period of 12 months referred to in section 11(6)(a) engaging in an anti-competitive practice which operated or might be expected to operate against the public interest, the commission —

- (a) shall, as part of its investigations, consider what action (if any) should be taken for the purpose of remedying or preventing the adverse effects of that practice; and
- (b) may, if it thinks fit, include in its report recommendations as to such action including, where appropriate, action by one or more Departments or other public authorities.

13 Time limit for report on competition reference

[P1973/41/70]

- (1) Every competition reference shall specify a period (not being longer than 6 months beginning with the date of the reference) within which a report on the reference is to be made; and a report of the commission on a competition reference shall not have effect, and no action shall be taken in relation to it under this Act, unless the report is made before the end of that period or of such further period (if any) as may be allowed by the Council of Ministers in accordance with subsection (2).
- (2) The Council of Ministers shall not allow any further period for a report on a competition reference except on representations made by the commission and on being satisfied that there are special reasons why the report cannot be made within the period specified in the reference; and the Council of Ministers shall allow only one such further period on any one reference, and no such further period shall be longer than 3 months.

14 Undertakings following report on competition reference

[P1980/21/9]

- (1) In any case where —
 - (a) the report of the commission on a competition reference concludes that any person specified in the report was engaging in an anti-competitive practice which operated or might be expected to operate against the public interest, and
 - (b) it appears to the Council of Ministers that the effects of that practice which are adverse to the public interest might be remedied or prevented if that person or any other person specified in the report took or refrained from taking any action,

the Council of Ministers may by notice in writing request OFT to seek to obtain from the person or, as the case may be, each of the persons specified in the notice an undertaking to take or refrain from taking any action with a view to remedying or preventing those adverse effects.⁴⁵

- (2) Where the Council of Ministers makes a request under subsection (1) —
 - (a) the Chief Secretary shall at the same time send a copy of the notice by which the request is made to the person or, as the case may be, each of the persons from whom an undertaking is to be sought; and

- (b) OFT shall seek to obtain an undertaking or undertakings of the description requested.⁴⁶
- (3) In any case where —
- (a) OFT is satisfied that a person from whom it has been requested to seek to obtain an undertaking is unlikely to give a suitable undertaking within a reasonable time, or⁴⁷
- (b) having allowed such time as in its opinion is reasonable for the purpose, it is satisfied that a suitable undertaking has not been given by the person in question,
- OFT shall give such advice to the Council of Ministers as it may think proper in the circumstances.⁴⁸
- (4) Where, following a request under subsection (1), an undertaking has been accepted by OFT, it shall —
- (a) give a copy of the undertaking to the Council of Ministers;
- (b) arrange for the undertaking to be published in such manner as appears to it to be appropriate;
- (c) keep under review the carrying out of the undertaking and from time to time to consider whether, by reason of any change of circumstances, the undertaking is no longer appropriate and either the person concerned can be released from the undertaking or the undertaking needs to be varied or to be superseded by a new undertaking; and
- (d) if it appears to OFT that any person can be so released or that an undertaking has not been or is not being fulfilled, or needs to be varied or superseded, give such advice to the Council of Ministers as it may think proper in the circumstances.^{49 50}
- (5) If, following advice from OFT that a person can be released from an undertaking, the Council of Ministers considers that it is appropriate for OFT to release him from it —
- (a) the Council of Ministers shall request OFT to do so, and⁵¹
- (b) OFT shall give the person concerned notice that he is released from the undertaking.^{52 53}

Orders following report on competition reference

15 Orders following report on competition reference

[P1980/21/10]

- (1) If, in any case where the report of a commission on a competition reference concludes that any person specified in the report was engaged in an anti-competitive practice which operated or might be expected to operate against the public interest —

- (a) the Council of Ministers has not under section 14(1) requested OFT to seek to obtain undertakings from one or more of the persons so specified, or⁵⁴
- (b) following a request under section 14(1) OFT has informed the Council of Ministers that it is satisfied as mentioned in section 14(3)(a) or (b), or⁵⁵
- (c) OFT has informed the Council of Ministers that an undertaking accepted by it under section 14 from a person specified in the report has not been or is not being fulfilled,⁵⁶

the Council of Ministers may, if it thinks fit, make an order under this section.

- (2) Subject to the following provisions of this section, an order under this section may do either or both of the following —
 - (a) prohibit a person named in the order from engaging in any anti-competitive practice which was specified in the report or from pursuing any other course of conduct which is similar in form and effect to that practice; and
 - (b) for the purpose of remedying or preventing any adverse effects which are specified in the report as mentioned in section 12(2)(d), exercise one or more of the powers specified in Schedule 2 to such extent and in such manner as the Council of Ministers considers necessary for that purpose.
- (3) No order may be made by virtue of subsection (2)(a) in respect of any person unless he is a person specified in the commission's report and either —
 - (a) he has not given an undertaking which OFT sought to obtain from him in pursuance of a request under section 14(1); or⁵⁷
 - (b) OFT was not requested under section 14(1) to seek to obtain an undertaking from him; or⁵⁸
 - (c) OFT has informed the Council of Ministers that an undertaking given by him and accepted by OFT under section 14 has not been or is not being fulfilled.⁵⁹

16 Orders under s 15: supplemental

[P1973/41/90]

- (1) Nothing in an order under section 15 shall have effect so as to apply to any person in relation to his conduct outside the Island unless that person is —
 - (a) a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a British National (Overseas),
 - (b) a body corporate incorporated under the law of the Island, or

- (c) a person carrying on business in the Island, either alone or in partnership with one or more other persons,
- but, in the case of a person falling within paragraph (a), (b) or (c), any such order may extend to acts or omissions outside the Island.
- (2) An order under section 15 may extend so as to prohibit the carrying out of agreements already in existence on the date on which the order is made.
- (3) [Repealed]⁶⁰
- (4) An order under section 15 may authorise the Council of Ministers to give directions to a person specified in the directions, or to the holder for the time being of an office so specified in any company or association, —
- (a) to take such steps within his competence as may be specified or described in the directions for the purpose of carrying out, or securing compliance with, the order, or
- (b) to do or refrain from doing anything so specified or described which he might be required by the order to do or refrain from doing,
- and may authorise the Council of Ministers to vary or revoke any directions so given.

17 Procedure for orders under s 15

[P1973/41/91]

- (1) No order under section 15 shall have effect unless it is approved by Tynwald.
- (2) Before an order under section 15 is made, the Chief Secretary shall publish, in one or more newspapers published and circulating in the Island, a notice —
- (a) stating the intention of the Council of Ministers to make the order;
- (b) indicating the nature of the provisions to be embodied in the order; and
- (c) stating that any person whose interests are likely to be affected by the order, and who is desirous of making representations in respect of it, should do so in writing (stating his interest and the grounds on which he wishes to make the representations) before a date specified in the notice (that date being not earlier than the end of the period of 30 days beginning with the day on which publication of the notice is completed);

and the Council of Ministers shall not make the order before the date specified in the notice in accordance with paragraph (c) and shall consider any representations duly made to it in accordance with the notice before that date.

18 Enforcement of orders under s 15

[P1973/41/93]

- (1) No criminal proceedings shall, by virtue of the making of an order under section 15, lie against any person on the grounds that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.
- (2) Nothing in subsection (1) limits any right of any person to bring civil proceedings in respect of any contravention or apprehended contravention of any such order, and (without prejudice to the generality of the preceding words) compliance with any such order shall be enforceable by civil proceedings at the suit of the Attorney General for an injunction or for any other appropriate relief.
- (3) If any person makes default in complying with any directions given under section 16(4), the High Court may, on the application of the Attorney General, make an order requiring that person to make good the default within a time specified in the order, or, if the directions related to anything to be done in the management or administration of a company or association, requiring the company or association or any officer of it to do so.
- (4) Any order of the Court under subsection (3) may provide that all the costs or expenses of or incidental to the application for the order shall be borne by any person in default or by any officers of a company or association who are responsible for its default.

*Investigations of prices***19 Investigations of prices**

[P1980/21/13]

- (1) OFT may carry out an investigation into any price, with a view to providing the Council of Ministers with information relating to that price, if it is satisfied that the price in question is one of major public concern.⁶¹
- (2) In determining whether a price is one of major public concern, OFT shall have regard to whether —
 - (a) the provision or acquisition of the goods or services in question is of general economic importance; or
 - (b) consumers are significantly affected, whether directly or indirectly, by the price.⁶²
- (3) On completion of an investigation under this section OFT shall make a report on the investigation to the Council of Ministers —
 - (a) stating its findings of fact which are material to the information which it provides; and

- (b) containing such additional observations (if any) as it considers should be brought to the attention of the Council of Ministers as a result of the investigation.⁶³
- (4) A report under subsection (3) shall be published in accordance with Schedule 3.

*Price references*⁶⁴

19A Price references

- (1) In any case where it appears to the Council of Ministers, after considering a report of OFT on an investigation under section 19, that any person resident or carrying on business in the Island has charged or charges an excessive price for any goods or services to which this section applies (whether supplied by him or by any other person, and whether supplied in the Island or elsewhere), then, subject to the following provisions of this section, the Council of Ministers may refer to such Department or Statutory Board, or such other person or persons, as the Council of Ministers thinks appropriate (“the commission”), the question specified in subsection (4) for investigation and report.⁶⁵
- (2) In a price reference the Council of Ministers shall specify –
 - (a) the person or persons subject to the reference, that is, the price charged by whom is to be investigated by the commission, and
 - (b) the goods or services to which the investigation is to extend.
- (3) The Council of Ministers may not under subsection (2) specify in a price reference any person who is not specified in the relevant report nor any goods or services which are not so specified but, subject to that, the Council of Ministers may under subsection (2) specify such person or persons and such goods or services as it considers appropriate.
- (4) Subject to subsection (6), on a price reference the commission shall investigate and report to the Council of Ministers on the question whether any person subject to the reference was at any time during the period of 12 months ending on the date of the reference charging for goods or services specified in the reference an excessive price or prices.
- (5) In determining on a price reference whether any price for goods or services is or was excessive the commission shall take all material considerations into account, and in particular the following matters –
 - (a) the cost of producing the goods or services, including the cost of any capital, goods and services required to produce them;
 - (b) the cost of marketing and distributing the goods or services;
 - (c) the extent to which, and the price at which, the persons to whom the goods or services were or are supplied could or can reasonably obtain comparable goods or services from other persons;

- (d) the probability of alternative sources of supply of the goods or services becoming available;
 - (e) the economy and efficiency with which the goods or services are produced, marketed and distributed;
 - (f) the margin of gross profit obtained by any person by whom the goods or services are produced, marketed or supplied; and
 - (g) the margin of gross profit obtained by other persons by whom comparable goods or services are produced, marketed or supplied (whether in the Island or elsewhere).
- (6) The Council of Ministers may at any time, by notice given to the commission, restrict the scope of a price reference by excluding from the reference —
- (a) any person subject to the reference, or
 - (b) any goods or services specified in the reference;
- and on the receipt of such notice the commission shall discontinue its investigation so far as it relates to any matter so excluded and shall make no reference to any such matter in its report.
- (7) Where the Council of Ministers makes a price reference or varies such a reference under subsection (6) the Chief Secretary shall arrange for the reference or, as the case may be, the variation to be published in such manner as he considers most suitable for bringing it to the attention of persons who, in his opinion, would be affected by it or be likely to have an interest in it.
- (8) Sections 12 and 13 apply with any necessary modifications to the report of the commission on a price reference as they apply to the report of the commission on a competition reference.
- (9) This section applies to goods of a description, and services of a description, specified in an order made by the Council of Ministers; and an order under this subsection shall not have effect unless it is approved by Tynwald.⁶⁶

19B Undertakings following report on price reference

- (1) In any case where —
- (a) the report of the commission on a price reference concludes that any person specified in the report was charging for goods or services specified in the reference an excessive price or prices, and
 - (b) it appears to the Council of Ministers that that person or any other person specified in the report ought to charge a lower price or prices for those goods or services,

the Council of Ministers may by notice in writing request OFT to seek to obtain from the person or, as the case may be, each of the persons specified

in the notice an undertaking to charge a lower price or prices for those goods or services.⁶⁷

- (2) Section 14(2) to (5) applies with any necessary modifications to a request under subsection (1) as it applies to a request under section 14(1).⁶⁸

Orders following report on price reference⁶⁹

19C Orders following report on price reference

- (1) If, in any case where the report of a commission on a price reference concludes that any person specified in the report was charging for goods or services specified in the reference an excessive price or prices —
- (a) the Council of Ministers has not under section 19B(1) requested OFT to seek to obtain undertakings from one or more of the persons so specified, or⁷⁰
 - (b) following a request under section 19B(1) OFT has informed the Council of Ministers that it is satisfied as mentioned in section 14(3)(a) or (b) (as applied by section 19B(2)), or⁷¹
 - (c) OFT has informed the Council of Ministers that an undertaking accepted by it under section 14 (as applied by section 19B(2)) from a person specified in the report has not been or is not being fulfilled,⁷²

the Council of Ministers may, if it thinks fit, make an order under this section.

- (2) Subject to the following provisions of this section, an order under this section may require a person named in the order not to charge, without the consent of OFT, for goods or services specified in the order a price or prices exceeding the price or prices specified in or determined in accordance with the order.⁷³
- (3) No order may be made by virtue of subsection (2) in respect of any person unless he is a person specified in the commission's report and either —
- (a) he has not given an undertaking which OFT sought to obtain from him in pursuance of a request under section 19B(1); or⁷⁴
 - (b) OFT was not requested under section 19B(1) to seek to obtain an undertaking from him; or⁷⁵
 - (c) OFT has informed the Council of Ministers that an undertaking given by him and accepted by OFT under section 14 (as applied by section 19B(2)) has not been or is not being fulfilled.⁷⁶
- (4) No order may be made by virtue of subsection (2) in respect of any goods or services unless they are goods or services —
- (a) to which section 19A applies, and

- (b) in respect of which the relevant report has concluded that the prices charged for them were excessive.⁷⁷

19D Orders under s 19C: supplemental

- (1) Nothing in an order under section 19C shall have effect so as to apply to any person in relation to goods or services supplied outside the Island unless that person is –
- (a) a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a British National (Overseas),
 - (b) a body corporate incorporated under the law of the Island, or
 - (c) a person carrying on business in the Island, either alone or in partnership with one or more other persons,
- but, in the case of a person falling within paragraph (a), (b) or (c), any such order may extend to prices charged for goods or services supplied outside the Island.
- (2) An order under section 19C may extend so as to limit the prices charged for goods or services to be supplied under agreements already in existence on the date on which the order is made, but shall not affect the prices charged for goods and services supplied before that date.
- (3) Sections 17 and 18(1) and (2) apply to an order under section 19C as they apply to an order under section 15.⁷⁸

PART 3 – GENERAL

General functions of Board

20 General functions of Board

[P1973/41/2]

- (1) Without prejudice to any other functions assigned to it by or under this Act, it is the duty of OFT, so far as appears to it to be practicable from time to time –
- (a) to keep under review the carrying on of commercial activities in the Island which relate to goods supplied to consumers in the Island or produced with a view to their being so supplied, or which relate to services supplied for consumers in the Island, and to collect information with respect to such activities, and the persons by whom they are carried on, with a view to its becoming aware of, and ascertaining the circumstances relating to, practices which may adversely affect the economic interests of consumers in the Island, and

- (b) to receive and collate evidence becoming available to OFT with respect to such activities as are mentioned in paragraph (a) and which appears to it to be evidence of practices which may adversely affect the interests (whether they are economic interests or interests with respect to health, safety or other matters) of consumers in the Island.^{79 80}
- (2) It is also the duty of OFT, so far as appears to it to be practicable from time to time, to keep under review the carrying on of commercial activities in the Island, and to collect information with respect to those activities, and the persons by whom they are carried on, with a view to its becoming aware of, and ascertaining the circumstances relating to, anti-competitive practices (as defined by section 8).⁸¹
- (3) It is the duty of OFT, where either it considers it expedient or it is requested by the Council of Ministers to do so —
 - (a) to give information and assistance to the Council of Ministers with respect to any of the matters in respect of which OFT has any duties under subsections (1) and (2), or⁸²
 - (b) to make recommendations to the Council of Ministers as to any action which in the opinion of OFT it would be expedient for the Council of Ministers to take in relation to any of the matters in respect of which OFT has any such duties.^{83 84}
- (4) It is also the duty of OFT to have regard to evidence becoming available to it with respect to any course of conduct on the part of a person carrying on a business which appears to be conduct detrimental to the interests of consumers in the Island and, in accordance with sections 1 to 5, to be regarded as unfair to them, with a view to considering what action (if any) it should take under those sections; and section 6 (interpretation) applies to this subsection as it applies to those sections.⁸⁵
- (5) In exercising its functions under this section OFT shall act in accordance with any general or special directions of the Council of Ministers.⁸⁶
- (6) In this section “commercial activities in the Island” means any of the following —
 - (a) the production and supply of goods in the Island,
 - (b) the supply of services in the Island.

Offences

21 False or misleading information

[P1973/41/93B]

- (1) If a person furnishes any information to the Council of Ministers, OFT or a commission in connection with any of their functions under this Act, and either he knows the information to be false or misleading in a material

particular, or he furnishes the information recklessly and it is false or misleading in a material particular, he is guilty of an offence.⁸⁷

- (2) A person who —
 - (a) furnishes any information to another which he knows to be false or misleading in a material particular, or
 - (b) recklessly furnishes any information to another which is false or misleading in a material particular,knowing that the information is to be used for the purpose of furnishing information as mentioned in subsection (1), is guilty of an offence.
- (3) A person guilty of an offence under subsection (1) or (2) is liable —
 - (a) on summary conviction, to a fine not exceeding £5,000, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (4) Section 22(1) (time limit for prosecutions) does not apply to an offence under this section.

22 Time limit for prosecutions

[P1973/41/129]

- (1) Subject to section 21(4), no prosecution for an offence under this Act shall be commenced after the expiration of 3 years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.
- (2) Notwithstanding anything in section 75 of the *Summary Jurisdiction Act 1989*, a court of summary jurisdiction may try a complaint for an offence under this Act if the complaint was laid within 12 months from the commission of the offence.

23 Offences by bodies corporate

[P1973/41/132]

- (1) Where an offence under this Act, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

*Supplemental provisions***24 Procedure on references etc**

- (1) Schedule 3 shall have effect with respect to —
 - (a) a reference under section 9, and an investigation or report pursuant to such a reference;
 - (b) a reference under section 11, and an investigation or report pursuant to such a reference;
 - (c) an investigation or report under section 19.
- (2) The Council of Ministers may by regulations prescribe the manner in which notices are to be given under any provision of this Act; and such regulations may prescribe the evidence which is to be sufficient evidence of the giving of such notices, and of their contents and authenticity.
- (3) Regulations under subsection (2) shall not have effect unless they are approved by Tynwald.

25 General restrictions on disclosure of information

[P1973/41/133]

- (1) Subject to subsections (2) to (4), no information with respect to any particular business which has been obtained under or by virtue of this Act shall, so long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business.
- (2) Subsection (1) does not apply to any disclosure of information which is made —
 - (a) for the purpose of facilitating the performance of any functions of the Council of Ministers or any Department or Statutory Board under —
 - (i) this Act,
 - (ii) the *Estate Agents Act 1975*,
 - (iii) the *Telecommunications Act 1984*,
 - (iv) the *Collective Investment Schemes Act 2008*,⁸⁸
 - (v) the Consumer Protection from Unfair Trading Regulations 2019^{2, 89}
 - (vi) the *Broadcasting Act 1993*,
 - (vii) the *Financial Services Act 2008*; or⁹⁰
 - (b) in pursuance of a retained EU obligation; or⁹¹

² SD 2019/0359

- (c) for the purposes of facilitating the performance of any function of —
- (i) OFT or the Financial Supervision Commission under the *Payment Services Act 2015*;
 - (ii) a body discharging functions similar to those of OFT or the Financial Supervision Commission under that Act in a country or territory which is for the time being part of the jurisdictional scope of the Single Euro Payment Area; or
 - (iii) the Commission of the European Union under the relevant competition provisions.⁹²
- (3) Subsection (1) does not apply to any disclosure of information which is made for the purposes of any proceedings before the High Court or of any other legal proceedings, whether civil or criminal, under this Act or the Consumer Protection from Unfair Trading Regulations 2019³.⁹³
- (4) Nothing in subsection (1) shall be construed —
- (a) as limiting the matters which may be included in, or made public as part of, a report under this Act; or
 - (b) as applying to any information which has been made public as part of such a report.
- (5) Any person who discloses any information in contravention of this section is guilty of an offence and liable —
- (a) on summary conviction, to a fine not exceeding £5,000;
 - (b) on conviction on information, to imprisonment for a term not exceeding 2 years or to a fine or to both.

26 Interpretation

[P1973/41/137]

In this Act —

“**agreement**” means any agreement or arrangement, in whatever way and in whatever form it is made, and whether it is, or is intended to be, legally enforceable or not;

“**anti-competitive practice**” has the meaning given by section 8;⁹⁴

“**the Board**” [Repealed]⁹⁵

“**business**” includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;

³ SD 2019/0359

“**commission**” means the person, persons or body to whom a competition reference or a price reference is made;⁹⁶

“**competition reference**” means a reference under section 11(1);⁹⁷

“**consumer**” has the meaning given by section 6;

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

“**goods**” includes buildings and other structures, and also includes ships, aircraft and hovercraft;

“**OFT**” means the Isle of Man Office of Fair Trading;⁹⁸

“**practice**” means any practice, whether adopted in pursuance of an agreement or otherwise;

“**price**” includes any charge or fee, by whatever name called;

“**price reference**” means a reference under section 19A(1);⁹⁹

“**production**”, in relation to minerals or other substances, includes the getting of them, and, in relation to animals or fish, includes the taking of them;

“**public authority**” means a Department, Statutory Board or local authority;

“**supply**” —

- (a) in relation to goods, includes supply by way of sale, lease, hire or hire-purchase;
- (b) in relation to buildings or other structures, includes the construction of them by a person for another person;
- (c) in relation to services, does not include the rendering of any services under a contract of employment but —
 - (i) includes the undertaking and performance for gain or reward of engagements (whether professional or other) for any matter other than the supply of goods, and
 - (ii) includes both the rendering of services to order and the provision of services by making them available to potential users.

27 Short title and commencement

- (1) This Act may be cited as the Fair Trading Act 1996.
- (2) This Act shall come into operation on such day or days as the Council of Ministers may by order appoint.¹⁰⁰

Schedule 1¹⁰¹**Schedule 2****POWERS EXERCISABLE BY ORDER UNDER SECTION 15**

Section 15(2)(b)

1. Subject to paragraph 3, an order under section 15 (in this Schedule referred to as “**an order**”) may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to make or to carry out any such agreement as may be specified or described in the order.
2. Subject to paragraph 3, an order may require any party to any such agreement as may be specified or described in the order to terminate the agreement within such time as may be so specified, either wholly or to such extent as may be so specified.
3. An order shall not by virtue of paragraph 1 or 2 declare it to be unlawful to make or to carry out, or require any person to terminate, an agreement in so far as, if made, it would relate, (or as the case may be) in so far as it relates, to the terms and conditions of employment of any workers, or to the physical conditions in which any workers are required to work.
4. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to withhold or to agree to withhold or to threaten to withhold, or to procure others to withhold or to agree to withhold or threaten to withhold, from any such persons as may be specified or described in the order, any supplies or services so specified or described or any orders for such supplies or services (whether the withholding is absolute or is to be effectual only in particular circumstances).
5. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to require, as a condition of the supplying of goods or services to any person, —
 - (a) the buying of any goods, or
 - (b) the making of any payment in respect of services other than the goods or services supplied, or
 - (c) the doing of any other such matter as may be specified or described in the order.
6. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, —
 - (a) to discriminate in any manner specified or described in the order between any persons in the prices charged for goods or services so specified or described, or

- (b) to do anything so specified or described which appears to the Council of Ministers to amount to such discrimination,

or to procure others to do any of the things mentioned in sub-paragraph (a) or (b).

7. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, —

- (a) to give or agree to give in other ways any such preference in respect of the supply of goods or services, or the giving of orders for goods or services, as may be specified or described in the order, or
- (b) to do anything so specified or described which appears to the Council of Ministers to amount to giving such preference,

or to procure others to do any of the things mentioned in sub-paragraph (a) or (b).

8. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to charge for goods or services supplied prices differing from those in any published list or notification, or to do anything specified or described in the order which appears to the Council of Ministers to amount to charging such prices.

9. An order may require a person supplying goods or services to publish a list of or otherwise notify prices, with or without such further information as may be specified or described in the order.

10. (1) An order may require a person supplying goods or services to publish —

- (a) any such accounting information in relation to the supply of the goods or services, and
- (b) any such information in relation to —
 - (i) the quantities of goods or services supplied, or
 - (ii) the areas in which they are supplied,as may be specified or described in the order.

(2) In this paragraph “accounting information”, in relation to a supply of goods or services, means information as to —

- (a) the costs of the supply, including fixed costs and overheads,
- (b) the manner in which fixed costs and overheads are calculated and apportioned for accounting purposes of the supplier, and
- (c) the income attributable to the supply.

11. (1) Subject to sub-paragraph (2), an order may, to such extent and in such circumstances as may be provided by or under the order, regulate the prices to be charged for any goods or services specified or described in the order.

(2) An order shall not exercise the power conferred by sub-paragraph (1) in respect of goods or services of any description unless the matters specified in the

relevant report as being those which in the opinion of the commission operate, or may be expected to operate, against the public interest relate, or include matters relating, to the prices charged for goods or services of that description.

(3) In this paragraph “the relevant report”, in relation to an order, means the report (as published) in consequence of which the order is made.

12. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, for any person, by publication or otherwise, to notify, to persons supplying goods or services, prices recommended or suggested as appropriate to be charged by those persons for those goods or services.

13. An order may prohibit or restrict the acquisition by any person of the whole or part of the undertaking or assets of another person’s business, or the doing of anything which will or may result in a body corporate becoming a subsidiary (within the meaning of section 1 of the *Companies Act 1974*) of another body corporate, or of 2 or more bodies corporate becoming subsidiaries of one and the same body corporate, or may require that, if such an acquisition is made or anything is done which has such a result, the persons concerned or any of them shall thereafter observe any prohibitions or restrictions imposed by or under the order.¹⁰²

14. An order may require any person to furnish any such information as may be specified or described in the order to OFT or to such other person as may be so specified.¹⁰³

15. An order may require any activities to be carried on separately from any other activities.

16. An order may prohibit or restrict the exercise of any right to vote exercisable by virtue of the holding of any shares, stock or securities.

Schedule 3

REFERENCES, INVESTIGATIONS AND REPORTS

Section 24(1).

General

1. (1) In this Schedule “**commission**”, in relation to a reference, investigation or report, means OFT or commission to whom the reference is made or by whom the investigation is carried out or the report is made, as the case may be.¹⁰⁴

(2) Where power is given to a commission to give any notice, certificate or authorisation, or to make any other document (other than a report), the power may be exercised —

- (a) where the commission is a Department or Statutory Board, by any member of the commission, or by any officer of the commission duly authorised for the purpose;
- (b) where the commission is a body corporate other than a Department or Statutory Board, by any officer of the commission duly authorised for the purpose;
- (c) where the commission consists of 2 or more individuals, by any one or more of them.

Procedure in carrying out investigations

2. (1) A commission, in carrying out an investigation under this Act, —
- (a) shall take into consideration any representations made to it by persons appearing to it to have a substantial interest in the subject-matter of the reference, or by bodies appearing to it to represent substantial numbers of persons who have such an interest, and
 - (b) unless in all the circumstances it considers it not reasonably necessary or not reasonably practicable to do so, shall permit any such person or body to be heard orally by the commission.
- (2) Subject to subsection (1), a commission may determine its own procedure for carrying out any investigation under this Act, and in particular may determine —
- (a) the extent, if any, to which persons interested or claiming to be interested in the subject-matter of the reference are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or otherwise take part in the investigation, and
 - (b) the extent, if any, to which the sittings of the commission are to be held in public.
- (3) In determining its procedure under sub-paragraph (2) and in exercising any powers conferred on it by paragraph 6, a commission shall act in accordance with any general directions which may from time to time be given to it by the Council of Ministers.
- (4) The Council of Ministers shall cause a copy of any directions given by it under sub-paragraph (3) to be laid before Tynwald.

General provisions as to reports

3. (1) In making any report under this Act a commission shall have regard to the need for excluding, so far as that is practicable, —
- (a) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in its opinion, seriously and prejudicially affect the interests of that individual, and

- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the commission, seriously and prejudicially affect the interests of that body, unless in its opinion the inclusion of that matter relating specifically to that body is necessary for the purposes of the report.
- (2) For the purposes of the law relating to defamation, absolute privilege shall attach to any report of a commission under this Act.
- (3) Where a commission consists of 2 or more individuals, and a member of the commission dissents from any conclusions contained in the report of the commission as being conclusions of the commission, the report shall, if that member so desires, include a statement of his dissent and of his reasons for dissenting.

Publication of reports

4. (1) Where a report of a commission to the Council of Ministers is required by this Act to be published in accordance with this Schedule, the report shall be laid before Tynwald, and the Chief Secretary shall —
- (a) publish notice of the report, identifying the subject matter with sufficient particularity, in one or more newspapers published and circulating in the Island;
 - (b) make a copy of the report available for inspection by any person free of charge at all reasonable hours at such place in the Island as appears to him appropriate; and
 - (c) cause copies of the report to be available for sale to any person at such reasonable charge as he may determine.
- (2) If it appears to the Council of Ministers that the publication of any matter in a report of a commission under this Act would be against the public interest, the Council of Ministers shall exclude that matter from the report as published under this paragraph.
- (3) Without prejudice to sub-paragraph (2), if the Council of Ministers considers that it would not be in the public interest to disclose —
- (a) any matter contained in such a report relating to the private affairs of an individual whose interests would, in the opinion of the Council of Ministers, be seriously and prejudicially affected by the publication of that matter, or
 - (b) any matter contained in the report relating specifically to the affairs of a particular person whose interests would, in the opinion of the Council of Ministers, be seriously and prejudicially affected by the publication of that matter,
- the Council of Ministers shall exclude that matter from the report as published under this paragraph.
- (4) Any reference in this Act to a report of a commission as published shall be construed as a reference to the report in the form in which it is published under this paragraph.

Public interest

5. In determining for any purposes of this Act whether any particular matter operates, or may be expected to operate, against the public interest, a commission shall take into account all matters which appear to it in the particular circumstances to be relevant and, among other things, shall have regard to the desirability —

- (a) of maintaining and promoting effective competition between persons supplying goods and services in the Island; and
- (b) of promoting the interests of consumers, purchasers and other users of goods and services in the Island in respect of the prices charged for them and in respect of their quality and the variety of goods and services supplied.

Attendance of witnesses and production of documents

6. (1) For the purposes of any investigation under this Act a commission may by notice in writing —

- (a) require any person to attend at a time and place specified in the notice, and to give evidence to the commission, or
- (b) require any person to produce, at a time and place specified in the notice, to the commission or to any person nominated by the commission for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation, or
- (c) require any person carrying on any business to furnish to the commission such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished.

(2) For the purposes of any such investigation the commission may take evidence on oath, and for that purpose may administer oaths.

(3) No person shall be compelled for the purpose of any such investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

(4) Any person who intentionally alters, suppresses or destroys any document which he has been required by any such notice to produce is guilty of an offence and liable —

- (a) on summary conviction, to a fine not exceeding £5,000, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(5) If any person (“the defaulter”) refuses or otherwise fails to comply with any notice under sub-paragraph (1), the commission may certify that fact in writing to the High Court and the Court may enquire into the case.

(6) If, after hearing any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence, the High Court is satisfied that the defaulter did without reasonable excuse refuse or otherwise fail to comply with the notice, the Court may punish the defaulter (and, in the case of a body corporate, any director or officer) in like manner as if the defaulter had been guilty of contempt of court.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Whole Act (as originally enacted)	SD 474/96	1/8/96

Table of Renumbered Provisions

Original	Current

Table of Endnote References

-
- ¹ Subs (1) amended by SD579/98 and by SD2015/0205.
- ² Para (b) amended by SD2015/0205.
- ³ Subs (6) amended by SD2015/0205.
- ⁴ Para (a) amended by SD2015/0205.
- ⁵ Para (b) amended by SD2015/0205.
- ⁶ Subs (1) amended by SD2015/0205.
- ⁷ Subs (1) amended by SD2015/0205.
- ⁸ Para (a) amended by SD2015/0205.
- ⁹ Para (b) amended by SD2015/0205.
- ¹⁰ Subs (2) amended by SD2015/0205.
- ¹¹ S 7 repealed by SD2019/0359.
- ¹² Headings inserted by Fair Trading (Amendment) Act 2001 s 1.
- ¹³ Para (a) amended by Financial Services Act 2008 Sch 6.
- ¹⁴ Para (b) amended by SD155/10 Sch 1, by SD2014/07 and by SD2017/0325.
- ¹⁵ S 7A inserted by Fair Trading (Amendment) Act 2001 s 1.
- ¹⁶ S 7B inserted by Fair Trading (Amendment) Act 2001 s 1.
- ¹⁷ S 7C inserted by Fair Trading (Amendment) Act 2001 s 2.
- ¹⁸ Subs (4) amended by SD2015/0205.
- ¹⁹ S 7D inserted by Fair Trading (Amendment) Act 2001 s 2.
- ²⁰ Subs (1) amended by Fair Trading (Amendment) Act 2001 s 3 and by SD2015/0205.
- ²¹ Subs (4A) inserted by SD2015/0205.
- ²² Subss (5) and (6) repealed by Fair Trading (Amendment) Act 2001 s 3.
- ²³ Subs (1) substituted by SD2015/0347.

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- ²⁴ Subs (2) amended by SD2015/0205.
- ²⁵ Para (c) amended by Fair Trading (Amendment) Act 2001 s 3 and by SD2015/0205.
- ²⁶ Subs (1) amended by SD2015/0205.
- ²⁷ Subs (2) amended by SD2015/0205.
- ²⁸ Para (a) amended by SD2015/0205.
- ²⁹ Para (c) amended by SD2015/0205.
- ³⁰ Para (d) amended by SD2015/0205.
- ³¹ Para (e) amended by SD2015/0205.
- ³² Para (f) amended by SD2015/0205.
- ³³ Para (h) amended by SD2015/0205.
- ³⁴ Subs (4) amended by SD2015/0205.
- ³⁵ Subs (5) amended by SD2015/0205.
- ³⁶ Subs (6) amended by SD2015/0205.
- ³⁷ Subs (8) amended by SD2015/0205.
- ³⁸ Subs (9) amended by SD2015/0205.
- ³⁹ Para (a) amended by SD2015/0205.
- ⁴⁰ Para (b) amended by SD2015/0205.
- ⁴¹ Para (c) amended by SD2015/0205.
- ⁴² Subs (1) amended by Fair Trading (Amendment) Act 2001 s 18.
- ⁴³ Subs (2) repealed by Fair Trading (Amendment) Act 2001 s 18.
- ⁴⁴ Subs (5) amended by SD2015/0205.
- ⁴⁵ Subs (1) amended by SD2015/0205.
- ⁴⁶ Para (b) amended by SD2015/0205.
- ⁴⁷ Para (a) amended by SD2015/0205.
- ⁴⁸ Subs (3) amended by SD2015/0205.
- ⁴⁹ Para (d) amended by SD2015/0205.
- ⁵⁰ Subs (4) amended by SD2015/0205.
- ⁵¹ Para (a) amended by SD2015/0205.
- ⁵² Para (b) amended by SD2015/0205.
- ⁵³ Subs (5) amended by SD2015/0205.
- ⁵⁴ Para (a) amended by SD2015/0205.
- ⁵⁵ Para (b) amended by SD2015/0205.
- ⁵⁶ Para (c) amended by SD2015/0205.
- ⁵⁷ Para (a) amended by SD2015/0205.
- ⁵⁸ Para (b) amended by SD2015/0205.
- ⁵⁹ Para (c) amended by SD2015/0205.
- ⁶⁰ Subs (3) repealed by Fair Trading (Amendment) Act 2001 s 3 with saving s 3(5) and 3(7).
- ⁶¹ Subs (1) amended by SD2015/0205.
- ⁶² Subs (2) amended by SD2015/0205.
- ⁶³ Subs (3) amended by SD2015/0205.
- ⁶⁴ Heading inserted by Fair Trading (Amendment) Act 2001 s 18.

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- ⁶⁵ Subs (1) amended by SD2015/0205.
- ⁶⁶ S 19A inserted by Fair Trading (Amendment) Act 2001 s 18.
- ⁶⁷ Subs (1) amended by SD2015/0205.
- ⁶⁸ S 19B inserted by Fair Trading (Amendment) Act 2001 s 18.
- ⁶⁹ Heading inserted by Fair Trading (Amendment) Act 2001 s 18.
- ⁷⁰ Para (a) amended by SD2015/0205.
- ⁷¹ Para (b) amended by SD2015/0205.
- ⁷² Para (c) amended by SD2015/0205.
- ⁷³ Subs (2) amended by SD2015/0205.
- ⁷⁴ Para (a) amended by SD2015/0205.
- ⁷⁵ Para (b) amended by SD2015/0205.
- ⁷⁶ Para (c) amended by SD2015/0205.
- ⁷⁷ S 19C inserted by Fair Trading (Amendment) Act 2001 s 18.
- ⁷⁸ S 19D inserted by Fair Trading (Amendment) Act 2001 s 18.
- ⁷⁹ Para (b) amended by SD2015/0205.
- ⁸⁰ Subs (1) amended by SD2015/0205.
- ⁸¹ Subs (2) amended by SD2015/0205.
- ⁸² Para (a) amended by SD2015/0205.
- ⁸³ Para (b) amended by SD2015/0205.
- ⁸⁴ Subs (3) amended by SD2015/0205.
- ⁸⁵ Subs (4) amended by SD2015/0205.
- ⁸⁶ Subs (5) amended by SD2015/0205.
- ⁸⁷ Subs (1) amended by SD2015/0205.
- ⁸⁸ Subpara (iv) substituted by Collective Investment Schemes Act 2008 Sch 6.
- ⁸⁹ Para (v) substituted by SD2019/0359.
- ⁹⁰ Subpara (vii) added by Financial Services Act 2008 Sch 6.
- ⁹¹ Para (b) substituted by SD2019/0038 with effect from 31/12/2020 at 23:00.
- ⁹² Para (c) inserted by SD2015/0205. [Editorial Note: References to the “Financial Supervision Commission” should be read as references to the “Isle of Man Financial Services Authority” by virtue of article 7(3) of the Transfer of Functions (Isle of Man Financial Services Authority) Order 2015 [SD2015/0090], with effect from 01/11/2015.]
- ⁹³ Subs (3) amended by SD2019/0359.
- ⁹⁴ Definition of “anti-competitive practice” inserted by Fair Trading (Amendment) Act 2001 s 18.
- ⁹⁵ Definition of “the Board” amended by SD579/98 and repealed by SD20150205.
- ⁹⁶ Definition of “commission” inserted by Fair Trading (Amendment) Act 2001 s 18.
- ⁹⁷ Definition of “competition reference” inserted by Fair Trading (Amendment) Act 2001 s 18.
- ⁹⁸ Definition of “OFT” inserted by SD2015/0205.
- ⁹⁹ Definition of “price reference” inserted by Fair Trading (Amendment) Act 2001 s 18.
- ¹⁰⁰ ADO (whole Act) 1/8/1996 (SD474/96).
- ¹⁰¹ Sch 1 repealed by SD2019/0359.
- ¹⁰² Para 13 amended by Fair Trading (Amendment) Act 2001 s 3.

¹⁰³ Para 14 amended by SD2015/0205.

¹⁰⁴ Subpara (1) amended by SD2015/0205.

