



**AN BILLÉ UM CHLEACHTAIS SRIANTA TRADALA, 1952.
RESTRICTIVE TRADE PRACTICES BILL, 1952.**

*Mar a tugadh isteach.
As introduced.*

ARRANGEMENT OF SECTIONS.

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SCHEDULE.

THE FAIR TRADE COMMISSION.



AN BILLE UM CHLEACHTAIS SRIANTA TRADALA, 1952.
RESTRICTIVE TRADE PRACTICES BILL, 1952.

BILL

entitled

AN ACT CONCERNING RESTRICTIVE TRADE PRACTICES 5
IN REGARD TO THE SUPPLY AND DISTRIBUTION OF
GOODS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS :—

Definitions.

1.—In this Act—

“the Commission” means the Fair Trade Commission established 10
by *section 2*;

“the Minister” means the Minister for Industry and Commerce.

Fair Trade
Commission.

2.—(1) There shall be a body to be known as the Fair Trade
Commission.

(2) The provisions of the *Schedule* shall apply to the Commission. 15

Fair trading
rules.

3.—The Commission may, on their own initiative, and shall, at the
request of an association representing persons engaged in the supply
and distribution of any kind of goods, prepare and publish rules (in
this Act referred to as fair trading rules) representing, in the
opinion of the Commission, fair trading conditions with regard to 20
the supply and distribution of such goods.

Procedure.

4.—(1) Before making fair trading rules the Commission shall
cause to be published in such manner as they think fit notice of
their intention to do so and shall give to any person desiring to make
representations in relation to the making of the proposed rules an 25
opportunity to do so; and the notice shall specify the time and
manner in which representations are to be made.

(2) The Commission may prescribe the manner in which requests
for the making of fair trading rules are to be made.

Review of
operation
of rules.

5.—The Commission shall keep under review the operation of fair 30
trading rules and, if it appears to them that those rules are not
being observed, report accordingly to the Minister.

Enquiries.

6.—(1) The Commission may, on their own initiative, and shall,
at the request of the Minister, cause an enquiry to be held (by one
or more of their members delegated by them for the purpose) into 35
the conditions which obtain in regard to the supply and distribution
of any kind of goods.

(2) The Commission shall comply with the directions of the
Minister as to the nature and scope of an enquiry made at his 40
request.

(3) An enquiry shall be held in public save in so far as, in the opinion of the member or members holding it, private sittings may be necessary to avoid any disclosure of confidential information which might materially injure the legitimate business interests of any person.

(4) The Commission shall submit to the Minister a report of every enquiry.

7.—(1) A report made by the Commission under section 5 or 6 shall— Report of enquiry.

10 (a) describe the conditions which obtain in regard to the supply or distribution of the goods concerned;

(b) state whether and, if so, how these conditions prevent or restrict competition or restrain trade or involve resale price maintenance;

15 (c) state whether, in the opinion of the Commission, any such interference with competition or trade is unfair or operates against the public interest;

(d) give the reasons for their conclusions.

(2) If the Commission are of opinion that the Minister should make an order under section 8, they shall in their report recommend accordingly and indicate the form of order that they recommend.

(3) (a) The Minister shall lay a copy of the report before each House of the Oireachtas.

25 (b) It shall be lawful for the Minister to omit from the copy any information contained in the report the publication of which would, in his opinion, materially injure the legitimate business interests of any person, if such information is not essential to the full understanding of the report.

30 (c) The Minister shall lay before each House of the Oireachtas, together with the copy of the report, a statement indicating the general character of any information so omitted.

35 8.—(1) The Minister, having considered a report of the Commission under section 5 or 6, may, if he so thinks proper, after consultation with any other Minister concerned, by order do, in relation to goods to which the report relates, or any class or classes of such goods, all or any of the following :— Orders relating to restrictive practices.

(a) prohibit specified arrangements or agreements;

40 (b) prohibit the withholding from any specified class of persons of supplies of goods;

(c) prohibit the giving of specified preferences in regard to the provision of, or the placing of orders for the supply of, goods;

45 (d) prohibit the imposition of specified conditions in regard to the supply or distribution of goods;

(e) make such provision as the Minister thinks necessary to ensure the equitable treatment of all persons in regard to the supply or distribution of the goods concerned and the avoidance of unfair practices;

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(f) make such other provision in regard to the supply and distribution of goods as he thinks fit.

(2) The Minister may by order revoke or amend an order under subsection (1).

(3) An order under this section shall not have effect unless it is confirmed by Act of the Oireachtas but, upon being so confirmed, it shall have the force of law in accordance with its terms.

(4) If the Commission, in a report to the Minister, recommend the making of an order and the Minister decides not to make any order, he shall lay before each House of the Oireachtas a statement giving the reasons for his decision. 5

General
duties of
Commission.

9.—The Commission shall keep under review the general effect on the public interest of restrictive practices in connection with the supply and distribution of goods and the operation of orders under section 8 and may (and, if so requested by the Minister, shall) submit to the Minister a report on any such matter and their recommendations as to what action should be taken thereon. 10

Jurisdiction
of Court to
grant
injunction.

10.—It shall be lawful for a court of competent jurisdiction, notwithstanding any rule of law, to grant an injunction on the motion of the Minister or of any other person to enforce compliance with the terms of an order under section 8 for the time being in force. 15

Contravention
of Order.

11.—(1) A person who contravenes (whether by act or omission) any provision of an order under section 8 for the time being in force shall be guilty of an offence. 20

(2) Every person who aids, abets, or assists another person, or conspires with another person, to do any thing (whether by way of act or of omission) the doing of which is declared by subsection (1) to be an offence shall himself be guilty of an offence. 25

Offences in
relation to
bodies
corporate and
unincorporated
bodies.

12.—(1) Where an offence under this Act is committed by a person purporting to act on behalf of a body corporate or unincorporated body of persons, every person being, in the case of a body corporate, a Director thereof, or in the case of an unincorporated body, a member of the committee of management or other controlling authority thereof shall also be guilty of an offence unless he shows to the satisfaction of the Court that he did not consent to nor approve of the act or omission constituting the offence and that it was not facilitated by any neglect on his part. 30

(2) (a) A body corporate may be sent forward for trial on indictment for an offence under this Act with or without recognisances. 35

(b) On arraignment before the Central Criminal Court or the Circuit Court, the body corporate may enter in writing by its representative a plea of guilty or not guilty and if it does not appear by a representative appointed by it for the purpose, or, though it does so appear, fails to enter any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the body corporate had duly entered that plea. 40 45

(c) A statement in writing purporting to be signed by a director of the body corporate to the effect that the person named in the statement has been appointed as the representative of the body for the purpose of this subsection shall be admissible without further proof as evidence that that person has been so appointed. 50

(3) Any summons or other document required to be served for the purpose or in the course of proceedings under this section on a body corporate may be served by leaving it at or sending it by post to the registered office of that body or, if there be no such 55

office in the State, by leaving it at, or sending it by post to, the body at any place in the State at which it conducts its business.

13.—(1) Every person who commits an offence under this Act for which no special penalty is provided shall— Penalties.

5 (a) on summary conviction thereof, be liable to a fine not exceeding five hundred pounds (together with, in the case of a continuing offence, a fine not exceeding fifty pounds for every day on which the offence is continued) or, at the discretion of the Court, to imprisonment for a term not exceeding twelve months or both such fine and imprisonment, or

10 (b) on conviction thereof on indictment, be liable to a fine not exceeding five thousand pounds (together with, in the case of a continuing offence, a further fine not exceeding five hundred pounds for every day on which the offence is continued) or, at the discretion of the Court, to penal servitude for a term not exceeding ten years or to imprisonment for a term not exceeding two years or to such fine and such penal servitude or imprisonment.

20 (2) (a) Where—

25 (i) a person is convicted of an offence under this Act by reason of his failure, neglect or refusal to comply with a provision in an order requiring him to perform a specified act within a specified period or before a specified date, and

30 (ii) the said act remains, after the date of such conviction, unperformed by him, such person shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds for each day, after the date of such first-mentioned conviction, on which the act remains unperformed by him or, at the discretion of the Court, to imprisonment for a term not exceeding twelve months.

35 (b) An offence under this subsection shall be a continuing offence and accordingly fresh proceedings in respect thereof may be taken from time to time.

40 **14.—**(1) Proceedings in the District Court in relation to an offence under this Act may be brought and prosecuted by the Minister. Summary Proceedings.

45 (2) Notwithstanding subsection (4) of section 10 of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within twelve months from the date of the offence.

15.—This Act shall not affect the validity of anything done in the exercise of statutory duty. Saver for exercise of statutory duty.

16.—The expenses incurred by the Minister or the Commission in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

17.—This Act may be cited as the Restrictive Trade Practices Act, 1952. Short title.

THE FAIR TRADE COMMISSION.

Constitution.

1.—(1) The permanent members of the Commission shall consist of a chairman and not less than two and not more than four other members. They shall be appointed by the Minister. 5

(2) Whenever it appears to the Minister that a permanent member is temporarily unable to discharge his duties, the Minister may appoint a temporary member to act in his place during such inability or for such shorter period as the Minister thinks proper.

(3) The Minister may also appoint temporary members for the purpose of a particular enquiry. 10

Members.

2.—(1) The term of office of a permanent member shall be fixed by the Minister when appointing him and shall not exceed five years.

(2) An outgoing permanent member shall be eligible for re- 15 appointment.

(3) Each member shall hold office on such conditions as may be fixed by the Minister after consultation with the Minister for Finance.

(4) A member may be paid such remuneration as the Minister, 20 with the consent of the Minister for Finance, determines.

(5) The Civil Service Regulation Acts, 1924 and 1926, shall not apply to the office of member.

Restriction
on interested
person acting
as member.

3.—If a member is personally interested in a particular matter with which the Commission is dealing, he shall inform the Minister 25 accordingly and shall not, unless authorised by the Minister, act as a member during the consideration of that matter.

Removals,
resignation
and
disqualification.

4.—(1) The Minister may remove a member from office.

(2) A member may resign his office.

(3) Where a member of the Commission becomes a member of 30 either House of the Oireachtas, he shall, upon his becoming entitled under the Standing Orders of that House to sit therein, cease to be a member of the Commission.

(4) A person who is for the time being entitled under the Stand- 35 ing Orders of either House of the Oireachtas to sit therein shall be disqualified from being a member of the Commission.

(5) A member shall be disqualified for holding and shall cease to hold office if he is adjudged bankrupt, or makes a composition or arrangement with his creditors, or is sentenced by a court of com- 40 petent jurisdiction to suffer imprisonment or penal servitude or ceases to be ordinarily resident in the State.

Procedure.

5.—(1) The quorum for a meeting of the Commission shall be two unless the Minister otherwise directs.

(2) The Commission may act notwithstanding vacancies in their membership. 45

(3) The Commission may regulate their own procedure.

6.—(1) The Commission may for the purposes of their functions do all or any of the following things :—

Power of
Commission
to summon
witnesses, etc.

- (a) summon witnesses to attend before them,
- 5 (b) examine on oath (which any member is hereby authorised to administer) the witnesses attending before them,
- (c) require any such witness to produce to the Commission any document in his power or control.

(2) A witness before the Commission shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(3) A summons shall be signed by at least one member.

(4) If any person—

- (a) on being duly summoned as a witness before the Commission makes default in attending, or
- 15 (b) being in attendance as a witness refuses to take an oath legally required by the Commission to be taken, or to produce any document in his power or control legally required by the Commission to be produced by him, or to answer any question to which the Commission may
- 20 (c) does any other thing which would, if the Commission were a court of justice, having power to commit for contempt of court, be contempt of such court,

the Commission may certify the offence of that person under their hands to the High Court and the court may, after such inquiry as it thinks proper to make, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of that court.

(5) In this paragraph references to the Commission shall be construed as including references to a member or members holding an enquiry under section 6.

7.—(1) The Commission shall cause to be published in such manner as they think fit notice of their intention to hold an enquiry.

Notice of
enquiry and
submissions
by interested
persons.

(2) Any person may make a submission to the Commission in the manner prescribed by their rules in relation to the subject matter of an enquiry.

8.—(1) In this paragraph, " authorised officer " means a member of the Commission, a member of the Garda Síochána or a person authorised in writing by the Commission for the purposes of this paragraph.

Inspection of
premises and
obtaining of
information.

(2) For the purpose of obtaining the information necessary for the exercise by the Minister or the Commission of any function under this Act, an authorised officer is hereby authorised—

- (a) at all reasonable times to enter premises at which any activity in connection with the business of supplying or distributing goods or in connection with the organisation or assistance of persons engaged in any such business is carried on and to inspect the premises;
- 45 (b) to require the person who carries on such activity and any person employed in connection therewith to produce to the officer any books, documents or records relating to such activity which are in that person's power or control and to give him such information as he may reasonably require in regard to any entries in such books, documents and records;
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(c) to inspect and copy or take extracts from such books, documents and records;

(d) to require such a person to give to the officer any information he may require in regard to the persons carrying on such activity (including, in particular, in the case of 5 an unincorporated body of persons, information in regard to the membership thereof and of its committee of management or other controlling authority) or employed in connection therewith;

(e) to require such a person to give to the officer any information which the officer may reasonably require in regard to such activity. 10

(3) A person who obstructs or impedes an authorised officer in the exercise of a power or does not comply with a requirement under this section shall be guilty of an offence. 15

Prohibition of disclosure of confidential information.

9.—(1) No person shall disclose confidential information available to him by virtue of the powers of obtaining information conferred by this Act or through being present at a meeting of the Commission held in private.

(2) *Subparagraph (1) of this paragraph does not apply to—* 20

(a) a communication made by a member of the Commission or authorised officer in the execution of his duties under this Act, or

(b) the disclosure of information in a report of the Commission or for the purpose of legal proceedings under this Act. 25

(3) If any person contravenes this paragraph he shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds or imprisonment for a period not exceeding six months or, at the discretion of the Court, to both such fine and imprisonment. 30

Officers and servants.

10.—(1) The Minister, with the consent of the Minister for Finance, may appoint such officers and servants as he thinks necessary to assist the Commission in the performance of their functions.

(2) The officers and servants so appointed shall hold office on such terms and receive such remuneration as the Minister for Finance determines. 35

Annual Report.

11.—The Commission shall, as soon as may be after the end of each year, make to the Minister a report of their proceedings during the year and the Minister shall lay the report before each House of the Oireachtas. 40

BILL

BILL

As amended by the Committee on the Judiciary and
the Committee on the Senate Judiciary Committee
in the House of Representatives
on the 10th day of June, 1952

Enacted by the House of Representatives
on the 10th day of June, 1952

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BILLE

(mar a tugadh isteach)

dá ngairmtear

Acht i dtaobh cleachtas srianta trádála maidir le
soláthar agus imdháil earraí.

*An tAire Tionscail agus Tráchtála a thug
isteach.*

Do hordaiodh, ag Dáil Éireann, do chlóbhualadh, 26ú Meitheamh, 1952.

BAILE ATHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR,

Le ceannach díreach ón Oifig Díolta Foilseachán Rialtais
An Stuara, Árd Oifig an Phoist, Baile Átha Cliath, nó trí
aon díoltóir leabhar.

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BILL

(as introduced)

entitled

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regard to the supply and distribution of
goods.

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Commerce.*

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