



AN BILLE UM CHLEACHTAIS SRIANTA, 1971
RESTRICTIVE PRACTICES BILL, 1971

Mar a tugadh isteach
As introduced

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[No. 27 of 1971]



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AN BILLE UM CHLEACHTAIS SRIANTA, 1971
RESTRICTIVE PRACTICES BILL, 1971

BILL

entitled

5 AN ACT TO CONSOLIDATE AND AMEND THE RESTRICTIVE
TRADE PRACTICES ACTS, 1953 AND 1959.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

- 1.—(1) In this Act— Interpretation.
- “ the Act of 1953 ” means the Restrictive Trade Practices Act, 1953; 1953, No. 14.
- 10 “ the Act of 1959 ” means the Restrictive Trade Practices (Amend- 1959, No. 37.
ment) Act, 1959;
- “ the Commission ” means the Restrictive Practices Commission
established by *section 2*;
- “ fair practice rules ” means rules under *section 4*;
- 15 “ the Examiner ” has the meaning assigned to it by *section 13*;
- “ the Minister ” means the Minister for Industry and Commerce;
- “ service ” includes any professional service but does not include—
- (a) any service provided under a contract of employment,
- (b) any service being banking business within the meaning of the 1971, No. 24.
20 Central Bank Act, 1971,
- (c) the supplying of electricity,
- (d) any transport service provided or operated by Córas Iompair
Éireann,
- (e) any air service or service ancillary thereto,
- 25 (f) any transport service provided by the holder of a licence 1932, No. 2.
under the Road Transport Act, 1932, or the Road Trans- 1933, No. 8.
port Act, 1933,
- (g) any shipping service or any service provided by a harbour 1946, No. 9.
30 authority within the meaning of the Harbours Act, 1946, 1913, c.31.
or by a pilotage authority constituted under the Pilotage
Act, 1913,
- (h) any service provided by a local authority within the meaning
of section 2 of the Local Government Act, 1941. 1941, No. 32.
- (2) In this Act a reference to a section or schedule is to a section
35 of, or schedule to, this Act unless it is indicated that reference to
some other enactment is intended.

(3) In this Act a reference to a subsection, paragraph, subparagraph or other division is to the subsection, paragraph, subparagraph or other division of the provision (including a schedule) in which the reference occurs, unless it is indicated that reference to another provision is intended.

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Restrictive Practices Commission.

2.—(1) Notwithstanding the repeals effected by *section 26*, the Fair Trade Commission shall continue in being but shall, from the passing of this Act, be known as the Restrictive Practices Commission and is in this Act referred to as the Commission.

(2) The *First Schedule* shall apply to the Commission.

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(3) (a) Any enquiry under the Act of 1953 or the Act of 1959 by the Fair Trade Commission completed before the passing of this Act shall be deemed to be an enquiry by the Restrictive Practices Commission under *section 5*.

(b) Any enquiry under the Act of 1953 or the Act of 1959 by the Fair Trade Commission which is not completed at the passing of this Act shall be deemed to be an enquiry by the Restrictive Practices Commission under *section 5*.

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Unfair practices.

3.—In the exercise of their functions under this Act the Commission and the Examiner shall have regard to the unfair practices listed in the *Third Schedule*.

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Fair practice rules.

4.—(1) The Commission may, on the recommendation of the Examiner or at the request of an association representing persons engaged either in the supply and distribution of goods or in the provision of services, prepare and publish rules representing, in the opinion of the Commission, fair practice conditions with regard to the supply and distribution of such goods or the provision of such services.

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(2) Before making fair practice 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 opportunity to do so, and the notice shall specify the time and manner in which any representations may be made.

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Enquiries by Commission.

5.—(1) (a) The Commission shall, on the recommendation of the Examiner or at the request of the Minister transmitted by the Examiner, and may, on application by any person whose request for an enquiry has been refused by the Examiner, cause an enquiry to be held—

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(i) into the conditions which obtain in regard to the supply and distribution of any kind of goods or to one or more aspects of the supply and distribution of one or more kinds of goods,

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(ii) into the conditions which obtain in regard to the provision of any service or to one or more aspects of the provision of one or more kinds of service, or

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(iii) into one or more aspects of the operation of an order under *section 8*.

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(b) The Commission may at the request of any person made after publication of a notice under *section 10* (4) of their intention to hold a special review, hold the

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special review by means of an enquiry, but where they decide not to hold the special review by means of an enquiry, shall inform the person who made the request of the reasons for their decision.

5 (2) Subject to *subsections* (3) and (4), an enquiry may be held by one or more of the members of the Commission delegated by the Commission for the purpose.

(3) An enquiry shall not, without the consent of the Minister, be held by a temporary member acting alone.

10 (4) Not more than one temporary member may act for the purpose of a particular enquiry.

(5) 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 solely to establish matters of fact the public disclosure of which might materially injure the legitimate business interests of any person.

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

20 (7) Where the Commission, having received a request from any person (being a person whose request for an enquiry has been refused by the Examiner) to hold an enquiry, decide not to hold the enquiry, they shall inform the person of the reasons for their decision.

6.—(1) The Commission shall give such notice as they think fit of a decision to hold an enquiry.

Notice of enquiries and Examiner's reports.

25 (2) A notice under this section shall include a statement that a report on matters relevant to the proposed enquiry has been made to the Commission by the Examiner under *section 16* and that a copy of the report may be obtained from the Commission on application by an interested person.

30 (3) Subject to *subsection* (4), the Commission shall furnish a copy of a report referred to in *subsection* (2) to an interested person who applies therefor.

(4) A copy of a report furnished under *subsection* (3) shall not contain any confidential information on a matter of fact which in the opinion of the Commission might materially injure the legitimate business interests of any person if the information is not essential to the full understanding of the report.

(5) A report referred to in *subsection* (2) shall be admissible in evidence at an enquiry under *section 5*.

40 7.—A report made by the Commission under *section 5* (other than a report of an enquiry under *section 5* (1) (b)) shall—

Report of enquiry.

45 (a) describe the conditions which obtain in regard to the supply or distribution of the goods concerned or in regard to the provision of the services concerned, in so far as those conditions come within the scope of the enquiry to which the report relates,

50 (b) state whether (and, if so, how) any of those conditions involves restrictive practices including arrangements, agreements or understandings which prevent or restrict competition or restrain trade or the provision of any service or involve resale price maintenance,

- (c) state whether, in the opinion of the Commission, any interference with competition or trade or with the provision of services such as is mentioned in *paragraph (b)* above is unfair or operates against the common good,
- (d) state whether, in the opinion of the Commission, any of those conditions involves practices (including arrangements, agreements or understandings) or methods of competition (whether or not relating to price) which are unfair or operate against the common good, 5
- (e) give the reasons for the conclusions stated in the report, and 10
- (f) state whether the Commission are of the opinion that the Minister should make an order under *section 8* and indicate the form of order which they recommend.

Orders relating to restrictive practices, etc.

8.—(1) The Minister, having considered a report of the Commission under *section 5* (other than a report of an enquiry under *section 5 (1) (b)*), may, if he thinks that the exigencies of the common good so warrant, after consultation with any other Minister concerned, by order do, in relation to any goods or services to which the report relates, all or any of the following— 15

- (a) prohibit restrictive practices including arrangements, agreements or understandings which prevent or restrict competition or restrain trade or the provision of any service or which involve resale price maintenance; 20
- (b) prohibit unfair practices or unfair methods of competition (whether or not relating to price); 25
- (c) make such provision as the Minister thinks necessary to ensure the equitable treatment of all persons in regard to the supply or distribution of goods or the provision of services;
- (d) make such other provision in regard to restrictive practices or unfair practices or unfair methods of competition (whether or not relating to price) affecting the supply and distribution of goods or the provision of services as he thinks fit. 30

(2) The Minister may by order revoke or amend an order under this section. 35

(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, as soon as possible after he has received the report, lay before each House of the Oireachtas a statement giving the reasons for his decision. 40

Enquiries into refusal to use particular materials or methods for certain purposes.

9.—(1) The Commission shall, whenever so requested by the Minister, cause an enquiry to be held into the refusal or alleged refusal by employers or employees (or any combination of employers or of employees or of employers and employees) to use particular materials or particular methods for manufacturing or construction purposes. 45 50

(2) *Subsections (2) to (6) of section 5*, and *paragraph 8 of the First Schedule*, shall have effect in relation to an enquiry under this section.

- 10.—(1) The Commission shall, on the recommendation of the Examiner or at the request of the Minister transmitted by the Examiner, hold a special review of the operation of an order under section 8. Special review of order under section 8.
- 5 (2) The Commission, on the request of a person whose request for a special review has been refused by the Examiner, may hold a special review of the operation of an order under section 8.
- (3) A special review may relate to the operation of an order as a whole or to particular aspects of the operation of an order.
- 10 (4) The Commission shall cause to be published in such manner as they think fit notice of their intention to hold a special review and shall give to any person desiring to make submissions in relation to the subject matter of the review an opportunity to do so and the notice shall specify the time and manner in which submissions shall be made.
- 15 (5) The Commission shall submit to the Minister a report of every special review and the report shall state whether any request was made to the Commission under section 5 (1) (b) and, if so, give the reasons for a decision not to accede to the request.
- 20 (6) Where the Commission are of opinion that the Minister should amend the order which is the subject of a special review, they shall in their report of the review recommend accordingly and indicate the form of amending order they recommend.
- (7) Where the Commission are of opinion that the Minister should revoke the order which is the subject of a special review, they shall in their report of the review recommend accordingly.
- 25 11.—The Commission shall examine every report furnished to them by the Examiner under section 16 (4) and shall give observations on the report to the Minister and may make recommendations to the Minister as to what action should be taken on the report. Examination by Commission of Examiner's reports under section 16(4).
- 30 12.—In addition to the functions conferred on the Commission by sections 4, 5, 7 and 9 to 11, the Commission shall study and analyse (and report to the Minister when requested by him the results of any such study or analysis) the effect on the common good of methods of competition, types of restrictive practice, monopolies, the structure of any markets, amalgamation of, or acquisition of control of, bodies corporate, the operation of multi-national enterprises and relevant legislation, and a study or analysis under this section may either include or consist of a study or analysis of any development outside the State relating to any of the above matters. Studies and analyses by Commission.
- 40 13.—(1) The Minister shall from time to time appoint a person who shall be known as the Examiner of Restrictive Practices and is referred to in this Act as the Examiner. Examiner of Restrictive Practices.
- (2) The *Second Schedule* shall apply to the Examiner.
- 45 14.—(1) The Examiner may and, at the request of the Minister, shall— Powers of Examiner.
- (a) investigate any aspect of the supply or distribution of goods or of the provision of a service,
- (b) investigate any aspect of the operation of an order under this Act,
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(c) investigate in the State any aspect of the supply or distribution of goods or the provision of a service by a person outside the State.

(2) The Examiner may investigate any aspect of the operation of fair practice rules.

Inspection of premises and records, etc.

15.—(1) For the purpose of obtaining any information necessary for the exercise by the Examiner of any of his functions under this Act, an authorised officer may, on production of his authorisation if so required—

(a) at all reasonable times enter and inspect premises at which any activity in connection with the business of supplying or distributing goods or providing a service, or in connection with the organisation or assistance of persons engaged in any such business, is carried on,

(b) require the person who carries on such activity and any person employed in connection therewith to produce to the authorised officer any books, documents or records relating to such activity which are in that person's power or control, and to give to the authorised officer such information as he may reasonably require in regard to any entries in such books, documents and records,

(c) inspect and copy or take extracts from any such books, documents and records,

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

(e) require a person mentioned in *paragraph (b)* to give to the authorised officer any information which the officer may reasonably require in regard to such activity.

(2) Before exercising any powers conferred on him by virtue of this section, an authorised officer shall inform the owner of premises referred to in *subsection (1) (a)* or a person mentioned in *subsection (1) (b)* (as the case may be)—

(a) of the powers of an authorised officer under this section, and

(b) of the owner's or other person's right under *subsection (3)* to apply for a declaration under this section.

(3) (a) The owner of premises which an authorised officer proposes to enter and inspect, or a person on whom an authorised officer has made a requirement under this section, may apply to the High Court for a declaration under this section.

(b) Where the owner of premises which an authorised officer proposes to enter and inspect, or a person on whom an authorised officer has made a requirement under this section, refuses access to the officer or refuses to comply with the requirement (as the case may be), the owner or other person shall within seven days thereafter apply to the High Court for a declaration under this section.

(c) The High Court, having heard such evidence as may be adduced and any representations that may be made by

5 the Examiner and a person referred to in *paragraph (a)*, may at its discretion declare that the exigencies of the common good do not warrant the exercise by the Examiner of the powers conferred on him by this section, and upon the making of such a declaration the Examiner shall either cease to effect the relevant entry or inspection or (as the case may be) withdraw the relevant requirement under this section.

10 (4) Subject to *subsection (3)* a person who obstructs or impedes an authorised officer in the exercise of a power conferred by this section or does not comply with a requirement under this section shall be guilty of an offence.

(5) The authorisation of an authorised officer shall indicate the matters in respect of which he may act under this section.

15 (6) In this section "authorised officer" means a person authorised in writing by the Examiner for the purposes of this section.

20 **16.—**(1) Where, as a result of an investigation under *section 14 (1) (a)*, *14 (1) (b)* or *14 (2)*, the Examiner is of the opinion that the Commission should hold an enquiry under this Act or a special review under *section 10* or should make fair practice rules, he shall furnish the Commission with a report of the investigation containing a recommendation to that effect.

Reports by Examiner.

25 (2) Where the Examiner carries out an investigation under *section 14 (1) (a)* or *14 (1) (b)* at the request of the Minister, his report, in lieu of being furnished to the Commission, shall be furnished by him to the Minister and shall contain such facts as the Examiner considers relevant but shall not contain any expression of opinion by the Examiner.

30 (3) If in a report of an investigation under *section 14 (1) (b)* the Examiner expresses the opinion that there has been a breach or contravention of an order under this Act, the report, in lieu of being furnished to the Commission, shall be furnished by him to the Minister.

35 (4) The Examiner may furnish the Commission with a report of an investigation under *section 14 (1) (c)* and shall do so if the investigation has been carried out at the request of the Minister.

40 (5) Where the Minister makes a request under *section 5* to hold an enquiry or under *section 10* to hold a special review, the Examiner shall furnish the Commission with a copy of the relevant report by him.

17.—The Examiner may give evidence at an enquiry under *section 5* and may call and examine witnesses at such an enquiry.

Examiner's rights at enquiries.

45 **18.—**(1) The Minister shall lay before each House of the Oireachtas a copy of the report made by the Commission of every enquiry under *section 5* or *section 9* and of every special review under *section 10*.

Laying of copies of reports before Houses of the Oireachtas.

50 (2) It shall be lawful for the Minister after consultation with the Commission to omit from the said 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 and a statement indicating the general character of any information so omitted shall be laid before each House of the Oireachtas with the copy of the report so laid.

Jurisdiction of courts to grant injunction.

19.—It shall be lawful for a court of competent jurisdiction 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 notwithstanding that any other proceedings, civil or criminal, may lie for that purpose.

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Contravention of order.

20.—(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.

(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.

Offence relating to evidence at enquiry.

21.—A person shall be guilty of an offence if, with intent to induce another person (in this section referred to as the complainant) not to give evidence at an enquiry under this Act, he does, threatens to do, causes another person to do or threatens that another person will do any of the following—

- (a) cease to trade with, or provide services for, the complainant,
- (b) restrict his trading with, or provision of services for, the complainant,
- (c) discriminate against the complainant in his terms of trading with, or provision of services for, the complainant.

Offences in relation to bodies corporate and unincorporated bodies.

22.—(1) Where an offence under this Act which is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person being a director, manager, secretary, member of the committee of management or other controlling authority of any such body, or being any other similar officer of any such body, that person shall also be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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

(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.

(c) A statement in writing purporting to be signed by the secretary 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.

(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 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.

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

5 (a) on summary conviction, be liable to a fine not exceeding £200 (together with, in the case of a continuing offence, a fine not exceeding £10 for every day on which the offence is continued) or, at the discretion of the Court, to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, or

10 (b) on conviction on indictment, be liable to a fine not exceeding £5,000 (together with, in the case of a continuing offence, a fine not exceeding £500 for every day on which the offence is continued) or, at the discretion of the Court, to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

15 (2) (a) Where 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 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 to a fine not exceeding £10 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 six months.

20 (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.

24.—(1) Summary proceedings in relation to an offence under this Act may be prosecuted by the Minister. Summary proceedings.

(2) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within twelve months from the latest day on which the offence was committed. 1851, c. 93.

25 25.—This Act shall not apply to anything done in the exercise of statutory duty. Saver for exercise of statutory duty.

26.—(1) The Act of 1953 and the Act of 1959 are hereby repealed. Repeals and consequential provisions.

(2) Notwithstanding subsection (1), every order under section 9 of the Act of 1953 in force at the passing of this Act shall continue in force and shall, for the purposes of this Act, be deemed to be an order under section 8 thereof.

27.—The expenses incurred by the Minister or the Commission or the Examiner 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.

28.—This Act may be cited as the Restrictive Practices Act, 1972. Short title.

RESTRICTIVE PRACTICES 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, all of whom 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. 10
- (3) The Minister may also appoint additional temporary members.
- 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-appointment. 15
- (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, with the consent of the Minister for Finance, determines.
- 1956, No. 45. (5) The Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 and 1958, shall not apply to the office of member. 20
- 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 accordingly and shall not act as a member during the consideration of the matter, unless the Minister, being of opinion that the member's interest is not such as to interfere with the impartial performance of his duties, authorises him to act. 25
- Removals, resignation and disqualification. 4. (1) The Minister may remove from office a member who has become incapable through ill-health of performing efficiently his duties as such member or whose removal appears to the Minister to be necessary in the interests of the effective and economical performance of the functions of the Commission. 30
- (2) Where the Minister removes a member from office he shall lay before each House of the Oireachtas a statement in writing of the reasons for such removal. 35
- (3) A member may resign his office.
- (4) Where a member of the Commission becomes a member of 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. 40
- (5) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein shall be disqualified from being a member of the Commission.
- (6) 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 competent jurisdiction to suffer imprisonment or penal servitude or ceases to be ordinarily resident in the State. 45

5. (1) The Minister shall, with the consent of the Minister for Finance, as soon as may be make and carry out according to its terms a non-contributory scheme for the granting of pensions, gratuities or other allowances to or in respect of members of the Commission ceasing to hold office other than members in respect of whom an award under the Superannuation Acts, 1834 to 1963, may be made. Superannuation of members.

(2) In the case of a member of the Commission who was appointed a member of the Fair Trade Commission on the 26th day of November, 1969, and who had before such appointment been a member of the Industrial Development Authority, a scheme under this paragraph shall provide for reckoning, as service as a member of the Commission, service by such person in a pensionable capacity as a member of the Industrial Development Authority.

(3) A scheme under this paragraph may provide that the termination of the appointment of a member of the Commission during that member's term of office shall not preclude the award to him of a pension, gratuity or other allowance.

(4) The Minister may, with the consent of the Minister for Finance, amend a scheme made by him under this paragraph.

6. (1) The quorum for a meeting of the Commission shall be two permanent members unless the Minister otherwise directs. Procedure.

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

(3) The Commission may regulate their own procedure.

7. (1) The Commission may for the purposes of their functions when holding an enquiry under *section 5* or *section 9* do all or any of the following things:— Power of Commission to summon witnesses, etc.

(a) summon witnesses to attend before them,

(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) Any person who—

(a) on being duly summoned as a witness before the Commission makes default in attending, or

(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 legally require an answer, or

(c) does any other thing which would, if the Commission were a court, having power to commit for contempt of court, be contempt of such court,

shall be guilty of an offence.

Submissions by interested persons. 8. 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.

Prohibition of disclosure of confidential information. 9. (1) No person shall disclose 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. 5

(2) *Subparagraph (1)* does not apply to—

(i) a communication made by a member of the Commission in the execution of his duties under this Act, or 10

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

(3) If any person contravenes this paragraph he shall be guilty of an offence and shall be liable on summary conviction 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. 15

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. 20

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

SECOND SCHEDULE

Section 13 25

EXAMINER OF RESTRICTIVE PRACTICES

Terms and conditions of office. 1. (1) The term of office of the Examiner shall be fixed by the Minister when appointing him and shall not exceed five years.

(2) On completion of a term of office the Examiner shall be eligible for re-appointment. 30

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

(4) The Examiner may be paid such remuneration as the Minister, with the consent of the Minister for Finance, determines.

(5) The Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 and 1958, shall not apply to the office of Examiner. 35

Temporary appointment. 2. (1) Whenever it appears to the Minister that the Examiner is temporarily unable to discharge his duties, the Minister may appoint a person to act in place of the Examiner during such inability or for such shorter period as the Minister thinks proper. 40

(2) A person appointed under *subparagraph (1)* shall have all the powers, rights and duties conferred on the Examiner by this Act and each reference in this Act to the Examiner shall be deemed to include a reference to such a person. 45

Restriction on Examiner. 3. If the Examiner is personally interested in a particular matter with which he is dealing, he shall inform the Minister accordingly and shall not act as Examiner during the consideration of the matter unless the Minister, being of opinion that such interest is not such as to interfere with the impartial performance of the Examiner's duties, authorises him to act. 50

4. (1) The Minister may remove the Examiner from office if he has become incapable through ill-health of performing efficiently his duties or if his removal appears to the Minister to be necessary in the interests of efficiency. Removal, resignation and disqualification.
- 5 (2) Where the Minister removes the Examiner from office he shall lay before each House of the Oireachtas a statement in writing of the reasons for such removal.
- (3) The Examiner may resign his office.
- (4) Where the Examiner becomes a member of either House of the Oireachtas, he shall, upon his becoming entitled under the Standing Orders of that House to sit therein, cease to hold the office of Examiner.
- 10 (5) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein shall be disqualified from being the Examiner.
- 15 (6) The Examiner 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 competent jurisdiction to suffer imprisonment or penal servitude or ceases to be ordinarily resident in the State.
- 20 (7) (1) The Minister shall, with the consent of the Minister for Finance, as soon as may be make and carry out according to its terms a non-contributory scheme for the granting of a pension, gratuity or other allowance to or in respect of the Examiner on his ceasing to hold office. Superannuation.
- 25 (2) A scheme under this paragraph may provide that the termination of the appointment of the Examiner during his term of office shall not preclude the award to him of a pension, gratuity or other allowance.
- 30 (3) The Minister may, with the consent of the Minister for Finance, amend a scheme made by him under this paragraph.
- 35 (6) (1) The Minister, with the consent of the Minister for Finance, may appoint such officers and servants as he thinks necessary to assist the Examiner in the performance of his functions. Officers and servants.
- (2) The officers and servants so appointed shall hold office on such terms and receive such remuneration as the Minister for Finance determines.
- 40 7. The Examiner shall, as soon as may be after the end of each year, make to the Minister a report of his proceedings during the year and the Minister shall lay the report before each House of the Oireachtas. Annual Report.
- 45 (8) (1) No person shall disclose information available to him through being present at an investigation held by the Examiner under section 14. Prohibition of disclosure of confidential information.
- (2) *Subparagraph (1)* does not apply to a communication made by the Examiner or an authorised officer in the execution of his duties under this Act or to the disclosure of information in a report by the Examiner or for the purpose of legal proceedings under this Act.
- 50 (3) If any person contravenes this paragraph he shall be guilty of an offence and shall be liable on summary conviction 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.

THIRD SCHEDULE

Section 3

UNFAIR PRACTICES

Any measures, rules, agreements or acts, whether put into effect (or intended to be put into effect) by a person alone, in combination or agreement (express or implied) with others or through a merger, trust, cartel, monopoly or other means or device whatsoever, which—

- (a) have or are likely to have the effect of unreasonably limiting or restraining free and fair competition, 5
- (b) are in unreasonable restraint of trade, 10
- (c) have or are likely to have the effect of unjustly eliminating a competitor, 15
- (d) unjustly enhance prices of goods or charges for services or promote unfairly at the expense of the public the advantage of suppliers or distributors of goods or of persons providing services, 20
- (e) secure or are likely to secure, unfairly or contrary to the common good, a substantial or complete control of the supply or distribution of goods or any class of goods or the provision of services or any class of services, 25
- (f) without just cause prohibit or restrict the supply of goods or the provision of services to any person or class of persons or give preference in regard to the supply of goods or the provision of services, 30
- (g) restrict or are likely to restrict unjustly the exercise by any person of his freedom of choice as to what goods or services he will supply or provide or as to the area in which he will supply or provide goods or services, 35
- (h) impose unjust or unreasonable conditions in regard to the supply or distribution of goods or the provision of services, 40
- (i) without good reason exclude or are likely to exclude new entrants to any trade, industry or business, 45
- (j) secure or are likely to secure unjustly the territorial division of markets between particular persons or classes of persons to the exclusion of others, or 50
- (k) in any other respect operate against the common good or are not in accordance with the principles of social justice. 55

BILL

BILL

(as introduced)

(as amended)

An Act to consolidate and amend the Restrictive Trade Practices Acts, 1926 and 1932.

Enacted by the House of Commons in the 10th year of the reign of His Majesty King George the Sixth, on the 17th day of July, 1947.

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BILLE

*(mar a tugadh isteach)
dá ngairtear*

Acht do chomhdhlúthú agus do leasú na nAchtanna um Chleachtais Srianta Trádála, 1953 agus 1959.

BILL

*(as introduced)
entitled*

An Act to consolidate and amend the Restrictive Trade Practices Acts, 1953 and 1959.

An tAire Tionscail agus Tráchtála a thug isteach

*Introduced by the Minister for Industry and
Commerce*

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20 Iúil, 1971*

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