



BERMUDA

COST OF LIVING COMMISSION ACT 1974

[NB. formerly the Price Commission Act 1974. Retitled by 2017 : 49 s. 2 effective 20 December 2017; references to 'Price Control Commission' substituted by "Cost of Living Commission" by 2017 : 49 s. 3.]

1974 : 118

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[preamble and words of enactment omitted]

PART I INTRODUCTORY AND ESTABLISHMENT OF COST OF LIVING COMMISSION

[Part I heading amended by 2017 : 49 S. 3 effective 20 December 2017]

Interpretation

- 1 In this Act, unless the context otherwise requires—

“business undertaking” includes—

- (a) a business or company in Bermuda operated on a self-service basis that offers a wide range of food and other household goods, including essential commodities; and
- (b) the supplier in Bermuda of the business or company referred to in paragraph (a);

“commodity” means any goods or service;

“Commission” means the Cost of Living Commission established under section 2;

“essential commodity” means a commodity specified as an essential commodity in regulations made under section 10E;

“injunction” includes an interlocutory, permanent or mandatory injunction or any temporary relief by way of injunction;

“Minister” means the Minister responsible for consumer affairs;

“price”, in relation to Part IIIA of this Act, means the monetary value placed by a business undertaking for a stated period on a finite quantity, weight, or other measure of an essential commodity that can be purchased at the business undertaking;

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“specified” means specified in the Second Schedule.

[Section 1 definition "Commission" amended by 2017 : 49 s. 3 effective 20 December 2017; Section 1 definition "Minister" amended by 2020 : 27 s. 2 effective 17 June 2022; Section 1 definitions "essential commodity", "price" and "business undertaking" inserted by 2020 : 27 s. 2 effective 17 June 2022; Section 1 definition "business undertaking" repealed and substituted by 2022 : 33 s. 4 effective 1 November 2022]

Establishment of the Cost of Living Commission

2 (1) There shall be established a body to be called the Cost of Living Commission who shall have such functions as may be conferred upon them by this Act or other statutory provision.

(2) Subject to subsection (3), the Commission shall consist of a Chairman and a minimum of seven and a maximum of twelve other members, all of whom shall be appointed by the Minister, including the following two *ex officio* members—

- (a) a representative from the Department of Consumer Affairs; and
- (b) a representative from the Department of Statistics.

(3) For the purposes of any inquiry under section 4 or 6 of the Act the Minister may appoint to the Commission an additional member who, in his opinion, is by reason of his special qualifications or experience able to assist the Commission in their inquiry, and any person so appointed shall, for the duration and purposes of such inquiry, be deemed to be a member of the Commission.

(4) The incidental provisions contained in the First schedule shall have effect in relation to the Commission.

[Section 2 amended by 2017 : 49 s. 3 effective 20 December 2017; Section 2 subsection (2) amended by 2018 : 12 s. 2 effective 23 March 2018; Section 2 subsection (2)(a) amended by 2020 : 27 s. 3 effective 17 June 2022]

PART II

CONTROL OF PRICE INCREASES OF SPECIFIED COMMODITIES

Regulation of increases of charges for specified commodities by specified undertakings

3 (1) No business undertaking specified in the first column of the Second Schedule shall increase the price or charge for a commodity specified in respect thereto in the second column of thereof or any published schedule of prices or charges therefor unless notice in writing of the increase and of the amount thereof has been duly given to the Commission.

(2) Any increase in installation charges, labour charges for repairs or other charges made in connection with the installation or use of any apparatus used for the supply of or necessary for the beneficial enjoyment of a specified commodity, or of the delivery charges for such commodity, shall not be deemed to be an increase of the price or charge of such commodity for the purposes of subsection (1).

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(3) When notice of intention to increase prices or charges to which subsection (1) applies has been duly given to the Commission those prices or charges shall not be increased otherwise than—

- (a) in the event of the Commission giving a direction under section 4 within a period of thirty days beginning with the date on which that notice of intention was given, to the extent and in such amount as may be permitted by the direction;
- (b) in any other case, until after the expiration of the said period of thirty days.

Power of Commission on receipt of notice of increase

4 (1) On receipt of a notice given under section 3(1) the Commission may, after making such inquiry in the matter as they may think fit for the purpose of ascertaining that the increase is just and reasonable, give a direction—

- (a) approving the increase; or
- (b) disallowing the increase either wholly or in part; or
- (c) postponing the date upon which the increase is intended to be effective to such other date as may be specified; or
- (d) otherwise setting out the terms and conditions upon which the increase may be made.

(2) In the exercise of their discretion under subsection (1) the Commission shall have regard to—

- (a) the cost to the supplier of the specified commodity;
- (b) the needs of the supplier for adequate working capital and to establish reasonable reserves;
- (c) the need to afford investors a reasonable rate of return on their investment;
- (d) the public interest;
- (e) any other matters which, to the Commission, appear relevant.

(3) The burden of proof to show that any increase in the price or charge of a specified commodity is just and reasonable is upon the owner of the business undertaking seeking the increase.

Appeal to Minister against the decision of the Commission

5 (1) A specified business undertaking which is aggrieved by a direction of the Commission under section 4 may, within twenty-one days of being notified thereof, or such longer period as the Minister may allow, by notice in writing appeal to the Minister.

(2) The Commission shall supply reasons for its direction to such undertaking for the purposes of any such appeal.

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(3) On an appeal under this section the Minister may, if he thinks fit, vary any direction of the Commission and such variation shall take effect on such date as the Minister may determine, but until such variation takes effect the direction shall continue to have effect according to the tenor thereof.

Further powers to obtain information

6 (1) The Minister may, for the purposes of this Act, by notice to a specified business undertaking require such undertaking—

- (a) to furnish, whether by periodical returns or other means, such estimates or other information as may be specified or described in the notice;
- (b) to produce to an officer of the Department of Consumer Affairs, or to the Commission, any documents so specified or described;
- (c) to keep such records as may be so specified or described.

(2) A notice under this section may specify the way in which, and the time during which, it is to be complied with.

(3) If a specified business undertaking fails to comply with a notice under this section, such business undertaking is guilty of an offence and liable on summary conviction to a fine of \$5,000 and, in addition, for each day that the business undertaking fails to comply, to a daily default fine of \$500.

[Section 6 subsection (3) repealed and substituted by 2017 : 49 s. 4 effective 20 December 2017; Section 6 subsection (1)(b) amended by 2020 : 27 s. 3 effective 17 June 2022]

Minister may amend Second Schedule

7 (1) Where the Minister is of the opinion that—

- (a) any business undertaking or group of related business undertakings are in substantial control of the supply of any commodity; or
- (b) any agreements or arrangements, whether legally enforceable or not, are in operation between business undertakings which in any way prevent or restrict competition in relation to any commodity,

he may by order published in the Gazette amend the Second Schedule by the addition of such undertaking or undertakings and such commodity.

(2) The Minister may by order published in the Gazette at any time delete from the Second Schedule any business undertaking or any commodity specified therein and may in like matter amend the description of any such undertaking or commodity.

(3) The affirmative resolution procedure shall apply to an order made under this section.

Enforcement of price control provisions

8 (1) A specified business undertaking shall be guilty of an offence if it—

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- (a) increases any price or charge or published schedule of prices or charges for a specified commodity without giving notice as required by section 3(1);
- (b) fails to comply with a direction of the Commission under section 4 or, as the case may be, such direction as varied by the Minister,

and shall be liable, on summary conviction therefor, to a fine not exceeding two thousand dollars.

(2) Any charge made by a specified business undertaking for a specified commodity in excess of any amount permitted by a direction under section 4 shall be unenforceable to the extent of the excess.

(3) The Minister shall be entitled to apply to the Supreme Court for an injunction restraining any breach or anticipated breach by any person of any provision of this Act, and the Supreme Court shall have jurisdiction to entertain any such application and to grant such an injunction in such terms as it may think fit.

(4) An injunction granted under this section shall be enforceable by attachment or committal or otherwise as the court thinks just.

PART III

INQUIRIES BY THE COST OF LIVING COMMISSION

[Part III heading amended by 2017 : 49 s. 3 effective 20 December 2017]

Minister may require Cost of Living Commission to conduct inquiry

9 The Minister may at any time require the Commission to inquire into—

- (a) any matter which may affect the exercise by him of his powers under this Act;
- (b) the price or charge made for any commodity, whether or not such commodity is a specified commodity;
- (c) such other matters as he may specify concerning the cost or supply of any commodity,

and it shall be the duty of the Commission thereupon to make such an inquiry and to report thereon to the Minister.

[Section 9 amended by 2017 : 49 s. 3 effective 20 December 2017]

Power to obtain information

10 (1) For the purpose of an inquiry under section 4 or 9 the Commission shall have power by order under the hand of the Chairman to require any person to attend before them and give evidence on oath or otherwise, and to require the production of accounts, records and other documents, so as to elicit all such information relevant to the matter inquired into as the Commission may think necessary.

(2) A person who—

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- (a) fails without reasonable excuse to attend before the Commission in compliance with an order under subsection (1);
- (b) when in attendance before the Commission refuses to make an oath, or refuses to produce a document, or refuses to give evidence, in compliance with such order as aforesaid,

is guilty of an offence and liable on summary conviction to a fine of \$5,000 and, in addition, for each day that the offence continues, to a daily default fine of \$500:

Provided that the person shall not be punished for refusing to answer any question or to produce any document which he could not be required to answer or produce before a court in Bermuda, or for failing or refusing to answer any question or produce any document which is not relevant to the matters in issue.

[Section 10 subsection (2) amended by 2017 : 49 s. 5 effective 20 December 2017]

PART IIIA

PRICE INFORMATION ON ESSENTIAL COMMODITIES

Commission to establish database for prices of essential commodities

10A (1) The Commission shall, for the purpose of efficiently and accurately informing members of the public of current prices of essential commodities, establish a database consisting of the prices at which essential commodities may be purchased at specified business undertakings from time to time.

(2) The prices of essential commodities set out in the database shall be the prices furnished on a timely basis by business undertakings as provided under this Part.

(3) The Commission shall, for the purposes of this Part and with the approval of the Minister, develop or employ such electronic real-time indicators as it may determine as necessary to enable it to—

- (a) obtain information on the prices of essential commodities from business undertakings; and
- (b) inform members of the public of current prices and price changes of essential commodities.

[Section 10A inserted by 2020 : 27 s. 4 effective 17 June 2022]

Commission to require price information on essential commodities

10B (1) The Commission may require each business undertaking to furnish the Commission with information on the price of each essential commodity sold by the business undertaking as provided in subsection (2).

(2) The Commission may require each business undertaking to furnish the Commission with information on the prices of essential commodities it sells as may be prescribed in the regulations made under section 10E, relating to—

- (a) the substance and detail of the information;

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- (b) the formatting style to be used for the information;
- (c) the electronic means to be used for furnishing the information;
- (d) the time-frame within which the information is to remain valid; and
- (e) the time-frame within which the information is to be furnished to the Commission.

(3) A business undertaking shall comply with a requirement by the Commission under subsection (2) within the time-frame stated.

[Section 10B inserted by 2020 : 27 s. 4 effective 17 June 2022]

Database of essential commodities to be accessible by members of public

10C The prices of essential commodities in the database established by the Commission under section 10A shall be—

- (a) accessible to members of the public on the Commission's website;
- (b) communicated to members of the public by means of such electronic device as may be prescribed in the regulations made under section 10E; and
- (c) published by such other method as the Commission may determine.

[Section 10C inserted by 2020 : 27 s. 4 effective 17 June 2022]

Enforcement of requirement to furnish price information on essential commodities

10D A business undertaking that fails to comply with the requirements under section 10B or the regulations made under section 10E shall be liable, on summary conviction, to a fine not exceeding two thousand dollars.

[Section 10D inserted by 2020 : 27 s. 4 effective 17 June 2022]

Regulations on essential commodities

10E (1) The Minister may, after consulting the Commission, make such regulations as appear to him to be necessary or expedient for the proper carrying out of the intent and provisions of this Part.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may prescribe—

- (a) the list of essential commodities;
- (b) the business undertakings that are to furnish information to the Commission on the prices of essential commodities;
- (c) the substance and detail of the information to be furnished by business undertakings on essential commodities;
- (d) the formatting style to be used for the information to be furnished by business undertakings on essential commodities;

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- (e) the electronic means to be used for furnishing the information on the prices of essential commodities;
- (f) the time-frame within which the information on essential commodities is to be furnished to the Commission;
- (g) the electronic devices by which information on the prices of essential commodities shall be communicated to members of the public.

(3) Regulations made under this section are subject to the negative resolution procedure.

[Section 10E inserted by 2020 : 27 s. 4 effective 17 June 2022]

PART IV SUPPLEMENTARY

Offences by corporations

11 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 default on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who is 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 accordingly.

Provision where specified business undertaking not a body corporate

12 Where under this Act any obligation is imposed upon any specified business undertaking which is not a body corporate or where any specified business undertaking which is not a body corporate is declared by this Act to be guilty of an offence, such obligation shall be deemed to be imposed upon, and such offence shall be deemed to be committed by, both the owner and the manager of the undertaking.

Amendment of Act No. 43 of 1971

13 *[omitted]*

FIRST SCHEDULE

1 A member of the Commission shall be appointed for a period of one year beginning on such day as may be determined by the Minister.

2 A member of the Commission may resign his office at any time by notice in writing given to the Minister.

3 The Minister may declare the office of a member of the Commission vacant if he is satisfied that the member—

- (a) is unable through mental or physical incapacity or absence from Bermuda to perform the functions of his office;
- (b) has failed, without adequate cause, to attend three successive meetings of the Commission;
- (c) has been sentenced to imprisonment for the commission of a criminal offence.

4 A person appointed to fill the place of a member of the Commission before the end of the member's term of office shall hold office so long only as the vacating member would have held office.

5 *[Deleted by 2018 : 12]*

6 A person who has held office as a member of the Commission shall be eligible for re-appointment.

7 No member of the Commission shall take part in an inquiry or decision relating to any specified business in which he or his spouse is a member or shareholder or has any private interest, direct or indirect, whereby his private interest may conflict with his duties as a member.

8 The Commission may act notwithstanding any vacancy in their membership, and no act of the Commission shall be deemed to be invalid only by reason of a defect in the appointment of a member thereof.

9 The Commission shall meet as often as may be necessary for them to dispatch their business under this Act.

10 A minute shall be made of every decision of the Commission in such form as the Minister may direct.

11 The quorum of the Commission shall be at least half of the members.

12 The Minister may designate any public officer to be secretary to the Commission.

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13 Any direction of the Commission given under the Act shall be deemed to be duly authenticated if it is given under the hand of the Chairman or, in his absence, the Secretary thereof.

14 In any matter before the Commission the Chairman or person acting as Chairman shall have a deliberative as well as a casting vote.

15 A notice may be given to the Commission by service upon the Secretary thereof.

16 Subject to the foregoing provisions of this Schedule the Commission may determine its procedure.

For the purposes of this Schedule a reference to a member or the membership of the Commission shall, unless the context otherwise requires, be construed as including the Chairman.

[First Schedule amended by 2018 : 12 s. 3 effective 23 March 2018]

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SECOND SCHEDULE

First column

Second column

Specified businesses

Specified commodities

[Schedule 2 amended by BR 75/2009 effective 27 November 2009]

[Assent Date: 20 December 1974]

[Amended by

1977 35

1986 35

BR 75 / 2009

2017 49

2018 12

2020 27

2022 33]