

The Price Control Order, 1973

*Date of Commencement: 1st August, 1973*

*Date of Assent: 20th July, 1973*

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*A King's Order-In-Council to provide for price control of goods and services in Swaziland.*

*Short Title And Commencement.*

1. This King's Order-in-Council may be cited as the Price Control Order, 1973 and shall come into force on a date to be appointed by the Minister who may appoint different dates for the coming into force of different sections thereof.

*Interpretation.*

2. In this King's Order-in-Council and in any notice issued thereunder, unless the context otherwise requires —

“controller” means the Price Controller appointed under section 3;

“goods” includes used goods;

“Minister” means the Minister for Commerce;

“sell” includes agree to sell, or mark with a selling price, or offer or attempt to sell, or expose, display or advertise for sale, or deliver in pursuance of a sale, or deliver or dispose of for any consideration, or sell by auction or by way of a hire purchase agreement or instalment sale agreement as defined in the Hire Purchase Act, No. 11 of 1969, the date of any such agreement being deemed to be the date of sale, and “sale” shall have a corresponding meaning;

“service” means any service rendered in the course of any commercial transaction and includes the supply of refreshments or meals for consumption on the premises at which such refreshments or meals are supplied.

*Appointment of Price Controller.*

3. The Minister may, subject to the Civil Service Order No. 16 of 1973, appoint a Price Controller who shall, subject to the control of the Minister, perform such functions and exercise such powers as may be assigned to or conferred upon him by this Order.

*Designation of Deputy Price Controllers etc.*

4. The Minister may designate any officers in the public service —

- (a) as deputy price controller who shall, subject to the control of the Controller perform such functions and exercise such powers as he may delegate to him;
- (b) as price control supervisors or inspectors, who shall, subject to the control of the Controller, perform such functions and exercise such powers as may be assigned to or conferred upon them by this Order.

*Controller May Fix Maximum Prices or Charges.*

5. (1) The controller may from time to time by notice in the Gazette or, with the authority of the Minister, in the case of any particular person, by notice in writing —

- (a) fix the maximum price at which any goods may be sold by any person to any other person;
- (b) fix the maximum price at which any person may purchase any goods from any other person;
- (c) fix the maximum charge that may be made by any person for any specified service;
- (d) prohibit any person from making any charge for any specified service.

(2) Any price or charge so fixed may —

- (a) be a specified price or charge fixed irrespective of the cost of the goods or service concerned or a price or charge to be determined on such basis as the controller may in each case specify;
- (b) vary in respect of different transactions, areas or persons or classes or categories of persons.

(3) Any price or charge so fixed may vary in respect of different classes, kinds, quantities or qualities of goods or services.

(4) Unless otherwise specified by the controller, whenever under this section the maximum price in respect of any goods has been fixed, the maximum price in respect of any quantity of such goods for which the maximum price has not been specifically fixed, shall —

- (i) if the quantity exceeds a quantity for which the maximum price has been fixed, be proportionate to the maximum price fixed for the largest quantity that is less than the firstmentioned quantity;
- (ii) if the quantity is less than the smallest quantity for which the maximum price has been fixed, be proportionate to the maximum price fixed for such smallest quantity.

(5) Unless otherwise specified by the controller, a fraction of one-half cent in any price calculated in terms of sub-section (4) may be charged as one-half cent.

*Deposits or Charges in Respect Of Containers Of Goods Sold.*

6. (1) The controller may from time to time by notice in the Gazette or with the authority of the Minister, in the case of any particular person, by notice in writing —

- (a) prescribe the maximum amount of any deposit which may be required in respect of the return of the container of any goods sold;
- (b) prohibit any person selling any goods in a container from requiring any deposit in respect of the return of such container or from making any charge for such container;
- (c) prescribe the amount of any refund to be made on return of the container in which any goods have been sold irrespective of the amount of any deposit made, the conditions subject to which such refund shall become payable and the time within which such refund may be claimed;
- (d) prescribe the amount which any person selling any goods in a container shall pay to the purchaser for a similar container.

(2) In exercising any power under subsection (1) the controller may differentiate between classes or categories of persons or classes or kinds of containers.

*Sale of Goods by Auction.*

7. (1) The controller may from time to time by notice in the Gazette prescribe the requirements to be complied with by any seller or auctioneer at a sale goods by auction, in order to ensure compliance with the provisions of this Order or any notice issued hereunder.

(2) Such requirements may vary in respect of different classes or categories of sellers or auctioneers.

*Display or Marking of Prices and Marking of Goods.*

8. The controller may from time to time by notice in the Gazette or, in the case of any particular person, by notice in writing —

- (a) whenever any maximum price for any goods or any maximum charge for any service has been fixed under this Order, direct that any person dealing in such

goods or rendering such service shall display in such manner as the controller may prescribe, such maximum price or charge;

- (b) require any dealer or any dealer of a specified class to mark in such manner as the controller may prescribe any goods or any specified goods with his selling price for such goods;
- (c) require any manufacturer or any particular manufacturer of any specified goods or goods of a specified class or any dealer or any particular dealer in such goods to mark such goods in such manner as the controller may prescribe —
  - (i) with the maximum price at which such goods may be sold to any person or to any person of a specified class by any dealer or any particular dealer or any dealer of a specified class;
  - (ii) with identification marks enabling such goods or any materials from which such goods were manufactured to be identified.
- (d) prohibit any person or any person of a specified class who sells any goods in respect of which any notice under paragraph (c) applies or applied —
  - (i) from altering, defacing, mutilating, destroying or removing any mark placed or purporting to have been placed on such goods in terms of such notice;
  - (ii) from permitting any such mark to be altered, defaced, mutilated, destroyed or removed.

#### *Issue and Retention of Invoices.*

9. The controller may from time to time by notice in the Gazette or with the authority of the Minister, in the case of any particular person, by notice in writing require any person —

- (a) selling any goods or rendering any service to issue, at such time or within such period as may be prescribed by the controller, to the purchaser of such goods or to the person to whom such service is rendered an invoice containing such particulars as may be so prescribed;
- (b) issuing such an invoice to retain a copy thereof for such period as the controller may prescribe;
- (c) to whom such an invoice has been issued to retain it for such period as the controller may prescribe.

#### *Prohibition of Certain Conditional Sales or Rendering Of Certain Services On Conditions.*

10. (1) The controller may from time to time by notice in the Gazette or, with the authority of the Minister, in the case of any particular person, by notice in writing, prohibit the sale of any goods or the rendering of any services subject to conditions specified in such notice, or the refusal to sell any goods or render any services except subject to conditions so specified, whether the maximum price for the sale of such goods or the maximum charge for the rendering of such services has been fixed under this Order or not.

(2) Any such prohibition may relate to any goods or services or to any class of goods or services and may vary in respect of different goods or services or classes of goods or services or classes or categories of persons.

(3) Without prejudice to the generality of the powers conferred on the controller by subsection (1), he may under such subsection by notice in the Gazette or, with the authority of the Minister, in the case of any particular person, by notice in writing, prohibit the sale of goods subject to conditions in terms of which, if the purchase price or other consideration is payable by instalments, less than the portion of the purchase price or other consideration specified in the notice shall or may be paid in cash amount of money or in goods at the time the agreement is entered into and the full purchase price or other consideration shall or may be paid over a longer period than that specified in the notice.

(4) For the purposes of the application of a notice such as referred to in subsection (3) —

- (a) substantial compliance with any condition specified in such notice shall be regarded as compliance with such condition; and
- (b) payment by means of a negotiable instrument (other than a promissory note) payable on demand to the seller or his order or to bearer shall be regarded as payment to the extent to which the amount due under such negotiable instrument is, within twenty-one days of delivery thereof to the seller, paid to the seller or his order or to the credit of his account, or that of his order, with a banker.

(5) For the purposes of this section “sale” shall, in addition to the meaning it has in terms of section 2, have the meaning assigned to it in any notice issued under subsection (1) hereof, and any such meaning may include disposal of any goods by way of a lease-lend, lease or any other agreement as defined in such notice, the date of any such agreement being deemed to be the date of sale; and “sell” shall have a corresponding meaning.

(6) No agreement shall be deemed to be inoperative by reason only of the fact that it is or was entered into in contravention of a prohibition contained in a notice issued under subsection (1), and no negotiable instrument shall be deemed to be inoperative by reason only of the fact that it was given or drawn in respect of any liability under any agreement which has been prohibited under subsection (1).

#### *Sale or Disposal of Certain Goods May Be Prohibited Temporarily.*

11. (1) The controller may by notice in writing and for such period as he may deem fit prohibit any person from selling or disposing of any goods not subject to a maximum selling price fixed under this Order.

(2) The controller may by notice in writing extend any such period or withdraw any such prohibition.

#### *Keeping and Preservation of Records.*

12. The controller may from time to time by notice in the Gazette, or, with the authority of the Minister, in the case of any particular person, by notice in writing —

- (a) require any person purchasing any goods for resale or for use in processing, manufacture or production of any class of goods for sale, to keep —
  - (i) such records as may be prescribed in the said notice, relating to the purchase price of such goods or to the cost of processing, manufacture or production of such class of goods or to the selling price of such goods or class of goods; or

- (ii) if no such records have been so prescribed, such records as will permit of the ready and accurate ascertainment of the purchase price of such goods or the cost of processing manufacture or production of such class of goods determined in such manner as may in respect of such class of goods be prescribed in the said notice or the selling price of such goods or class of goods;
- (b) require any person rendering any service at a remuneration so to keep such records as may be prescribed in such notice, relating to the costs incurred in rendering such service or, where no such records have been so prescribed, such records as will permit of the ready accurate ascertainment of such costs, determined in such manner as may in respect of such service be prescribed in such notice;
- (c) require any person keeping any records in terms of this section to preserve such records for such period as may be specified in the said notice.

*Information to Be Furnished to Controller.*

13. (1) The controller may in writing request any person who renders or has rendered any service or who supplies, produces, manufactures, sells, handles or deals in, or has supplied, produced, manufactured, sold, handled or dealt in any goods to furnish him with —

- (a) any information available to such person in respect of such service or such goods, which he or his servant or agent has or had in his possession or custody, or over which he has or had any control, or which he is capable of producing or manufacturing;
- (b) any balance sheet or business account in the possession or custody or under the control of such person relating to such service or such goods.

(2) The controller may in writing request any person who is or was the servant or agent of any person contemplated in subsection (1), to furnish him with any information relating to any service rendered or any goods sold, handled or dealt in by such servant or agent in the course of his employment by the last-mentioned person or in the performance of any mandate from such person.

(3) No person shall refuse to comply with any request made under this section merely on the ground that he may thereby be incriminating himself.

*Powers of Price Control Supervisors and Inspectors.*

14. (1) Any price control supervisor or inspector designated as such under section 4 may for the purpose of enquiring whether the provisions of this Order or any notice issued thereunder has been complied with —

- (a) in writing request any person who renders or has rendered any service, or who supplies, produces, manufactures, sells, handles or deals in, or has supplied, produced, manufactured, sold, handled or dealt in any goods, or any servant or agent of such person to —
  - (i) produce to him any goods, book, record, list, ticket or document in possession or custody or under the control of such person, servant or agent;

(ii) furnish him at such place and in such manner as he may specify with such information relating to such goods, service, book, record, list, ticket or document, as such supervisor or inspector may specify;

(b) examine or make extracts from or copies of any such book, record, list, ticket or document;

(c) seize and take possession of any such goods, book, record, list, ticket or document.

(2) Any such price control supervisor or inspector shall furnish the owner of anything seized and taken possession of under subsection (1) with a receipt.

(3) No person shall refuse to comply with any request under this section merely on the ground that he may thereby be incriminating himself.

(4) This section shall not entitle such supervisor or inspector to demand from any person the production of a balance sheet or a manufacturing, trading or profit and loss account unless specially authorised thereto by the controller.

*Power of Controller to Order Certain Payments.*

15. (1) If a person has in respect of any goods which he has sold received a price in excess of the maximum price permissible under this Order for such goods or if a person has in respect of any service which he has rendered received a charge in excess of the maximum charge permissible under this Order for such service, the controller may, irrespective of any action which may have been taken or which may be taken against such person, order him to pay to the purchaser of such goods or to the person to whom such service was rendered, or if the identity or whereabouts of the purchaser or the person to whom such service was rendered, cannot readily be ascertained, to pay to the Accountant-General, for the benefit of the Consolidated Revenue Fund a sum not exceeding twice the amount by which the first-mentioned price or charge exceeds the latter.

(2) If it appears that in determining the price which he charged any person for any goods the seller has complied with the provisions of this Order, but that the price charged by any previous seller of those goods was in excess of the maximum price permissible under this Order, the controller may order such previous seller to pay to the ultimate purchaser of such goods, or if his identity or whereabouts cannot readily be ascertained, to pay to the Accountant-General for the benefit of the Consolidated Revenue Fund a sum not exceeding twice the amount by which the price paid by such purchaser exceeded the maximum price which he would have been required to pay for the said goods if the provisions of this Order had been complied with by each of the persons who dealt in the said goods up to the time of their acquisition by such purchaser.

(3) If any person has been convicted on a charge of selling any goods contrary to a prohibition imposed under section 9 in that he required the purchaser of any particular goods to comply with a condition that the purchaser purchases from him or from any other person other goods in addition to such particular goods, the controller may, upon application by such purchaser, order the person who sold such other goods to pay to the purchaser the price he paid for such other goods.

(4) If the controller has made any order under this section he shall forward a certified copy thereof to the clerk of a subordinate court and thereupon such order shall have the effect of a civil judgment of such court.

*Exemptions.*

16. The controller may by notice in the Gazette or, with the authority of the Minister, in the case of a particular person, by notice in writing, subject to such conditions as he may impose, grant any person exemption from any provision of this Order to such extent as he may specify, and may at any time, without assigning any reason, in like manner modify or withdraw any such exemption.

*Evidence.*

17. (1) Any certificate purporting to have been issued by the controller, a deputy price controller or a price control supervisor and setting forth —

- (a) the maximum price at which on a particular date or during a particular period it would have been permissible for a particular person to sell specified goods; or
- (b) the maximum charge which on a particular date or during a particular period it would have been permissible for a particular person to make for any specified service;

shall on its mere production by any person in any criminal proceedings under this Order be *prima facie* proof of such price or charge.

(2) Any statement or entry contained in any book or document kept by any person or his servant or agent shall be admissible against such person in any criminal proceedings under this Order as an admission of the facts set forth in such statement or entry unless it is proved that the statement or entry was not made by such person or his servant or agent.

(3) If it is alleged in the charge in any criminal proceedings under this Order —

- (a) that any person is a person of a specified class or category of persons;
- (b) that any goods alleged to have been sold or purchased are goods of a particular class or kind;
- (c) that any goods are goods to which any provision of a notice under this Order applies;
- (d) that any person has altered, defaced, mutilated, destroyed or removed or permitted to be altered, defaced, mutilated, destroyed or removed any mark placed or purporting to have been placed on any goods in terms of a notice under this Order,

such allegation shall be sufficient proof of the facts alleged until the contrary is proved.

*Responsibility of Principal in Certain Cases.*

18. If the manager, servant or agent of any person does or omits to do anything which it would be an offence under this Order for such person to do or omit to do, such person shall be deemed himself to have done or omitted to do such thing and be liable on conviction to the penalties thereof unless he proves to the satisfaction of the court —

- (a) that in doing or omitting to do such thing such manager, servant or agent was acting without his connivance or permission;
- (b) that all reasonable steps were taken by him to prevent any act or omission of the kind in question; and



- (c) that it was not under any condition or in any circumstances within the scope of the authority or the course of the employment of the manager, servant or agent to do or omit to do acts, whether lawful or unlawful, of the character of that of the act or omission charged:

Provided that the fact that such person issued instructions forbidding any act or omission of the kind in question, shall not of itself be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

*Offences.*

19. Any person shall be guilty of an offence and liable on conviction to a fine of one thousand emalangeni or imprisonment for two years or both, if he —

- (a) sells any goods to any other person at a price in excess of the maximum price at which he may under this Order sell such goods to such other person;
- (b) purchases or offers to purchase any goods from any other person at a price in excess of the maximum price at which he may under this Order purchase such goods from such other person;
- (c) makes a charge for any service in excess of the maximum charge which he may under this Order make for such service;
- (d) makes a charge for any service if he is prohibited under this Order from making any charge for such service;
- (e) contravenes or fails to comply with any provision of a notice issued under section 6, 7, 8, 9, 10, 11 or 12;
- (f) in pursuance of a notice issued under section 9 issues an invoice which is incorrect in any material respect;
- (g) fails to comply within a reasonable time with a request made under section 13, or, in pursuance of such request, furnishes any information or document which is incorrect;
- (h) fails to comply with a request issued under section 14, within such time as the person making such request may specify, or, in pursuance of such request furnishes any information which is incorrect;
- (i) hinders, obstructs or delays any person in the performance of his functions or in the exercise of his powers under this Order;
- (j) falsely represents himself to be a price control supervisor or inspector.

*Jurisdiction of Subordinate Courts.*

20. Notwithstanding anything in any other law a subordinate court shall have jurisdiction to impose any penalty prescribed by this Order.

*Limitation of Application of Notices.*

21. The controller may limit the application of any notice issued by him under this Order to any area or areas or person or persons or classes or categories of persons specified in the notice.

*Repeal.*

22. The Defence Regulations Act, No. 150 of 1941 is hereby repealed, but any regulations published under such repealed Act or under the repealed Emergency Powers (Defence) Proclamation No. 37 of 1939 shall to the extent that they have not been repealed remain of full force and effect.