Draft Order laid before Parliament under section 1(6) of the Industrial Organisation and Development Act 1947, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2003 No.

INDUSTRIAL ORGANISATION AND DEVELOPMENT

The Horticultural Development Council (Amendment) Order 2003

Made - - - -	*2003*
Coming into force - -	*1st April 2003*

The Secretary of State and the National Assembly for Wales, acting concurrently, in exercise of the powers conferred by sections 1 to 4, 6, 8(1) and 14(2) of the Industrial Organisation and Development Act 1947(**1**), and now vested in them(**2**), and with the consent of the Scottish Ministers(**3**), and after consultation, in accordance with section 8(1) of the said Act, with the Horticultural Development Council and with organisations appearing to them to be representative of substantial numbers of persons carrying on business in the horticultural industry and with such organisations representative of persons employed in that industry as appear to them to be appropriate, and having satisfied themselves (as required by section 4(3) of the said Act) that the incidence of charges as between different classes of undertakings in that industry will be in accordance with a fair principle, make the following Order a draft of which has been laid before and approved by a resolution of each House of Parliament—

(**1**) 1947 c. 40: section 4 was modified, in the case of any development council order relating to agriculture, by section 60 of the Agriculture Act 1993 (c. 37).

(**2**) In respect of the Secretary of State, by virtue of S.I. 1955/554, 1978/272, 1999/672, 1999/3141 and 2002/794; in respect of the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) ("the 1999 Order"), in so far as they are exercisable in relation to Wales. The Horticultural Development Council is a cross-border body as defined in Schedule 3, paragraph 3(2), to the Government of Wales Act 1998 (c. 38). By virtue of article 2(c) of the 1999 Order, functions under the Industrial Organisation and Development Act 1947 which are exercisable in relation to a cross-border body, and which cannot be specifically exercised in relation to Wales, are exercisable by the National Assembly for Wales in relation to that body concurrently with the specified Minister of the Crown.

(**3**) By the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999 (S.I. 1999/1319), made under section 88(5) of the Scotland Act 1998 (c. 46), the Horticultural Development Council was specified as a cross-border public authority for the purposes of that Act. By article 3 of, and paragraph 3 of Schedule 14 to, the Scotland Act 1998 (Cross-Border Public Authorities)(Adaptation of Functions etc.) Order 1999 (S.I. 1999/1747) it was provided, in respect of any function exercisable by a Minister of the Crown under the Industrial Organisation and Development Act 1947 to modify the Horticultural Development Council Order 1986 (S.I. 1986/1110), that the Secretary of State for Scotland should cease to be such a Minister of the Crown, and that any such function should now be exercisable only with the consent of the Scottish Ministers.

Title and commencement

1.—(1) This Order may be cited as the Horticultural Development Council (Amendment) Order 2003, and shall come into force on 1st April 2003.

(2) In this Order "the principal Order" means the Horticultural Development Council Order 1986(**4**).

Amendment of the principal Order

2. The principal Order shall be amended in accordance with the following provisions of this Order.

3. In article 2 (interpretation), in paragraph (1)—

(a) there shall be inserted before the definition of "compost" the following definitions—

> ""apple" and "pear" mean respectively any apple other than the varieties listed in Part I of Schedule I and any pear other than the varieties listed in Part II of that Schedule;
>
> "apple or pear grower" means a person who carries on the trade or business of growing apples or pears for sale or for processing into an apple or pear product with a view to its sale, and occupies land of at least two hectares planted with at least 50 trees (whether apple or pear or both);";

(b) there shall be substituted for the definition of "grower" the following definition—

> ""grower" means—
>
> (a) a person, other than an apple or pear grower, who grows horticultural produce (excluding mushrooms) for sale, whose sales of such produce (excluding Value Added Tax and the cost of haulage and packing materials and, in those cases where the produce is prepared for market in rateable packhouses, any rates levied in respect of such packhouses) were not less than £25,000 during his relevant accounting year;
>
> (b) a mushroom grower; and
>
> (c) an apple or pear grower;";

(c) in the definition of "horticultural produce", there shall be inserted before the words "Schedule 1" the words "Part III of"

4. In article 4 (constitution of Council), in paragraph (1) there shall be substituted for the word "eleven" the word "twelve".

5. In article 6 (register of growers), for paragraph (2) there shall be substituted the following paragraph—

> "(2) The Council may enter on the register, in addition to the name and address of any registered grower—
>
> (a) any business name under which and the address of any place at which he carries on business in the industry, and the names of his partners in any such business, and
>
> (b) where the registered grower is a company, the names and addresses of any directors of the company,
>
> but no other information.".

6. There shall be substituted for article 7 (registration of growers) the following article—

(**4**) S.I. 1986/1110, as amended by S.I. 1990/454, 1992/1836, 2000/1975 and 2002/1676.

"**7.**—(1) Every person who was registered as a grower under the Apple and Pear Research Council Order 1989 immediately before the dissolution of the Apple and Pear Research Council shall be registered as a grower in the register kept by the Horticultural Development Council.

(2) Every person who on or after 1st April 2003 becomes a grower shall apply in writing to the Council to be registered within two months of the day on which he became a grower.

(3) Where two or more persons jointly carry on business in the industry they shall, for the purpose of registration, be treated as constituting a single person."(**5**).

7. In article 9 (charges for expenses)

(a) there shall be substituted for paragraph (1) the following paragraph—

"(1) For the purposes of enabling it to meet its expenses in the exercise of its functions and its administrative expenses the Council may, with the approval of the Ministers and subject to paragraphs (2), (3) and (3A), impose—

(a) on each grower, other than an apple or pear grower or a mushroom grower, a charge for any levy period at a rate not exceeding 0.5% of the value (excluding Value Added Tax) of his sales of horticultural produce during his relevant accounting year;

(b) on each apple or pear grower either—

(i) a charge for any levy period at a rate not exceeding £35 in respect of each hectare of land occupied by him during all or any part of that period for the purpose of business in the industry and planted with apple or pear trees, or

(ii) where the average density of planting on any land so occupied is less than 125 trees per hectare and the grower so elects, a charge for any levy period in respect of every 50 trees at the rate of two-fifths of the charge which would otherwise be imposed under paragraph (i) of this sub-paragraph; and

(c) on each mushroom grower a charge for any levy period at a rate not exceeding 15 pence per litre of spawn purchased for use in compost during his relevant accounting year.";

(b) after paragraph (3) there shall be inserted the following paragraph—

"(3A) For the purpose of calculating a charge imposed under paragraph (1)(b), headlands shall be included but fractions of less than one-tenth of a hectare or any remainder after the number of trees has been divided by 50 shall be ignored."

8. In article 12 (offences), in paragraph (1) there shall be inserted after the words "article 7(1)", the words "or (2)".

9. For Schedule 1 to the principal Order there shall be substituted the Schedule set out in the Schedule to this Order.

10. In Schedule 2 (functions of the Horticultural Development Council), after paragraph 3 there shall be added the following paragraphs—

"**4.** Promoting the adoption of measures for securing safer and better working conditions, and the provision and improvement of amenities for persons employed, and promoting or undertaking inquiry as to such measures.

5. Promoting the production and marketing of standard products.

(**5**) S.I. 1989/2277.

6. Promoting or undertaking research for improving arrangements for marketing and distributing products.

7. Promoting or undertaking research into matters relating to the consumption or use of goods and services supplied by the industry.

8. Promoting or undertaking arrangements for better acquainting the public in the United Kingdom with the goods and services supplied by the industry and methods of using them.".

Saving

11.—(1) Notwithstanding the provisions of this Order, the provisions of the principal Order in force prior to the coming into force of this Order shall continue to apply in respect of levy periods ending prior to the coming into force of this Order.

(2) In paragraph (1), "levy period" has the same meaning as in the principal Order.

Parliamentary Under Secretary of State
Department for Environment, Food and Rural
2003 Affairs

Signed on behalf of the National Assembly for Wales

2003 Presiding Officer

We consent

A member of the Scottish Executive