

*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.

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.

2003

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

Signed on behalf of the National Assembly for Wales

2003

Presiding Officer

We consent

A member of the Scottish Executive

SCHEDULE

Article 9

“SCHEDULE 1

Article 2(1)

PART I

EXCLUDED VARIETIES OF APPLES

Abondance	Dymock Red	Pennard Bitter
Allens Sweet	Early David	Pethyre
Amer de Berthecourt	EB 52	Pig’s Snout
Amer de Torentice	EB 54	Pomme Mettais
Argile Grise	Ecarlatine	Port Wine
Ashton Bitter	Eggleton Styne	Porter’s Perfection
Ashton Brown Jersey	Ellis Bitter	Red Foxwhelp
Backwell Red	Fair Maid of Devon	Red Jersey
Ball’s Bitter Sweet	Fillbarrel	Red Norman
Barbarie Blanche	Four Square	Red Streak
Bedan	Foxwhelp	Redstrake
Belle de Douai	Franqueville	Reine de Hatives
Belle Fille de la Manche	Frederick	Reine des Pommes
Belle Norman	Frequin Audievre	Reinette D’Obry
Bergere	Frequin Tardif	Rouge Bruyere
Binet Rouge	Frequin Tardive de la Sarthe	Rougette Douce
Black Dabinett	Genet Moyle	Royal Jersey
Black Foxwhelp	Gilbert	Royal Somerset
Black Norman	Goddard	Royal Wilding
Black Valls	Green Norman	Sandford Jersey
Blanc Mollet	Gros Doux Blanc	Sauvageon
Bloody Turk	Grosse Launette	Scudamore Crab
Bouteille de Caen	Hagloe Crab	Severn Bank
Bramtot	Hangdown	Sherrington Norman
Bran Rose	Harnette	Silver Cup
Breakwell’s Seedling	Harry Masters Jersey	Skyrmes Kernel
Brimley Bittersweet	Hereford Broadleaf	Slack My Girdle
Brown Thorn	Hereford White	Somerset Brown Jersey
Brown’s Apple	Honeystring	Somerset Red Streak

Broadleaf Norman	Improved Dove	Sops in Wine
Broadley Jersey	Improved Hangdown	St Laurent
Brown Jersey	Improved Kingston Black	Stable Jersey
Brown Snout	Improved Lambrook Pippin	Stembridge Cluster
Broxwood Foxwhelp	Improved Pound	Stembridge Jersey
Bulmer's Norman	Improved Redstreak	Stoke Red
Burrowhill Early	Jackson	Strawberry Norman
Camelot	Jambe de Lievre	Sweet Alford
Captain Broad	John Broad	Sweet Blenheim
Cherry Norman	Jolly Rouge	Sweet Copping
Cherry Pearmain	Killerton Sweet	Tale Sweet
Chisel Jersey	Kingston Black	Tan Harvey
Churchill	Knotted Kernel	Tanners Red
Cider Lady's Finger	Langworthy	Tardive Forestier
Cimetiere	Lavignee	Taunton Fair Maid
Coat Jersey	Le Bret	Taylor's
Collington Bitter Sweet	Lorna Doone	Ten Commandments
Compton Drum	Loyal Drain	Thomas Hunt
Cool Jersey	Major	Tom Putt
Court Royal	Marechal	Tremlett's Bitter
Cow Apple	Maundy	Upright French
Cowarne Red	Medaille d'Or 1	Upright Styre
Crimson King	Medaille d'Or 2	Vagnon Archer
Crimson Victoria	Michelin	Vagon Archer
Croix de Bouelles	Morgan Sweet	Vilberie
Crummy Norman	Moulin a Vent	Wellings Bitter Sweet
Dabinett	Muscadet de Dieppe	White Alphington
De Boutteville	Nehou	White Close Pippin
Des Domaines	Neverblight	White Frequin
Doux Amer	Northwood	White Jersey
Doux Lazon	Oakham Green	White Norman
Doux Normandie	Oisier	Woodbine
Dove	Old Pound	Yarlington Mill
Dufflin	Omont	Yellow Redstreak
Dunkerton Late	Peau de Blaireau	Yellow Styre

Dunkerton's Sweet

Peau de Vache

PART II

EXCLUDED VARIETIES OF PEARS

Arlingham Squash	Flakey Bark	Painted Lady
Barland	Forrest Pear	Parsonage
Barnet	Gin	Pig Pear
Bartestree Squash	Golden Balls	Pine
Bastard Longdon	Goldings	Pint
Bastard Sack	Grandfather Tum(p)	Potato Pear
Billy Williams	Green Horse	Red Huffcap
Black Huffcap	Green Longdon	Red Longdon
Blacksmith	Harley Gum	Red Pear
Blakeney Red	Hartpury Green	Rock
Bloody Bastard	Hastings	Rumblers
Bosbury Scarlet	Hatherley Squash	Sack
Boy Pear	Hellens Early	Sickle Pear
Brandy	Hellens Green	Silver Pear
Brockhill	Hendre Huffcap	Snake Pole
Brown Bess	Heydon	Sow Pear
Brown Russet	High Pear	Speart Pear
Butt	Hillend Green	Staunton Squash
Cannock	Holmer	Stinking Bishop
Chaceley Green	Honey Knob	Swan Egg
Claret	Iron Sides	Taynton Squash
Clipper Dick	Jenkins' Red	Teddington Green
Clusters	Judge Amphlett	Thorn
Coppy	Knapper	Thurston's Red
Cowslip	Lullam	Tumper
Deadboy	Merrylegs	Turner's Barn
Ducksbarn	Moorcroft	Teddington Green
Early Blet	Murrell	White Bache
Early Griffin	Nailer	White Longdon
Early Hay Pear	New Meadow	Winnal's Longdon

Early Longdon	Newbridge	Yellow Huffcap
Early Treacle	Oldfield	Young Heydon

PART III

HORTICULTURAL PRODUCE

VEGETABLES GROWN IN THE OPEN

All vegetables sold for human consumption, including watercress but excluding potatoes.

FRUIT

All soft fruit and orchard fruit including nuts but excluding—

- (a) the varieties listed in Parts I and II of this Schedule;
- (b) hops; and
- (c) grapes.

FLOWERS AND BULBS

All flowers whether cut or in pot, foliage, flower bulbs, corms, tubers and rhizomes.

HARDY AND OTHER NURSERY STOCK

All hardy nursery stock including

- fruit trees, bushes and canes, strawberries for runner production and other fruit stock for transplanting
- roses (including stock for budding)
- shrubs and hedging plants
- ornamental trees and trees for sale for amenity purposes
- perennial herbaceous plants
- aquatic plants

All other nursery stock, seedlings and cuttings for propagation.

PROTECTED CROPS

All crops grown in glasshouses and other forms of protection including pot plants, bedding plants and plants being propagated for growing elsewhere.

MUSHROOMS

All species of mushrooms.

HERBS

All species of herbs.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 1st April 2003, applies throughout Great Britain and further amends the Horticultural Development Council Order 1986 (S.I.1986/1110) (“the principal Order”).

The Order adds five new functions of the Horticultural Development Council established under the principal Order (article 10). It also provides for any person who grows apples or pears (other than certain excluded varieties) for sale or processing into an apple or pear product and who occupies at least two hectares of land planted with at least 50 trees to be included in the definition of “grower” in the principal Order (article 3). Such growers were subject to a charge by the Apple and Pear Research Council until its dissolution by the Apple and Pear Research Council Dissolution Order (S.I. No. 908).

Article 7 sets a maximum charge of £35 per hectare for such growers, and Article 6 provides for their inclusion in the register kept by the Council. Article 4 provides for the membership of the Council to be increased by one to fifteen. Article 5 enables the Council to record the names and addresses of the directors of companies on the register.