STATUTORY INSTRUMENTS

1977 No. 1272

COUNTER-INFLATION

The Counter-Inflation (Price Code) Order 1977

Made - - - -	*27th July* 1977
Laid before Parliament -	*29th July* 1977
Coming into Operation -	*1st August* 1977

The Secretary of State in exercise of the powers conferred by section 2 of the Counter-Inflation Act 1973(**a**), as amended under the Prices Act 1974(**b**) and by the Price Commission Act 1977(**c**), by section 3 of the Remuneration, Charges and Grants Act 1975(**d**) as amended(**c**) and by sections 15(2) and 21(2) of the said Act of 1977 and of all other powers enabling him in that behalf, and having consulted the Price Commission and representatives of consumers, persons experienced in the supply of goods or services, employers and employees and other persons in accordance with subsection (4) of the said section 2, hereby makes the following Order:—

1.—(1) This Order may be cited as the Counter-Inflation (Price Code) Order 1977 and shall come into operation on 1st August 1977.

(2) The Interpretation Act 1889(**e**) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament, and as if for the purposes of section 38 of that Act this Order were an Act of Parliament and the orders revoked by article 3 of this Order were Acts of Parliament thereby repealed.

2. The Price Code prepared by the Secretary of State and set out in the Schedule to this Order shall be the code for the purposes of the Counter-Inflation Act 1973.

3.—(1) Subject to paragraph (2) below, the Counter-Inflation (Price Code) Order 1976(**f**) and the Counter-Inflation (Price Code) Order 1976 (Amendment) Order 1976(**g**) are hereby revoked.

(**a**) 1973 c. 9. (**b**) *See* S.I. 1974/1218 (1974 II, p. 4631).
(**c**) 1977 c. 33. (**d**) 1975 c. 57. (**e**) 1889 c. 63.
(**f**) S.I. 1976/1170 (1976 II, p. 3226). (**g**) S.I. 1976/2207 (1976 III, p. 6190).

(2) Where, in relation to any product, a certificate given by the Secretary of State under paragraph 103 of the code set out in Schedule 1 to the Counter-Inflation (Price Code) Order 1976 or a certificate referred to in article 3(3) of that order is in force when this Order comes into operation, that certificate shall continue to have effect for so long as it remains in force as if it were given under paragraph 24 of the Code set out in the Schedule to this Order and as if references therein to any provision of the first mentioned code or of the code first mentioned in the said article were references to the corresponding provision of the Code set out in the Schedule to this Order.

Roy Hattersley,

Secretary of State for Prices and Consumer Protection.

27th July 1977.

(*Article 2*)

THE SCHEDULE

THE PRICE CODE

PART I

PURPOSE, PRINCIPLES AND SCOPE

Paragraph

Paragraph

Banks, finance houses and similar enterprises

Services

Non-profit-making organisations

PART VII

GENERAL

PART VIII

PAY SANCTION

THE PRICE CODE

PART I

PURPOSE, PRINCIPLES AND SCOPE

Purpose

Purpose of the Code

1. The Code has a dual purpose. First, the Price Commission are required to exercise their functions so as to ensure that it is implemented. Secondly, all those concerned with the determination of prices and charges should have regard to it.

Who is concerned with the Code?

2. The Code is therefore addressed both to the Commission and to all those concerned with price and charge determination.

Principles

General principles

3. The general principles are—

(*a*) to restrain prices by controls on net profit margins and gross percentage margins while safeguarding and encouraging investment;

(*b*) to reinforce the effects of competition, and to secure its full benefits in the general level of prices;

(*c*) to provide a sanction against the payment of remuneration in excess of specified limits.

Scope

Scope of control

4. With the exceptions specified in paragraphs 5 to 9 below, the margin controls relate to all prices of goods and services supplied in the course of business on the home market.

Prices and charges outside control

5. The control on net profit margins does not relate to the following prices and charges—

(*a*) prices for the sale of goods or charges for the performance of services which are supplied, whether by the person selling or performing them or another, outside the United Kingdom or to persons or in relation to property outside the United Kingdom;

(*b*) prices for the sale of any goods—

(i) which have been produced or manufactured outside the United Kingdom; and

(ii) which have not been subjected to any process in the United Kingdom other than packing or repacking, cleaning and sterilising or, in the case of crude oil, stabilisation; and

(iii) which have not been sold to any person in the United Kingdom;

and charges for the performance of any services in the United Kingdom or in relation to any property in the United Kingdom which are performed for any person outside the United Kingdom;

(*c*) prices of goods and services where the application of the control would be inconsistent with an international agreement or arrangement between states or organisations of states;

(*d*) prices at sales by auction, where such sales are a normal practice in the particular trade;

(*e*) prices of goods at the point of sale on a commodity market in the United Kingdom such as the London Metal Exchange or prices directly determined by reference to such markets;

(*f*) prices for the sale of scrap metal;

(*g*) prices of second-hand goods (other than second-hand road vehicles sold by distributors);

(*h*) charges for—

(i) the carriage of goods or passengers on international journeys;

(ii) the carriage of goods or passengers on other journeys by sea, excluding charges which are determined by a tariff of general application;

(iii) air navigation relating wholly or mainly to international traffic, and the provision of landing and related facilities for aircraft;

(iv) harbour operations within the harbour area (other than charges mentioned in head (v) below) made by a harbour authority within the meaning of the Harbours Act 1964(**a**) or the Harbours Act (Northern Ireland) 1970(**b**), as the case may be;

(v) ship, passenger and goods dues in relation to which an objection may be made to the National Ports Council under section 31 of the said Act of 1964 or to the Department of Commerce under section 7 of the said Act of 1970 and charges exigible by virtue of section 29 of the said Act of 1964 (local light dues); and

(vi) international mail, giro, remittance and telecommunications services;

(*i*) charges for services provided by shipbrokers;

(*j*) charges for package holidays taken outside the United Kingdom;

(*k*) prices of ethical medicines supplied to the United Kingdom market to the extent that regulation of their prices is within the scope of any agreement relating to those prices made between the Secretary of State for Social Services and representatives of manufacturers of those medicines; but only so long as such an agreement is in force;

(*l*) prices in Government contracts for warlike and other stores and services which are within the agreement between Her Majesty's Government and industry governing the pricing of, and control of profit from, non-competitive contracts; these prices will be subject to the controls provided in that agreement;

(*m*) insurance premiums, which are subject to restriction by the Secretary of State for Trade;

(*n*) taxi fares, where subject to control by the Home Secretary or the Secretary of State for Scotland;

(*o*) charges payable to returning officers in connection with Parliamentary elections, determined under the Representation of the People Act 1949(**c**);

(*p*) bus fares which are fixed by conditions attached to a road service licence granted under section 135 of the Road Traffic Act 1960(**d**) or a permit granted under section 30 of the Transport Act 1968(**e**) and charges made in respect of the use of vehicles under authorisations granted under section 2(3)(*b*) of the Passenger Vehicles (Experimental Areas) Act 1977(**f**);

(*q*) charges for carriage by air transport for which an air transport licence granted by the Civil Aviation Authority is by section 21 of the Civil Aviation Act 1971(**g**) required to be held by the operator;

(*r*) subscriptions and certain prices charged by non-profit-making organisations as in paragraphs 64 to 66;

(*s*) charges being payments in respect of services provided under or pursuant to Part IV of the National Health Service Act 1946(**h**) or Part IV of the National Health Service (Scotland) Act 1947(**i**) to persons providing such services;

(**a**) 1964 c. 40. (**b**) 1970 c. 1 (N.I.). (**c**) 1949 c. 68.
(**d**) 1960 c. 16. (**e**) 1968 c. 73. (**f**) 1977 c. 21.
(**g**) 1971 c. 75. (**h**) 1946 c. 81. (**i**) 1947 c. 27.

(*t*) charges for services to the Post Office by sub-postmasters;

(*u*) prices for the sale of tops of wool and other fine animal hair;

(*v*) prices of tallow, meat and bone-meal processed from waste fat, bone and offal;

(*w*) charges made by the British Airports Authority and the British Railways Board for the parking of vehicles;

(*x*) charges of the Post Office for services of a description provided only to a government department; and

(*y*) charges for the services of local authorities and local authority joint boards.

Food

6. The prices of manufactured food and drink, like those of manufactured products generally, are within the scope of the control as are those of semi-processed foodstuffs such as butter, cheese and quick-frozen vegetables.

Agriculture

7.—(1) The prices paid to United Kingdom producers or producers' organisations or to overseas suppliers for fresh foods and similar products, which are subject to fluctuations on world and United Kingdom markets because of seasonal factors or changes in the relationship between supply and demand, are not controlled. This applies in particular to meat, including bacon and poultry, fish, eggs, fruit and vegetables. However, enterprises which resell these products, whether home-produced or imported, at any subsequent stage will be subject to control.

(2) The price for the sale of raw beet sugar for further refining is not controlled.

(3) The price for the sale of whole hams in cans is not controlled.

Milk for liquid consumption

8. The retail price of milk for liquid consumption and the margins of milk distributors will continue to be subject to the existing controls by the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland. So long as these controls apply, the price of milk for liquid consumption and distributors' margins on milk for liquid consumption will not be subject to the Code.

Other animal and vegetable products

9. What is said in paragraph 7(1) in relation to prices paid for fresh foods applies also to prices of other primary products of animal or vegetable origin which are subject to similar fluctuations.

PART II

NET PROFIT MARGINS

Reference level

10.—(1) Prices should be determined so as to secure that net profit margins, as defined in paragraph 11, do not in any period of 12 months exceed the reference level.

(2) For the purposes of the Code, subject to sub-paragraph (3), the "reference level" means the simple average level of the net profit margins in either—

(*a*) the best two of the last five years of account of the unit for profit margin control ending not later than 30th April 1973, or

(*b*) the best two of the last eight years of account for that unit ending not later than 31st July 1976,

as the enterprise may choose; and where an enterprise applies a reference level determined under head (*b*) in any period, subject to the provisions of the Code apart from this sub-paragraph, it shall apply that reference level in each subsequent period.

(3) For the purposes of sub-paragraph (2)(*b*) there shall be left out of account any excess of the net profit margin over the reference level determined under the code in force at the time.

(4) For the purposes of this paragraph and paragraphs 11 to 13, 33, 35, 38 and 39, references to any period of 12 months shall, in relation to an enterprise which has an accounting period of, or periods which in the aggregate amount to, other than 12 months, be construed as a reference to the accounting period or, as the case may be, the aggregate of the accounting periods of that enterprise which is nearest to 12 months.

Net profit margin

11.—(1) "Net profit margin" means the margin of net profit expressed as a percentage of turnover. "Net profit" means the net profit, determined in accordance with generally accepted accounting principles consistently applied by the enterprise concerned, which arises from trading operations within the control after taking into account all expenses of conducting and financing them, including the additional payments mentioned in sub-paragraph (2), depreciation as provided in paragraph 26 and, in the case of enterprises applying paragraph 27, interest within that paragraph, but before deducting corporation tax or income tax.

(2) The additional payments referred to in sub-paragraph (1) are additional payments in accordance with section 26 of the Independent Broadcasting Authority Act 1973(**a**) (which relates to rental payments by television programme contractors to the Independent Broadcasting Authority) as substituted by section 1 of the Independent Broadcasting Authority Act 1974(**b**).

Stock relief

12.—(1) In determining net profit for the purposes of the Code (except paragraph 38(1)) in relation to any period of 12 months ending after 31st July 1976, an enterprise may deduct an amount in respect of increases in the value of stock ("stock value increase") determined under this paragraph; and where an enterprise has obtained relief under this paragraph or under paragraph 82 of the 1976 Code in any period—

(*a*) it shall also apply this paragraph in each similar period ending within the 13 months following the first such period; and

(*b*) after the expiry of the last period mentioned in sub-paragraph (*a*), may apply this paragraph as if it had not previously obtained relief under this paragraph or paragraph 82 of the 1976 Code;

and for that purpose references to stock value increase include references to a decrease in the value of stock and references to the deduction of stock value increase include references to the addition of such a decrease.

(2) "stock value increase", in the case of any enterprise, means 70 per cent of the excess of the value of the stock at the end of a period of 12 months chosen by the enterprise for the purpose of calculating the net profit margin under paragraph 10 over the value of stock at the beginning of that period; and decrease in the value of stock shall be determined in a similar manner; and in applying sub-paragraph (1) above no account shall be taken of—

(*a*) any decrease in the value of stock below the value of stock at the beginning of the first period by reference to which the enterprise has applied this paragraph or paragraph 82 of the 1976 Code; and

(*b*) any amount by which the sum of decreases in the value of stock exceeds the sum of increases in the value of stock, being increases in respect of which the enterprise has obtained relief under that sub-paragraph or under paragraph 82 of the 1976 Code.

(**a**) 1973 c. 19. (**b**) 1974 c. 16.

(3) For the purposes of this paragraph, "stock" includes work in progress but does not include any description of security, and the value of stock shall be determined in accordance with generally accepted accounting principles consistently applied by the enterprise.

Action where profit margin is likely to be exceeded

13.—(1) Where, in any period of 12 months, the reference level—

(*a*) has been exceeded; or

(*b*) in the light of interim accounts or other evidence, is likely to be exceeded;

and the circumstances mentioned in sub-paragraph (2) have not arisen, price reductions should be made, provided that account has been taken of distorting factors. The reductions should be sufficient to eliminate the actual or expected excess over the reference level as soon as reasonably possible, and to offset any excess which has already arisen in a period subsequent to 30th April 1973 over the level determined from time to time under such of the orders referred to in paragraph 68 as were in force at the time in question.

(2) The circumstances referred to in sub-paragraph (1) arise where, in any period of 12 months following that mentioned in sub-paragraph (1), the reference level—

(*a*) has not been reached; or

(*b*) in the light of interim accounts or other evidence, is not likely to be reached, and the amount of the actual or expected shortfall is equal to or exceeds the amount of the actual or expected excess mentioned in sub-paragraph (1) above.

(3) Reductions under sub-paragraph (1) need not be made until an amount has been recovered which corresponds with the amount giving rise to any deficiency in any period of 12 months ending after 31st July 1976 below either of the returns mentioned in paragraph 38(3).

Unit for profit margins

14. In calculating the net profit margin under paragraph 10, the unit for profit margin control shall be either—

(*a*) the enterprise as a whole; or

(*b*) the distribution activity of the enterprise or its manufacturing activity or its activity of providing services or an activity comprising the two last-mentioned activities; or

(*c*) a unit of an enterprise, being a separate constituent company or sub-division, provided that the Commission are satisfied that:

(i) the unit constituted, before 30th April 1973, and still constitutes a separate unit immediately below the level of the main Board of the enterprise as a whole for management, operational and accounting purposes. In applying the test in this sub-paragraph the Commission may disregard an intermediate non-trading company; and

(ii) the accounts of all such units, if combined with one another, can be reconciled with those of the enterprise as a whole; and are not materially distorted by transactions conducted otherwise than on arm's length terms; or

(*d*) in a case where the Commission, having regard to any of the matters mentioned in heads (*a*), (*c*) and (*d*) of paragraph 22, are satisfied that in the circumstances of an enterprise it is appropriate that a unit of the enterprise, which would fall within sub-paragraph (*c*) above if it had constituted a separate unit before 30th April 1973, should be the unit for profit margin control, that unit.

The same unit should then be adhered to for all the purposes of the Code to which the net profit margin is relevant, except paragraph 38(1).

Meaning of 'enterprise as a whole'

15.—(1) For the purpose of paragraph 14—

(*a*) where the enterprise is a company, 'the enterprise as a whole' means the company or (where the company is a member of a group) all the companies in the group, carrying on business in the United Kingdom; and

(*b*) where the enterprise is a partnership or other unincorporated body of persons, means the partnership or body in question.

(2) In sub-paragraph (1) above—

(*a*) 'company' includes any body corporate; and

(*b*) 'group' means the person (including a company) having control of a company together with all companies directly or indirectly controlled by him.

Allocation of profits to controlled prices

16.—(1) Allocation of profits between sales to which the control on net profit margins relates and those to which it does not may be necessary where an enterprise—

(*a*) sells in both home and overseas markets; or

(*b*) makes sales at home, some of which are within and some outside the scope of the control.

(2) Where such an enterprise—

(*a*) has made allocations which represent a fair division of profits in its circumstances, over part or all of the field; and

(*b*) has done so on a consistent basis;

it should continue to use this basis for all calculations relevant to the Code. In other cases enterprises may make such allocations by dividing profits in proportion to the value of sales in each area, or on any other basis which represents good accounting practice, provided that they adhere to the chosen basis for all calculations relevant to the Code.

Transfer prices

17. Where the Commission are satisfied that prices, either of purchases or of sales which an enterprise proposes to regard as a basis for the calculation of net profit margins, differ from what they would be if the goods or services had been transferred on an arm's length basis, they may substitute modified profit margins which in their judgement fairly reflect what would be appropriate on that basis.

Enterprises not trading for five years before 1st May 1973

Modified base period for profit margin calculation

18. Where an enterprise has traded for less than five complete years of account before 1st May 1973, or has traded at a loss in one or more of those years, the reference level determined under paragraph 10(2)(*a*) may be calculated as follows—

(*a*) if there have been four years of trading before 1st May 1973, the average of the best two; if three or two years, the best year;

(*b*) if there have been less than two years of trading before 1st May 1973, the limitations on profit margins will not apply except where the enterprise chooses to apply paragraph 10(2)(*b*); and

(*c*) any year in which an enterprise made a loss may be treated as equivalent to a year of no trading and sub-paragraphs (*a*) and (*b*) may be applied accordingly.

Changes in membership of groups of companies etc.

New enterprises

19.—(1) Subject to paragraph (2) below, the reference level of an enterprise shall not be liable to variation by virtue only of a change in the ownership of the business carried on by the enterprise.

(2) Where a new enterprise is formed from a reconstruction or amalgamation of existing enterprises, in calculating the reference level of the new enterprise under paragraph 10, the net profit margin shall be determined in accordance with paragraph 11 by expressing the aggregate profits of the constituent enterprises as a percentage of their aggregate turnover.

Acquisitions and disposals

20. Where at any time before or after this Code comes into operation an enterprise acquires a new undertaking or disposes of an existing undertaking, then, subject to paragraph 21, in calculating net profit margins and reference levels in relation to the enterprise after the acquisition or disposal, the sales and profits or losses of the undertaking acquired (before and after the acquisition) shall be included and the sales and profits or losses of the undertaking disposed of (before and after the disposal) shall be excluded.

Acquisitions since 29th April 1973

21.—(1) Where an enterprise has acquired a new undertaking after 29th April 1973—

(*a*) the words "constituted, before 30th April 1973, and still" in paragraph 14(*c*) will not apply in relation to the new undertaking; and

(*b*) the new undertaking may be integrated into a unit for profit margin control which has been or could have been established under paragraph 14, so long as the conditions of paragraph 14(*b*) or (*c*) are or continue to be met where applicable.

(2) Where the new undertaking is integrated into such a unit, the unit's reference level may be adjusted to include an element reflecting any relief which the new undertaking could have obtained under paragraph 23 immediately before the acquisition (paragraph 23 being assumed, in the case of an acquisition before the date when this Code comes into operation, to have been in force at the relevant time).

(3) This paragraph will not apply unless—

(*a*) the acquisition of the new undertaking is the result of a transaction at arm's length; and

(*b*) the new undertaking existed outside the enterprise as a whole before the transaction.

Reliefs

Modification of reference levels

22.—(1) The Commission may permit a modification of the reference level if they are satisfied that, in the circumstances of the enterprise, a modification is justified.

(2) When considering whether a modification is justified the Commission shall have regard to the matters mentioned in section 2(2) of the Price Commission Act 1977 and any other matter, being matters which appear to them to be relevant, including such of the following as may apply—

(*a*) the enterprise was substantially reconstructed in or since the base period;

(*b*) the base period was not representative for the enterprise;

(*c*) there has been a substantial change in the character or activities of the enterprise since the base period;

(*d*) there has been a substantial change in the relationship between the unit for profit margin control concerned and the enterprise as a whole.

Relief for low profits

23.—(1) In a case where the Commission are satisfied that an enterprise cannot, without exceeding its reference level and excluding any increase arising from the application of paragraph 46, obtain the greater of—

(*a*) a return on capital of 12½ per cent, and

(*b*) a return on turnover of 3 per cent,

the reference level shall, for so long as may be necessary, be taken to be such a level as would permit such return to be obtained.

(2) In this paragraph, 'capital' means the net assets employed, excluding any part of them which is represented by borrowings on which interest is to be taken into account under paragraphs 27 to 30 and excluding goodwill. The value of the assets concerned shall be determined in accordance with generally accepted accounting principles consistently applied by the enterprise concerned but should be based on the historic costs of the assets except that where, in annual accounts for a year ended on or before 30th September 1972, the enterprise has revalued an asset, the value may be based on the value of the asset shown in those accounts.

Special cases

Shortages and balance of payments

24. Where—

(*a*) having regard to the need to alleviate the shortage or threatened shortage referred to below, the Secretary of State has certified in relation to any product or commodity that—

(i) there is a severe shortage of supplies in the domestic market or serious threat of such shortage; and

(ii) significant damage is being thereby caused or threatened to the interests of particular industries or of consumers in the United Kingdom; or

(*b*) having regard to the need to remove or reduce a significant adverse effect on the United Kingdom balance of payments or a serious threat thereof, the Secretary of State has certified, in relation to any product or commodity, that such an adverse effect or threat exists;

then, for so long as the certificate remains in force, such departures from the provisions of the Code relating to net profit margins shall be permitted by the Commission as the Secretary of State may specify in the certificate.

Mergers and acquisitions

25. Where, in relation to the acquisition of any company by any other company or of any merger between companies, the Secretary of State is of the opinion that the acquisition or merger is of special importance to a particular industry or to consumers in the United Kingdom and is satisfied that the provisions of the Code relating to net profit margins have, or might have, a significant adverse effect, the Secretary of State may so certify in relation to enterprises of any description or to any enterprise in circumstances of any description; and, for so long as the certificate remains in force, such departures from the provisions of the Code relating to net profit margins shall be permitted by the Commission as the Secretary of State may specify in the certificate.

Supplementary provisions

Depreciation

26. For the purposes of the Code, 'depreciation' means the aggregate amount of depreciation, calculated in accordance with generally accepted accounting principles

consistently applied by the enterprise, for the period to which the calculation relates in respect of assets of the enterprise which were used in the activity concerned in that period based—

(*a*) where the calculation of depreciation is made by reference to a period ending after 31st July 1976, on, at the option of the enterprise, either—

(i) the historic cost of the asset or a revaluation of the asset calculated in accordance with generally accepted accounting principles and which has appeared in annual accounts for a period ending on or before 30th September 1972 increased, in either case, by a multiple of 1.4; or

(ii) a revaluation of the asset calculated in accordance with generally accepted accounting principles, and having appeared in annual accounts; and

(*b*) where that calculation is made by reference to a period ending before 1st August 1976, on either—

(i) the historic cost of the asset; or

(ii) a revaluation of the asset calculated in accordance with generally accepted accounting principles and having appeared in annual accounts for a period ending on or before 30th September 1972.

Interest—general rule

27.—(1) Except where an enterprise as a whole within the meaning of paragraph 15 elects under paragraph 28, interest shall be taken into account for the purposes of the net profit margin control, except interest—

(*a*) which is a distribution of profits; or

(*b*) which is payable on a loan by another unit of the same enterprise and—

(i) which is not required for the purposes of the principal activity of the unit by or for which it is paid, or

(ii) which is at a rate higher than that which would have been charged if the transaction had been at arm's length; or

(*c*) which, although expressed as interest, is capital expenditure; or

(*d*) which relates to the acquisition after 29th April 1973 of a new member in a group of companies.

(2) In taking interest into account under sub-paragraph (1) above, interest received shall be treated as part of the turnover of the profit margin unit by or for which it is received.

Interest to be disregarded if enterprise so elects

28.—(1) Subject to the following provisions of this paragraph, where an enterprise, other than an enterprise within paragraphs 53 to 62 or an enterprise within paragraph 130(1) of the 1976 Code, so elects in accordance with paragraph 29, interest shall not be taken into account for the purposes of any provision of the Code.

(2) For the purposes of paragraphs 10(2), 23(1)(*b*) and 38(1) and (3)(*b*), interest other than interest mentioned in heads (*a*) to (*d*) of paragraph 27 shall be taken into account in determining net profit margins.

(3) Interest falling within paragraph 63(2) shall be taken into account for all purposes of the Code other than the adjustment of the reference level under sub-paragraph (4) below.

(4) Subject to sub-paragraph (3) above, the reference level determined under paragraph 10(2) for any enterprise applying this paragraph shall be adjusted, if not previously adjusted pursuant to paragraph 19(5) of the 1976 Code, by the addition or subtraction, as the case may require, of the percentage which interest relating to trading operations within the control for the latest complete year of account bears to turnover for the same period.

Time for election under paragraph 28

29.—(1) An election under paragraph 28—

(*a*) shall be irrevocable,

(*b*) shall apply to all units of the enterprise,

(*c*) shall be exercised in the case of an enterprise required by an order under section 15 of the Counter-Inflation Act 1973 to furnish periodical returns to the Commission not later than the earlier of the date when it first furnishes such a return after 30th September 1977 and 31st December 1977 and in the case of an enterprise not so required not later than the last-mentioned date.

(2) Where an enterprise has made an election under paragraph 19(2) of the 1976 Code, the enterprise may not later than the time specified in sub-paragraph (1)(c) above revoke that earlier election and apply paragraph 27 above.

Acquisitions and mergers

30.—(1) Where an enterprise acquires control of any undertaking, interest shall be treated for the purposes of the net profit margin control in relation to that undertaking as it fell to be treated in relation to that enterprise immediately before the acquisition of control.

(2) Where any enterprises are amalgamated or reconstructed, the enterprises resulting from the amalgamation or reconstruction may make an election under paragraph 28 as if for the requirement in sub-paragraph 29(1)(*c*) there were substituted a requirement to exercise the election not later than the expiry of three months beginning with the date of formation of any enterprise resulting from the amalgamation or reconstruction.

Temporary employment subsidy and regional employment premiums etc.

31. In any calculation under the Code in relation to any period ending after 31st July 1976 no account shall be taken of—

(*a*) grant made pursuant to arrangements under section 5(1) of the Employment and Training Act 1973(**a**);

(*b*) payments made under section 26(1) of the Finance Act 1967(**b**); and

(*c*) grant made under Part I or Part II of the Industry Act 1972(**c**).

Assistance under enactments

32. In the application of the Code to—

(*a*) any enterprise being a person to whom an advance by way of grant is made under the Highlands and Islands Shipping Services Act 1960(**d**); or

(*b*) the Civil Aviation Authority;

no account shall be taken of any grant made, in the case of (*a*), to the enterprise in pursuance of the said Act of 1960 or, in the case of (*b*), to the Authority in pursuance of section 10(1)(*a*) of the Civil Aviation Act 1971(**e**).

PART III

GROSS PERCENTAGE MARGINS OF DISTRIBUTORS

Distribution

33.—(1) In the determination of prices for sales within the United Kingdom, wholesalers, retailers and other enterprises engaged in distribution should ensure that their gross percentage margins in any period of 12 months do not exceed the proportion specified in sub-paragraph (2) of the level of the gross percentage margin in either—

(**a**) 1973 c. 50. (**b**) 1967 c. 54. (**c**) 1972 c. 63.
(**d**) 1960 c. 31. (**e**) 1971 c. 75.

(*a*) the last complete account year of the enterprise ending on or before 30th April 1973; or

(*b*) a 12-month period ending between 30th October 1972 and 30th April 1973 for which separate accounts are or can be made available;

less in either case an appropriate reduction for the abolition of SET:

Provided that where an enterprise began trading after 30th April 1972, there shall be substituted the margin for any continuous period of 12 months falling within the first two years of trading and for which separate accounts are, or can be made, available.

(2) The proportion of the gross percentage margin referred to in sub-paragraph (1) will be:

(*a*) 100 per cent. for any period before 6th May 1974;

(*b*) 90 per cent. for any period beginning on or after 6th May 1974.

(3) A figure of 100 per cent. and not 90 per cent. applies—

(*a*) for any period beginning on or after 6th May 1974 to—

(i) distributors engaged mainly in retailing with total annual sales of less than £250,000;

(ii) other distributors with total annual sales of less than £500,000; and

(iii) all sales of goods exempted from restrictions on resale price maintenance by order under section 5 of the Resale Prices Act 1964(a); and

(*b*) for any period beginning on or after 1st August 1976 to—

(i) distributors engaged mainly in retailing with total annual sales of less than £500,000; and

(ii) other distributors with total annual sales of less than £1,000,000; and

(*c*) for any period beginning on or after 1st August 1977 to—

(i) distributors engaged mainly in retailing with total annual sales of less than £600,000; and

(ii) other distributors with total annual sales of less than £1,200,000.

Safeguard for net profit margins

34. Where the net profit margin of the enterprise as defined in paragraphs 14 and 15 is reduced or is likely to be reduced to a level more than three-twentieths below the reference level, gross percentage margins may be increased (though not above 115 per cent. of the figure determined under paragraph 33(1)) to the extent necessary to restore the net profit margin to a level three-twentieths below the reference level. No increase under paragraph 46 shall be taken into account in applying this paragraph but an increase in the appropriate net profit margin reference level and level of gross percentage margin may also be made under that paragraph.

Gross percentage margin

35.—(1) For all the purposes of the Code 'gross percentage margin' in the case of an enterprise which has traded for not less than two years means the aggregate difference between the cost to the distributor of all the goods he sells in the home market in any period of 12 months and the value of his sales of those goods in that period, expressed as a percentage of the sales value. The difference should be calculated according to the normal accounting practice consistently applied by the enterprise.

(2) In determining its gross percentage margin, an enterprise may obtain relief under paragraph 12 and, in applying that paragraph—

(*a*) the amount of any increase or decrease in the value of stock determined under that paragraph for any period shall be taken into account; and

(*b*) references therein to an enterprise shall be construed as references to an enterprise as defined in paragraph 41.

(a) 1964 c. 58.

Distributors' stocks

36. In most cases prices determined by distributive enterprises will have to take account of the cost of goods used from stock for sale. Such enterprises should adhere to the practice they have followed consistently for pricing purposes in arriving at such costs and at the relevant gross percentage margins.

Repricing

37.—(1) Retailers should not increase the prices of goods that are or have been displayed for sale by reference to increases in replacement costs, even if such price increases would otherwise be permitted by the Code.

(2) This paragraph does not apply—

(*a*) to any particular description of goods on which the average rate of annual stockturn for the distribution activities of the enterprise as a whole is less than 10; or

(*b*) to price increases directly resulting from the withdrawal of special offers; or

(*c*) to goods exempted from restrictions on resale price maintenance by an order under section 5 of the Resale Prices Act 1964; or

(*d*) where the Commission are satisfied, after consulting representative bodies, that the effect on prices of applying the paragraph would be contrary to consumers' interests.

Distributors making low profits

38.—(1) An enterprise engaged in distribution may increase prices to cover its expenses, being expenses referred to in paragraph 11(1), plus a margin (excluding any increase under paragraph 46) consisting of an amount equal in any period of 12 months to 2 per cent. of turnover during that period, notwithstanding the limitation on gross percentage margins.

(2) Price increases may not be made under this paragraph if they cause the profit margin reference level referred to in paragraphs 10 to 23 to be exceeded.

(3) Where the Commission are satisfied that the net profit margin of an enterprise (excluding any increase arising from the application of paragraph 46) represents less than the greater of—

(*a*) a return of 10 per cent. on capital, and

(*b*) a return of 2 per cent. on turnover,

none of the provisions relating to the control of gross percentage margins shall be applied so as to prevent such a return from being obtained.

Action where gross or net percentage margins are likely to be exceeded

39.—(1) Where, in any period of 12 months—

(*a*) a distributor's net profit margin or gross percentage margin has exceeded the level allowed under the Code; or

(*b*) in the light of interim accounts or other evidence, that level is likely to be exceeded;

and the circumstances mentioned in sub-paragraph (2) have not arisen, price reductions should be made, provided that account is taken of distorting factors. The reduction should be sufficient to eliminate the actual or expected increase over the permitted level as soon as reasonably possible, and to offset any excess which has already arisen in a period subsequent to 30th April 1973 over the level determined from time to time under such of the orders referred to in paragraph 68 as were in force at the time in question.

(2) The circumstances mentioned in sub-paragraph (1) arise where, in any period of 12 months following that mentioned in sub-paragraph (1), the net profit margin reference level or gross percentage margin—

(*a*) has not been reached; or

(*b*) in the light of interim accounts or other evidence is not likely to be reached,

and the amount of the actual or expected shortfall is equal to or exceeds the amount of the actual or expected excess mentioned in sub-paragraph (1) above.

(3) Reductions under sub-paragraph (1) need not be made until an amount has been recovered which corresponds with the amount giving rise to any deficiency in any period of 12 months ending after 31st July 1976 below either of the returns mentioned in paragraph 38(3).

Modification of permitted gross percentage margins

40.—(1) The Commission may permit a modification of the gross percentage margin ascertained under paragraph 33 if they are satisfied that in the circumstances of the enterprise the modification is justified.

(2) When considering whether a modification is justified, the Commission shall have regard to the matters mentioned in section 2(2) of the Price Commission Act 1977(**a**) and any other matter, being matters which appear to them to be relevant, including such of the following as may apply—

(*a*) that the base period was not representative for the enterprise;

(*b*) that since the base period there has been a substantial change in—

(i) the character of the enterprise,

(ii) the description or descriptions of goods sold by it, or

(iii) the proportion which any description of such goods bears to any other description of such goods.

Definition of enterprise

41. For the purpose of this part of the Code except paragraph 38(3), an enterprise means either an enterprise as a whole of a separate constituent company or sub-division provided that in the latter case separate accounts for such sub-divisions—

(*a*) are or can be made available for all relevant periods,

(*b*) are not materially distorted by transactions conducted otherwise than on arm's length terms, and

(*c*) would, if combined with one another and with the accounts of all other activities or transactions of the enterprise, produce results consistent with those shown by the accounts of the enterprise taken as a whole.

Mixed enterprises

42. Where the activities of an enterprise are not confined to distribution but include manufacturing or the provision of services, distribution must be treated separately for the purposes of the gross percentage margin control unless separate accounts satisfying paragraph 41 cannot be made available for that activity. Where these activities are not treated separately, the main activity of the enterprise will determine whether the provisions of the Code relating to distribution or to manufacturing and services apply.

PART IV

INVESTMENT

Relief for investment

43. Enterprises may increase net profit margin reference levels and the levels of gross percentage margins by reference to their estimated capital expenditure on investment in assets physically located (or, in the case of road vehicles, based) in the United Kingdom, in accordance with the provisions of paragraphs 44 to 47.

(**a**) 1977 c. 33.

Meaning of 'expenditure on investment'

44.—(1) 'Expenditure on investment' means expenditure, approved in the case of a company by the board of directors, which it is estimated will actually become due and payable in the investment year (any estimate being revised from time to time on the basis of fact or of revised estimates, as circumstances may require) being—

(*a*) in the case of the owner, capital expenditure on new and second-hand plant and machinery except—

(i) plant and machinery which is let under a leasing or hiring agreement for not less than one year and on which the benefit of relief under paragraph 46 is transferred by the owner to the lessee or hirer, and

(ii) plant and machinery which is let under a hire-purchase agreement or sold under a conditional sale agreement;

(*b*) in the case of a lessee or hirer under a leasing or hiring agreement for not less than one year, capital expenditure by the owner on plant and machinery in a case where the owner has transferred to him the benefit of relief within sub-paragraph (2) below;

(*c*) in the case of a hirer under a hire-purchase agreement or the purchaser under a conditional sale agreement, an amount equal to the capital expenditure by the owner on the plant and machinery covered by the agreement;

(*d*) capital expenditure on the construction of buildings; and

(*e*) capital expenditure on the acquisition of buildings for occupation by the enterprise,

less, in any case, the disposal value of such plant, machinery and buildings (calculated, in the case of plant or machinery the subject of an agreement within (*b*) above, in accordance with sub-paragraph (2)) disposed of in the investment year by the person who would be entitled to relief under paragraph 46 if the asset were acquired by him at the time of its disposal; and, where relief has been obtained by virtue of head (*b*) or (*c*) above, the termination of the agreement in question (otherwise, in the case of a hire-purchase or conditional sale agreement, than by due performance of the agreement) shall be treated as a disposal by the lessee, hirer or purchaser as the case may be:

Provided that—

(i) expenditure relating to trading operations outside the control (except by virtue only of paragraph 5(*a*)) shall be left out of account;

(ii) expenditure relating to ethical medicines of which the prices are outside the control by virtue of paragraph 5(*a*) shall be left out of account if their prices would, if they were sold in the United Kingdom market, be outside the control by virtue of paragraph 5(*k*); and

(iii) expenditure which cannot be appropriated to a distribution activity shall be apportioned in proportion to the turnover of all the activities concerned in the year of account ended not more than 12 months before the beginning of the investment year.

(2) In a case falling within head (*b*) of sub-paragraph (1) above, relief shall be calculated under paragraph 46, and it shall be assumed for the purposes of the calculation in a case where the benefit of relief under that paragraph has been transferred by the owner in respect of a leasing or hiring agreement—

(*a*) that the expenditure on investment is the capital expenditure first incurred by the owner less an amount equal to the sum of the payments made to him in respect of the leasing or hiring under any previous agreement; and

(*b*) that the disposal value of the plant or machinery for the purposes of that sub-paragraph shall be the capital expenditure first incurred by the owner less an amount equal to the sum of the payments made to him in respect of the leasing or hiring under the agreement in question and under any previous agreement.

(3) In this paragraph, 'buildings' means industrial buildings and warehouses and, in the case of an enterprise carrying on a distribution activity, buildings occupied by it

for the purpose of storing goods and retail shops occupied by it, and 'plant and machinery' does not include television sets for domestic use or mechanically propelled vehicles other than—

(*a*) vehicles of a construction primarily suited for the conveyance of goods or burden of any description;

(*b*) vehicles of a type not commonly used as private vehicles and unsuitable to be so used; and

(*c*) vehicles provided wholly or mainly for hire to, or for the carriage of, members of the public in the ordinary course of a trade.

(4) Where the Commission are satisfied that expenditure within heads (*a*) to (*e*) of sub-paragraph (1) above or the disposal value of the plant, machinery and buildings mentioned in that sub-paragraph differs from what it would be if the expenditure had been incurred, or the plant, machinery and buildings had been disposed of, on an arm's length basis, they may substitute modified expenditure or a disposal value, as the case may be, which in their judgment fairly reflects what would be appropriate on that basis.

Other definitions relating to investment relief

45.—(1) 'Investment year' means a period of 12 months chosen by the enterprise—

(*a*) in the case of an enterprise which has not obtained relief under paragraph 98 of the 1976 Code, beginning on a date not earlier than nine months before, and not later than, the beginning of the relief year, being a date after 31st December 1976; and

(*b*) in the case of any other enterprise, beginning immediately after its investment year under the said paragraph 98;

and, in either case, any consecutive period of 12 months.

(2) 'Relief year' means a period of 12 months chosen by the enterprise—

(*a*) in the case of an enterprise which is required to furnish periodical returns pursuant to an order under section 15 of the Counter-Inflation Act 1973 and which has not obtained relief under paragraph 98 of the 1976 Code, beginning not earlier than 56 days after the enterprise concerned has informed the Commission (whether before or after the Code comes into operation) that it intends to apply this paragraph;

(*b*) in the case of an enterprise which is required to furnish such returns and which has obtained relief under paragraph 98 of the 1976 Code, consecutive upon the relief year under that paragraph, provided that no relief shall be taken under paragraph 46 earlier than 28 days after the enterprise concerned has informed the Commission that it intends to apply that paragraph; and

(*c*) in any other case, beginning at any time;

and any later consecutive period of 12 months.

(3) 'Relevant expenditure' means an amount (revised from time to time to take account of revision of expenditure on investment) which is represented by 50 per cent of expenditure on investment.

(4) 'Turnover', in relation to a relief year, means the turnover on trading operations within the control which may reasonably be expected to be achieved in the year in question, revised from time to time on the basis of fact or as circumstances may require.

Calculation of relief

46.—(1) The permitted increases in net profit margin reference levels and the levels of gross percentage margins shall be calculated in accordance with the following provisions of this paragraph. An enterprise—

(*a*) may, for a relief year, treat the net profit margin reference level as increased by the addition of a figure found by expressing the relevant expenditure as a percentage of turnover; and (*b*) in respect of its distribution activities, may, for a relief year, treat the level of the gross percentage margin from time to time ascertained under paragraph 33 as increased by the addition of a figure found by expressing the relevant expenditure as a percentage of turnover.

(2) Investment expenditure in respect of which the enterprise has benefited from a modification under paragraph 101 of the 1976 Code or any provision which it replaced may not be included in the calculation of relevant expenditure where the modification was to the provisions relating to profit margins.

(3) In this paragraph 'relief year' includes any relief year applied under the 1976 Code.

Transitional provisions relating to investment relief

47.—(1) Where the relief year of an enterprise ascertained under paragraph 97 of the 1976 Code or paragraph 79 or 79A of the 1974 Code ends after 31st July 1977 and—

(*a*) the application of sub-paragraph (1) of paragraph 98 of that Code has not caused the relevant expenditure to be recovered in sales in the part of the relief year ending with that date; or

(*b*) the application of that paragraph or paragraph 79 or 79A of the 1974 Code has not caused relevant expenditure relating to any earlier relief year of the enterprise to be recovered in sales before 1st August 1977 (which expenditure, so far as it is unrecovered, is hereinafter referred to as 'earlier unrecovered expenditure');

the permitted increase in the net profit margin reference level and, in the case of a distributor, the level of the gross percentage margin shall be calculated, for the balance of the relief year unexpired after that date, in accordance with sub-paragraph (2) below; and the enterprise may, in the period of twelve months immediately following the relief year, treat the reference level and gross percentage margin as increased respectively by the percentage points calculated under sub-paragraph (3).

(2) The permitted increase referred to in sub-paragraph (1) above shall be calculated in accordance with paragraph 46 as if in that paragraph—

(*a*) for references to the relevant expenditure there were substituted references to relevant expenditure reduced by the amount recovered before 1st August 1977 and increased by the amount of any earlier unrecovered expenditure;

(*b*) for the references in sub-paragraphs (1)(*a*) and (*b*) to a relief year there were substituted references to the balance of the relief year unexpired after 31st July 1977; and

(*c*) for references to 'turnover' there were substituted references to turnover in the said balance of the relief year.

(3) The increase in the reference level and gross percentage margin in the period of twelve months following the relief year referred to in sub-paragraph (1) shall be the amount, expressed as a percentage of turnover in that period, by which the permitted increase, as defined in sub-paragraph (2), exceeds two percentage points.

(4) Where—

(*a*) the relief year of an enterprise ascertained under paragraph 97 of the 1976 Code or paragraph 79 or 79A of the 1974 Code has ended before 1st August 1977;

(*b*) the application of sub-paragraph (1) of paragraph 98 of that Code or paragraph 79 or 79A of the 1974 Code, as the case may be, has not caused relevant expenditure for that year or earlier unrecovered expenditure to be recovered in sales before that date; and

(*c*) no relief year of the enterprise is in progress at that date,

the permitted increase in the net profit margin reference level and, in the case of a distributor, the level of the gross percentage margin shall be calculated by expressing the sum of such expenditure as a percentage of estimated turnover in the twelve months beginning with that date.

Action where relief exceeded

48.—(1) If relief under paragraph 46 has exceeded or is likely to exceed the relevant expenditure then, notwithstanding any other provisions of the Code, net profit margin reference levels and the levels of gross percentage margins shall each be reduced by an amount necessary to ensure that no more than the amount of the relevant expenditure is recovered.

(2) Where relief under paragraph 98 of the 1976 Code is likely to exceed, or has exceeded, the relevant expenditure for the purposes of the said paragraph 98, sub-paragraph (1) above shall have effect as if the references therein to paragraph 46 included a reference to paragraph 98 of the 1976 Code and references to the relevant expenditure were references to the relevant expenditure under that paragraph.

PART V

INDIRECT TAXES

Profit margins and indirect taxes

49.—(1) In making comparisons between net profit margins as a percentage of sales and the reference level, due account must be taken of the effect on margins of changes in indirect tax on goods and services sold, so that the comparison is not materially distorted. The comparison with earlier years should be made on a basis which excludes purchase tax from sales in the period up to the end of March 1973 and excludes VAT from 1st April 1973 onwards. Where customs and excise duties have been included in the sales figures, these duties should be included throughout, adjusted as necessary to take account of the partial replacement of excise duties by VAT and of other changes in those duties. Subject to the following provisions of this paragraph, where indirect taxes have been increased after 25th March 1974, a deduction should be made from the value of sales corresponding to the cash value of the extra tax borne by the goods sold; conversely where indirect taxes have been reduced after 25th March 1974, a corresponding addition should be made to the value of sales.

(2) In the case of sales of alcoholic beverages and tobacco and tobacco products, sub-paragraph (3) below applies in relation to every sale in the course of an activity which consists of distribution or the provision of services and, in relation to sales in the course of a manufacturing activity, to sales before 1st August 1977; and where the activities of an enterprise comprise more than one of those activities, paragraph 42 shall have effect for the purposes of determining in the course of which activity sales are made.

(3) In determining margins for the purposes of sub-paragraph (1), in cases where indirect taxes (other than VAT) have been paid the value of sales—

(*a*) before 17th January 1977 shall be taken to be—

(i) in the case of alcoholic beverages, 85 per cent. of the value of sales, and

(ii) in the case of tobacco and tobacco products, 80 per cent. of the value of sales;

(*b*) after 16th January 1977 shall be taken to be—

(i) in the case of alcoholic beverages, 80 per cent. of the value of sales, and

(ii) in the case of tobacco and tobacco products, 75 per cent. of the value of sales before 1st August 1977 and 73 per cent. of the value of sales on and after that date.

(4) Where the Commission are satisfied, having regard to the sales mix of the enterprise in respect of the products within sub-paragraph (3) that a higher percentage than is specified in that sub-paragraph is appropriate, they may, in the case of any enterprise, substitute that higher percentage.

Purchase tax

50. Where an enterprise does not already have accounts showing separately the purchase tax element in the turnover of previous years, or which permit the precise calculation of the amount of excise duty abatement from records of duty paid, such elements should be estimated on the basis of the best available information. Where total purchase tax can be ascertained from purchase invoices this total can be deducted from tax inclusive sales. Where such purchase invoices are not available, the purchase tax element may be estimated by applying to the value of purchases of goods charged to different rates of purchase tax appropriate factors derived from those rates.

Prices and indirect taxes

51.—(1) Where indirect taxes have been increased after 25th March 1974, an addition not exceeding the cash amount of the increase may be made to prices. Where indirect taxes are reduced, the reduction must be fully reflected in prices. The cash amount of the increase or reduction should be applied so far as practicable to the goods bearing the indirect taxes.

(2) This paragraph also applies to the effects of changes in the coverage of indirect taxes.

Calculation of gross percentage margin

52. In arriving at sales and cost of sales, indirect taxes should be treated on the same basis as for calculating net profit margins in paragraph 49.

PART VI

PARTICULAR SECTORS

Public sector

Meaning of 'nationalised industry'

53. Paragraphs 54 and 55 apply to the following nationalised industries—

National Coal Board;
Electricity Council;
Area Electricity Boards;
Central Electricity Generating Board;
North of Scotland Hydro-Electric Board;
South of Scotland Electricity Board;
Northern Ireland Electricity Service;
British Gas Corporation;
British Steel Corporation;
Post Office;
British Airways Board;
British Airports Authority;
British Railways Board;
British Transport Docks Board;
British Waterways Board.

Special provisions for nationalised industries

54. In the application of the Code to the nationalised industries mentioned in paragraph 53 no account shall be taken of Government compensation or grants taken directly to revenue account; and in paragraph 26, "depreciation" means the aggregate amount of provision for the writing off of displaced plant and deferred charges and either—

(*a*) depreciation of each of the other assets of the industry determined in accordance with paragraph 26, or (*b*) in a case where provision for supplemental depreciation is made at replacement cost by the British Transport Docks Board and the Post Office, such supplemental provision.

Financial reconstruction

55. Where a statute effects, or has since 1973 effected, a change in the finances of a nationalised industry, any resulting changes in the accounting practices of the industry or in the value of its assets and liabilities shall be taken into account in calculations under the Code.

Water undertakings

56. Water authorities and water undertakers in England and Wales must comply with their obligations under statute (including, in the case of a statutory water company, any agreement between a water authority and the company under section 12 of the Water Act 1973) but shall have regard to the principles of the Code and shall not make charges which, taken as a whole, are likely to result in a higher revenue in any accounting year than is required to comply with their duty under section 29(1) of the Water Act 1973, wherein the reference to outgoings shall include depreciation calculated in accordance with the provisions of the Code and such allocations to reserve as may be necessary to comply with any directions made under paragraph 32 of the Third Schedule to that Act.

Banks, finance houses and similar enterprises

Application of Code

57. Most banks, finance houses and similar financial enterprises are engaged partly in business for which the charge is a rate of interest and partly in business for which the charge is of a different nature. Interest charges are not within the control. The other charges of these enterprises are subject to control. It will therefore be necessary to allocate profits between the two classes of business for the purpose of the control on non-interest charges. Paragraph 16 applies.

Extension of meaning of exports

58. For the purposes of the Code the enterprises described in paragraph 57 may treat as goods and services exported—

(*a*) transactions in sterling with any person or body corporate resident outside the United Kingdom; and

(*b*) dealings in foreign currencies.

Non-interest charges

59. The provisions of the Code relating to the limitation on net profit margins, defined in the case of these enterprises as in paragraph 61, apply to their non-interest charges. These include commissions, fees and all similar charges.

Hire purchase etc.

60.—(1) In the case of hire-purchase, credit sale and conditional sale agreements, the net profit margin control applies in relation to all separately identifiable fees and charges payable by the debtor to the creditor, other than repayments of credit and charges for credit.

(2) In the case of charges under plant and machinery leasing agreements, the provisions of the Code apply in full.

Special definition of net profit margin

61. For the purposes of the Code 'net profit margin' means—

(*a*) in the case of enterprises within paragraph 57 undertaking plant and machinery leasing contracts, where either the greater part of the business of the enterprise consists of such contracts, or separate accounts can be produced for such contracts, net income from charges for this business less associated costs, including overheads, expressed as a proportion of average resources employed;

(*b*) in the case of enterprises undertaking hire-purchase, credit sale and conditional sale business where either the greater part of the business of the enterprise consists of such business or separate accounts can be produced for such business, net income from separately identifiable fees and charges payable by the debtor to the creditor, other than repayments of credit and charges for credit, expressed as a percentage of gross income from the transactions concerned;

(*c*) in the case of all other enterprises within paragraph 57, net income from charges (that is, gross income less costs, including associated overheads) expressed as a percentage of gross income (that is, total income from the transactions concerned); and in this sub-paragraph, gross and net income includes interest earned on customers' current account credit balances held in the course of controlled (that is, non-interest) business.

National Giro

62.—(1) In the case of the banking services of the Post Office, the reference level for the purposes of paragraph 10 means the average level of the years of account ending in 1975 and 1976, the level for the year of account ending in 1975 being determined on the following assumptions—

(*a*) that the reduction of the liability of the Post Office under section 4 of the Post Office (Banking Services) Act 1976(**a**) should be deemed to have been effected on 1st April 1974 instead of on 1st April 1975; and

(*b*) that from the amount of such reduction there were deducted any part of the liability of the Post Office to which the said section 4 applies which was incurred during the year to 31st March 1975.

(2) Paragraph 55 applies to the banking services of the Post Office.

Services

Application of Code

63.—(1) The limitation on net profit margins will apply to profit of firms or individuals providing professional or other services irrespective of the method by which fees are determined.

(2) For the purpose of paragraph 11, turnover and net profit include interest on money belonging to another person retained by solicitors and estate agents and other enterprises which retain such interest in the ordinary course of business.

(3) Where the number of partners in a firm has changed as a result of the substitution of a partner for an employee, or of an employee for a partner, the reference level may be recalculated by reference to the changed number of partners. Paragraph 19 applies to amalgamations of and successions to partnerships.

Non-profit-making organisations

Charges outside control

64. The controls on margins do not apply in relation to subscriptions charged by organisations which—

(*a*) exist for religious, charitable, educational, representational or recreational purposes; and

(*b*) are non-profit-making; and

(*c*) do not carry on a trade or business as their main activity.

Provisions supplemental to paragraph 64.

65. The Code will not apply to prices charged in the course of its activities by an organisation satisfying the tests in paragraph 64 or by any properly authorised person

(**a**) 1976 c. 10.

acting on behalf of that organisation, if they are charged in order to raise funds for the purposes of the organisation, and those activities involve no substantial or continuing competition with trading enterprises.

Charges within control

66. Except where they are outside the control under paragraph 65, prices charged in any trading activity carried on by an organisation which meets the requirements of paragraph 64 are governed by the Code, unless—

(*a*) the customers of the trading activity are confined to members of the organisation; or

(*b*) in the case of the control on net profit margins, separate accounts cannot be made available for the trading activity.

PART VII

GENERAL

Modification etc of particular provisions of the Code

67. Where the particular provisions of the Code cannot be directly applied to particular cases or sectors without modification, the Commission will, in exercising their functions, apply those provisions with such adaptations or modifications as appear to them to be necessary to give effect to the principles and objectives of the Code.

Transitional provisions

68.—(1) Where an increase in a price or charge was implemented while the Code set out in any of the following Orders, that is to say—

(*a*) the Counter-Inflation (Price and Pay Code) Order 1973(**a**);

(*b*) the Counter-Inflation (Price and Pay Code) (No. 2) Order 1973(**b**) as amended;

(*c*) the Counter-Inflation (Price Code) Order 1974(**c**) as amended; and

(*d*) the Counter-Inflation (Price Code) Order 1976(**d**);

was in force and was not permissible under whichever of those Codes was for the time being in force, the price or charge in question should be reduced to the level that would have been permitted under the appropriate Code.

(2) Where in any particular case an increase in a price or charge was impermissible under the Code in force at the time, the revocation of that Code does not of itself make the increase permissible.

(3) In relation to labour cost increases after 6th November 1972 in respect of work executed before 1st August 1976, paragraph 71 (contracts containing escalation or variation of price clauses) and paragraph 73 (contracts subject to prime cost or cost reimbursement arrangements) of the 1976 Code shall have effect subject to paragraphs 74 and 76 of that Code as if they formed part of the Code, and paragraph 75 of the 1976 Code shall have effect for the purpose of applying those paragraphs.

(4) A person shall not by virtue only of the revocation of any of the Orders referred to in sub-paragraph (1) above be entitled to recover under any contract any sum forgone by way of a productivity deduction required to be made under any Code set out in a Schedule to any of those Orders.

(5) In the Code, 'the 1974 Code' means the code set out in the Counter-Inflation (Price Code) Order 1974 and 'the 1976 Code' means the code set out in the Counter-Inflation (Price Code) Order 1976 as amended from time to time in each case.

(**a**) S.I. 1973/658 (1973 I, p. 2106).
(**b**) S.I. 1973/1785 (1973 III, p. 5445).
(**c**) S.I. 1974/2113 (1974 III, p. 8253).
(**d**) S.I. 1976/1170 (1976 II, p. 3226).

Charges

69. References in the Code to prices include references to charges, unless there is explicit provision to the contrary.

Goods and services

70. References in the Code to goods or products include references to services, unless there is explicit provision to the contrary.

Co-operatives, etc.

71. A reference to an enterprise includes a reference to a co-operative, a partnership or to an individual carrying on a business.

Food subsidies included in price

72. A subsidy received or to be received by an enterprise on any food under section 1 of the Prices Act 1974(a) shall for all the purposes of this Code be treated as part of the price received by the enterprise for that food or for any product of which that food is an ingredient.

PART VIII

PAY SANCTION

Sanction against payment of remuneration in excess of pay limits

73. For the purpose of providing a sanction against the payment of remuneration in excess of the limits ("the pay limits") at any time mentioned in section 1 of the Remuneration, Charges and Grants Act 1975(b) as extended by or under section 17 of the Price Commission Act 1977(c), the provisions of the Code relating to net profit margins and gross percentage margins shall have effect subject to paragraphs 74 and 75.

Disallowance of excessive remuneration

74.—(1) In determining net profit for the purposes of paragraph 10(1), the expenses mentioned in paragraph 11 and the labour costs mentioned in sub-paragraph (2) below shall, during the period of 12 months beginning with the date on which the person in question first pays any part of such increase, be taken not to include an increase in remuneration any part of which arises after 11th July 1975, being an increase which is, at the date when he first pays it or any part of it, in excess of the pay limits then in force.

(2) Where the share of labour costs expressed as a percentage of the related expenses within the meaning of paragraph 11 is less than 15 per cent., the amount disallowed under sub-paragraph (1) above shall be increased by the proportion which 15 per cent. bears to that share; and in this sub-paragraph "labour costs" means wages, salaries, other remuneration within the meaning of section 7 of the Remuneration, Charges and Grants Act 1975, employers' national insurance contributions and training costs.

Modification of safeguard provisions

75. In determining expenses for the purpose of calculating the net profit margin under paragraphs 23, 34 and 38 no account shall be taken of any increase in remuneration to the extent that it is disallowed under paragraph 74.

Duty of Commission to refer questions about remuneration to Secretary of State

76. Before taking steps to enforce paragraph 74, the Commission shall refer any question whether increased remuneration exceeds the pay limits to the Secretary of State for Employment and shall accept his determination as certified to them.

(a) 1974 c. 24. (b) 1975 c. 57. (c) 1977 c. 33.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order substitutes a new Price Code for the Code which has been in operation since 1st August 1976 under the Counter-Inflation (Price Code) Order 1976 as amended.

The principal change is the removal of provisions imposing cost-related controls on manufacturing and service firms. Controls on net profit margins and, in the case of distributors, gross margins remain.

Other changes are—

(*a*) the minimum profit margin reference level of the greater of 12½ per cent. on capital and 2½ per cent. on turnover is modified by increasing the percentage figure on turnover to 3 per cent. (paragraph 23);

(*b*) firms are permitted to change any election they have made under the 1976 Code as to whether or not interest should be left out of account for the purposes of the Code (paragraphs 28 and 29);

(*c*) the net profit margin safeguard for distributors is modified by raising the level of gross margins in order to allow an increased percentage of net profit margin reference levels to be obtained (paragraph 34);

(*d*) certain prices and charges are added to those exempt from the Price Code (paragraph 5(*f*), (*i*) and (*v*));

(*e*) investment relief is extended to the acquisition of existing industrial buildings, warehouses and shops which are for occupation by the enterprise claiming relief (paragraph 44(1)(*e*)).

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