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STATUTORY INSTRUMENTS

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**1995 No. 356**

**INDUSTRIAL ORGANISATION  
AND DEVELOPMENT**

**The Milk Development Council Order 1995**

*Laid before Parliament in draft*

*Made - - - - 6th February 1995*

*Coming into force in accordance with article 1*

The Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland and the Secretary of State for Wales acting jointly in exercise of the powers conferred by sections 1, 2, 3, 4, 5, 6 and 14 of and Schedule 2 to, the Industrial Organisation and Development Act 1947<sup>(1)</sup> and now vested in them<sup>(2)</sup>, and of all other powers enabling them in that behalf, after consultation with the organisations appearing to them to be representative of substantial numbers of persons carrying on business in the industry and with the organisations representative of persons employed in the industry appearing to them to be appropriate, being satisfied that the establishment of a development council for the industry is desired by a substantial number of persons engaged in the industry, and having satisfied themselves that the incidence of charges as between different classes of undertakings in the industry will be in accordance with a fair principle, hereby make the following Order, a draft of which has been laid before and approved by resolution of each House of Parliament:—

**Title and commencement**

1. This Order may be cited as the Milk Development Council Order 1995 and shall come into force on the day after the day on which it is made.

**Interpretation**

2.—(1) In this Order, unless the context otherwise requires—

“the Act” means the Industrial Organisation and Development Act 1947;

“the Council” means the Milk Development Council established under the provisions of this Order;

“the industry” means the industry comprising the activities of producers in producing milk in Great Britain and selling it by way of business;

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

(2) By virtue of S.I. 1978/272.

“milk” means cows' milk;

“the Ministers” means the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for Wales acting jointly; and

“producer” means a person who produces milk in Great Britain and sells it by way of business.

(2) For the purposes of this Order, where a person produces milk, converts it or arranges for it to be converted into another product or part of another product and sells that other product—

(a) he shall be treated as selling the milk at the time that he sells that other product, and

(b) the quantity of milk which he shall be treated as selling shall be the quantity so converted.

(3) In this Order, unless the context otherwise requires, any reference to a numbered article or Schedule is a reference to the article or Schedule so numbered in this Order.

### **Establishment of Development Council**

**3.—**(1) There shall be established a development council for the industry, to be known as the Milk Development Council, and there shall be assigned to them the functions specified in Schedule 1.

(2) The Council shall exercise their functions in such manner as appears to them to be likely to increase efficiency and productivity in the industry, to improve and develop the service that the industry renders or could render to the community or to enable the industry to render that service more economically.

(3) The Council may enter into such agreements, acquire such property and do such things, as may in the opinion of the Council be necessary or desirable for the exercise of any of their functions and may dispose of as they think fit of any property acquired by them.

### **Constitution of Council**

**4.** The Council shall consist of the following members appointed by the Ministers, that is to say:

(a) not more than six or fewer than two persons capable of representing the interests of producers;

(b) two persons capable of representing the interests of people employed in the industry;

(c) two persons (including the chairman) as to whom the Minister is satisfied that they have no such financial or industrial interest as is likely to affect them in the discharge of their functions as members of the Council (hereinafter referred to as “independent members”); and

(d) one person having special knowledge of matters relating to the marketing or distribution of products of the industry.

### **Membership and Proceedings of Council**

**5.** The provisions of Schedule 2 shall have effect in relation to the membership and proceedings of the Council.

### **Register of producers**

**6.—**(1) The Council shall, in accordance with the following provisions of this article, maintain a register of producers, referred to in those provisions as “the register”.

(2) The Council shall acquire such information as it is reasonably practicable for them to acquire in order to enter on the register the name and address of each person who is a producer at the time of coming into force of this Order, and shall enter on the register the names and addresses of those whose identity as producers at that time has been ascertained by the Council in acquiring that information.

(3) Within thirty days after making any entry pursuant to paragraph (2) above in respect of any person, the Council shall give written notice to that person of the fact that they have done so and of details of the entry.

(4) The Council shall also enter on the register the name and address of every person who applies to the Council in writing, on the grounds that he is a producer, to have his name and address entered thereon.

(5) The Council may enter on the register, in addition to the name and address of any registered person, any business name under which and the address of any place at which he carries on the business in the industry, and the names of his partners in any such business, but no other information.

(6) Any registered person who becomes aware of any matter rendering the entry on the register relating to him inaccurate or incomplete shall give written notice to the Council of that matter within thirty days of his becoming aware of it.

(7) The Council shall amend the register in accordance with any such notification as is referred to in paragraph (6) above, on its receipt.

(8) Any registered person may apply in writing to the Council for the removal of his name from the register and if the Council are satisfied that such person is not a producer they shall remove his name forthwith.

(9) The Council may, if they have reasonable cause to believe that any registered person is not a producer, by notice in writing inform that person of their intention to remove his name from the register unless within thirty days from the date of the notice he gives notice in writing to the Council that he is a producer and, if no such notice is received by the Council within that period, the Council may on the expiration of that period remove his entry from the register.

(10) The register shall be kept at the office of the Council and any person shall, on the payment of a fee not exceeding one pound, be entitled to inspect the register during normal business hours and to take, or be supplied with, a copy of the entries relating to any one registered person.

(11) In this article “registered person” means a person whose entry is for the time being on the register.

### **Registration of producers**

7.—(1) Every person who is a producer at the time at which this Order comes into force shall within 120 days thereafter apply for registration in writing to the Council unless he has received a notice given under article 6(3).

(2) Every person who becomes a producer after this Order comes into force shall no later than 30 days after becoming a producer apply for registration in writing to the Council.

(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.

(4) In this article “registration”, in relation to any person, means the entering of his name and address on the register of producers maintained under article 6, and in article 8 “registered” shall be construed accordingly.

### **Returns and information**

8.—(1) Subject to paragraph 2 below, the Council may require any registered producer to furnish such returns and information relating to activities carried out as part of his business and comprised in the industry as appear to the Council to be required for the exercise of any of their functions.

(2) The Council shall not exercise the powers conferred upon them under this article generally as regards the industry or any section thereof unless the Ministers have consented to such exercise and have approved the form in which the returns or other information will be required to be furnished.

### **Charges for expenses**

9.—(1) For the purposes of enabling them to meet their administrative and other expenses incurred or to be incurred in the exercise of their functions the Council may, with the approval of the Ministers and subject to paragraph (2) below, impose on every producer a charge at such a rate (not exceeding 0.05 pence per litre) in respect of each litre of milk produced and sold by him as they consider from time to time to be appropriate.

(2) Every charge imposed under this article shall be paid by each producer—

- (a) in case A, to the agent who purchases the milk in respect of which the charge was imposed, the time for payment being the time at which the agent pays the producer for the milk, and
- (b) in case B, to the Council at their office no later than 30 days after the end of the relevant period in which the milk in respect of which the charge was imposed was sold by the producer.

(3) Case A above applies to milk in respect of which—

- (a) the Council have entered into an agreement with the purchaser of the milk from its producer providing for the purchaser to collect the charge from the producer as agent for the Council,
- (b) the Council have given written notice to the producer that they have entered into that agreement and the notice directs him to pay the charge to the purchaser, and
- (c) the notice has not been withdrawn or replaced by a subsequent notice,

and case B above applies to other milk in respect of which a charge is imposed under this article.

(4) Where two or more persons jointly carry on business in the industry, they shall, for the purpose of calculating any charge payable by them in respect of milk produced and sold in the joint business, be treated as constituting a single person.

(5) Every charge imposed under this article shall if not paid in accordance with this article be recoverable as a debt.

(6) For the purposes of this article each relevant period except the first is a period of 6 months beginning on 1st April or 1st October and the first begins on the first day of the month immediately following the month on which this Order comes into force and ends immediately before the beginning of the next relevant period.

### **Borrowing and investment of money**

10.—(1) The Council may borrow money and pledge, mortgage or charge or grant standard security over any of their property (including the proceeds of the charges imposed in accordance with the provisions of article 9) for the purpose of defraying any expenses incurred or to be incurred in the discharge of their functions.

(2) The Council may establish and thereafter maintain a reserve fund for the purpose of carrying out their functions.

(3) Any moneys for the time being comprised in a reserve fund maintained under this article and any other moneys of the Council which are not for the time being required for any other purpose may be invested in accordance with paragraph (4) below.

(4) Sections 1, 2, 5, 6, 12 and 13 of the Trustee Investments Act 1961<sup>(3)</sup> (which relate to the investment powers of trustees) shall have effect in relation to any such moneys, and in relation to any investments or other property for the time being representing any such moneys, as if they constituted a trust fund and the Council were the trustees of that trust fund.

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(3) 1961 c. 62.

## Returns

11.—(1) For the purposes of the imposition or recovery of their charges, the Council may from time to time require by notice in writing any person carrying on business in the industry to furnish to the Council a written return, in such form, within such period and showing such information as may be specified in the notice, or to produce for examination at such time as may be specified in the notice, books or other documents or records in the custody or under the control of that person, or to keep records and produce them for examination as aforesaid.

(2) The Council shall ensure that the returns to be furnished in accordance with the provisions of article 8 or the returns to be furnished or the books or other documents or other records to be produced in accordance with the provisions of this article shall be examined only by the independent members of the Council or by officers of the Council specially authorised in that behalf by the Council.

(3) A person who uses in his business what he claims to be a secret process that ought not to be disclosed on the ground of risk of prejudice to his business shall not be required by anything in this article or in article 8 to disclose particulars relating to the process unless the requirement and the form thereof have been approved by the Ministers after consideration of his claim.

(4) In this article, “person carrying on business in the industry” includes any person carrying on any business consisting wholly or partly in the production of, or dealing in, any of the materials of the industry.

## Offences and penalties

12.—(1) If any producer carries on his business in the industry after the expiration of the period within which he is required by article 7(1) to apply to be registered without having so applied he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If any person required to furnish returns of information or to keep records or to produce for examination books or other documents or records under this Order fails to furnish, keep or produce them in accordance with the requirement he shall, unless he proves that he had reasonable excuse for the failure, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If any person required to give notice under article 6(6) fails to do so he shall, unless either—

- (a) he has a reasonable excuse, or
- (b) he is a recipient of notice given under article 6(3) and can prove that he was not a producer at the time of coming into force of this Order,

be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) If any person knowingly or recklessly makes any statement, in compliance with a requirement under the provisions of article 8 or 11, which is false in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

4th February 1995

*Michael Jack*  
Minister of State, Ministry of Agriculture,  
Fisheries and Food

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2nd February 1995

*Hector Monro*  
Parliamentary Under-Secretary of State, Scottish  
Office

6th February 1995

*Gwilym Jones*  
Parliamentary Under-Secretary of State, Welsh  
Office

## SCHEDULE 1

Article 3(1)

### FUNCTIONS OF THE MILK DEVELOPMENT COUNCIL

1. Promoting or undertaking scientific research.
2. Promoting or undertaking inquiry as to materials and equipment and as to methods of production, management and labour utilisation, including the discovery and development of new materials, equipment and methods and of improvements in those already in use, the assessment of the advantages of different alternatives, and the conduct of experimental establishments and of tests on a commercial scale.
3. Promoting or undertaking research for improving arrangements for marketing and distributing products.
4. Promoting or undertaking research into matters relating to the consumption or use of goods and services supplied by the industry (including the range of factors affecting that consumption or use).
5. Promoting or undertaking the collection and formulation of statistics.
6. Advising on any matters relating to the industry (other than remuneration or conditions of employment) as to which the Ministers may request the Council to advise, and undertaking inquiry for the purpose of enabling the Council so to advise.
7. Undertaking arrangements for making available information obtained, and for advising, on matters with which the Council are concerned in the exercise of any of their functions.

## SCHEDULE 2

Article 5

### MEMBERSHIP AND PROCEEDINGS OF THE COUNCIL

1. The members of the Council shall hold office for such term not exceeding four years as the Ministers may determine and on the expiry of their term shall be eligible for reappointment.
- 2.—(1) If a member appointed as an independent member comes after his appointment to have a financial or industrial interest which the Ministers consider may be likely to affect him in the discharge of his functions as a member of the Council, the Ministers may by written notice given to him terminate his appointment from such date as may be specified in the notice.  
(2) If a member appointed as an independent member so conducts himself, in respect of any financial or industrial interest which he has at the time of his appointment, that the Ministers consider that that interest may be likely to affect him in the discharge of his functions as a member of the Council and, on being given a written request by the Ministers to satisfy them within such period as is specified in the request that he has ceased to have that interest, fails within that period so to satisfy the Ministers, the Ministers may by written notice given to him terminate his appointment from such date as may be specified in the notice.
3. Subject to paragraph 4 below, a quorum of the Council shall be such number as the Council may decide not being fewer than five.
4. The Council may appoint committees of their members, may authorise any such committee to discharge such functions of the Council as may be specified in the authorisation and may determine the quorum and procedure of any such committee.
5. The seal of the Council shall not be applied to any document except by the authority of the Council or a duly authorised committee of members of the Council and the application of the seal shall be authenticated by the signatures of two members of the Council.

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6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Council by any person generally or specially authorised by it for the purpose.

7. Every document purporting to be a document duly executed or issued either under the seal of the Council authenticated in the manner provided by this Schedule or on behalf of the Council, or purporting to be signed by the secretary or any person authorised to act in that behalf, shall, until the contrary be proved, be deemed to be a document so executed or issued or so signed as the case may be.

8. The Council may pay its members any expenses properly incurred by them in the business of the Council and may pay such remuneration and allowances to any of the members of the Council as the Ministers may determine.

9. The validity of any proceedings of the Council shall not be affected by any vacancy amongst its members.

10. Minutes shall be kept of the proceedings of the Council and any such minutes shall, if signed by any person purporting to have acted as chairman of the meeting or at a meeting at which they were read, be evidence of the proceedings at the first mentioned meeting, and a meeting to which any such minutes relate shall, unless the contrary is proved, be taken to have been regularly convened and constituted.

11.—(1) A member of the Council, shall, if he is in any way directly or indirectly interested in a contract made or proposed to be made by the Council, disclose the nature of his interest at a meeting of the Council as soon as possible after the relevant circumstances have come to his knowledge.

(2) Any disclosure made by a member under the foregoing sub-paragraph shall be recorded in the minutes of the Council, and that member shall not take part after the disclosure in any deliberation or decision of the Council with respect to that contract, but may, nevertheless, be taken into account for the purpose of constituting a quorum of the Council.

12. The Council shall have an office in Great Britain at which communications and notices will at all times be received and shall notify the Ministers of that address and any change of that address.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order establishes a development Council for the milk industry in Great Britain to be known as the Milk Development Council.

In particular the Order—

- (a) assigns functions to the Council (article 3 and Schedule 1);
- (b) provides for the appointment of members and the proceedings of the Council (articles 4 and 5 and Schedule 2);
- (c) provides for the keeping of a register of producers (articles 6 and 7);
- (d) empowers the Council to require registered producers to furnish returns and information (articles 8 and 11);



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- (e) provides for the imposition of charges by the Council for their expenses in the exercise of their functions (article 9);
- (f) provides for borrowing and investment of money (article 10); and
- (g) prescribes offences and penalties (article 12).

This Order comes into force on the day after the day on which it is made.