

1986 No. 1110

INDUSTRIAL ORGANISATION AND DEVELOPMENT

The Horticultural Development Council Order 1986

Laid before Parliament in draft

Made - - - 30th June 1986
Coming into Operation 1st July 1986

The Minister of Agriculture, Fisheries and Food, 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 the Industrial Organisation and Development Act 1947(a), and now vested in them (b), 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 the 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 whereof has been laid before Parliament and approved by a resolution of each House of Parliament:—

Title and commencement

1. This order may be cited as the Horticultural Development Council Order 1986, and shall come into operation on the day immediately following the day on which it is made.

Interpretation

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

“the Council” means the Horticultural Development Council established under the provisions of this order;

(a) 1947 c.40; which is to be read, as regards England and Wales, with section 40 of the Criminal Justice Act 1982 (c.48) and S.I. 1984/447; and as regards Scotland, with sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (c.21), as inserted by section 54 of the Criminal Justice Act 1982 (c.48), and S.I. 1984/526.

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

“grower” means a person who grows horticultural produce for sale, whose sales of such produce (excluding Value Added Tax) were not less than £25,000 during his relevant accounting year;

“horticultural produce” means any of the products listed in Schedule 1 to this order;

“the industry” means the growing of horticultural produce in England, Wales and Scotland by way of trade or business;

“levy period” means one of the periods specified in column (1) of the table in paragraph (2) of this article;

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

“processing” means an operation carried out upon raw horticultural produce by means of canning, freezing, drying, juicing, or any other process which substantially alters the raw product;

“relevant accounting year” means in respect of each of the levy periods specified in column (1) of the table in paragraph (2) of this article, the accounting year specified in respect thereof in column (2).

(2)	Column 1	Column 2
	(a) the period starting on the commencement day of this order and ending on 31st March 1987:	(a) the accounting year ending in the calendar year 1985:
	(b) the period commencing on 1st April 1987 and ending on 30th September 1987:	(b) the accounting year ending in the calendar year 1986:
	(c) any subsequent period of 12 months commencing on 1st October in any year:	(c) the accounting year ending in the calendar year preceding the end of the levy period:

Establishment of Development Council

3.— (1) There shall be established a development council for the industry, to be known as the Horticultural Development Council, and there shall be assigned to it the functions specified in Schedule 2 to this order.

(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 it renders or could render to the community and to enable it 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 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:—

- (1) fourteen persons capable of representing the interests of growers;
- (2) two persons capable of representing the interests of persons employed in the industry;
- (3) two persons as to whom the Ministers are 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
- (4) two persons 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 3 to this order shall have effect in relation to the membership and proceedings of the Council.

Register of growers

6.— (1) The Council shall keep a register of growers and shall enter therein the name and address of every grower who applies to the Council in writing to be registered.

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

(3) Any grower whose name is entered in the register shall notify the Council forthwith in writing of any matter rendering the entry in the register relating to him inaccurate or incomplete.

(4) The Council shall, on receipt of any such notification as is referred to in paragraph (3) of this article, amend the register in accordance therewith.

(5) 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 no longer a grower they may remove his name forthwith.

(6) The Council may, if they have reasonable cause to believe that any person whose name is entered in the register is no longer a grower, by notice in writing inform that person of their intention to remove his name from the register unless within one month from the date of the notice he gives notice in writing to the Council that he is a grower, and if no such notice is received by the Council within the said period the Council may on the expiration of that period remove his name from the register.

(7) 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.

Registration of growers

7.— (1) Every person who is a grower on the 1st day of September 1986, or on the first day of the second month next following the month within which this order comes into operation if that is later, shall within two months thereafter apply in writing to the Council to be registered, and every person who after that day becomes a grower shall so apply within two months of becoming a grower.

(2) 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.

Returns and information

8.— (1) Subject to paragraph (2) below, the Council may require any person carrying on a business in the industry to furnish such returns and information relating to activities carried on by him and comprised in the industry, including information with respect to the productive capacity, capital assets, staff, output, orders, sales, deliveries, stocks and costs 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 expenses in the exercise of their functions and their administrative expenses the Council may, with the approval of the Ministers and subject to paragraphs (2) and (3) of this article, impose on each grower a charge for any levy period at a rate not exceeding 0.25% of the value (excluding Value Added Tax) of his sales of horticultural produce during his relevant accounting year.

(2) For the purpose of calculating a charge imposed under paragraph (1) above for any levy period, there shall be deducted from the value of a grower's sales during his relevant accounting year—

- (a) the cost to the grower of any horticultural produce which he has bought in, grown on and resold; and
- (b) the value added to horticultural produce by any processing carried out by the grower.

(3) A grower shall be exempt from a charge imposed under paragraph (1) above for any levy period if a deduction made under paragraph (2) above reduces the value of the grower's sales during his relevant accounting year to less than £25,000 (excluding Value Added Tax).

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

(5) Any charge imposed in accordance with the provisions of this article shall be payable on such date or dates as the Council may determine, at the office of the Council, and it shall be a debt due to the Council and shall be recoverable as such.

Borrowing and investment of money

10.— (1) The Council may borrow money and pledge, mortgage or charge any of their property (including the proceeds of the charges imposed in accordance with the provisions of article 9 of this order) 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 purposes of 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 purposes, may be invested in accordance with the next following paragraph.

(4) Sections 1, 2, 5, 6, 12 and 13 of the Trustee Investments Act 1961^(a) (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.

Returns of sales of horticultural produce and any other matter

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 or information to be furnished in accordance with the provisions of article 8 or the returns to be furnished or the books or other documents or 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 for that purpose 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.

(a) 1961 c.62.

Offences

12.— (1) If any grower continues his business in the industry after the expiration of the period within which he is required by article 7(1) of this order 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 £400.

(2) If any person required to furnish returns or information or to keep records or to produce for examination books or other documents or records under this order fails to furnish, to keep or to 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 £400.

(3) If any person knowingly or recklessly makes any statement, in compliance with a notice under the provisions of article 8 or 11 of this order, which is false in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.

(4) If any person who is convicted of an offence under paragraph (1) of this article continues his business in the industry after the expiration of 21 days commencing with the date of the conviction without having applied for registration he shall be guilty of a further and continuing offence and shall be liable on summary conviction to a fine not exceeding five pounds in respect of each day during which he continues such business without having applied for registration.

(5) If any person who is convicted of an offence under paragraph (2) of this article, fails without reasonable excuse to furnish such return or to produce for examination such books, other documents or records to the Council within 21 days after such conviction he shall be guilty of a further and continuing offence and shall be liable on summary conviction to a fine not exceeding five pounds in respect of each day during which such failure continues.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 30th June 1986



Michael Jopling,
Minister of Agriculture, Fisheries and Food.

Gray of Contin,
Minister of State, Scottish Office.

30th June 1986.

Nicholas Edwards,
Secretary of State for Wales.

30th June 1986.

Article 2

SCHEDULE 1

VEGETABLES GROWN IN THE OPEN

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

FRUIT

All soft fruit and orchard fruit including nuts but excluding all types of apples and pears. Hops are not included.

FLOWERS AND BULBS

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

HARDY AND OTHER NURSERY STOCK

All hardy nursery stock including

- fruit trees (including apples and pears), bushes and canes, strawberries for runner production and other fruit stock for transplanting
- roses (including stock for budding)
- shrubs, conifers, hedging plants and Christmas trees
- ornamental trees
- perennial herbaceous plants

All other nursery stock, seedlings and cuttings for propagation.

PROTECTED CROPS

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

SCHEDULE 2

Article 3(1)

FUNCTIONS OF THE HORTICULTURAL 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. 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.

Article 5

SCHEDULE 3

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, so, however, that a member of the Council on vacating his office on the expiration of the term thereof shall be eligible for reappointment.

2. If a member appointed as an independent member—

(a) commences or resumes carrying on a business in the industry or acts in the management of any undertaking the owner of which carries on business in the industry, or

(b) refuses to sell or dispose of any interest or security held directly or indirectly for his benefit and the retention of which he has been informed by any of the Ministers to be in his opinion likely to affect him in the discharge of his functions or fails to sell or dispose of any such interest or security within one month after having been requested by any of the Ministers so to do,

the Ministers may declare the office of such member to be vacant.

3. A quorum of the Council shall be such number as the Council may decide not being less than eight.

4. 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.

5. In England and Wales, 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 them for the purpose.

6. Every document purporting to be a document duly executed or issued either under the seal of 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.

7. The Council may pay to their 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. The Council may also pay on the retirement or death of any of their members as to whom it may be determined by the Ministers to make such provision, such pensions and gratuities by reference to their service as may be so determined.

8. The validity of any proceeding of the Council shall not be affected by any vacancy amongst the members thereof.

9. 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.

10.— (1) A member of the Council 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.

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

EXPLANATORY NOTE

(This Note is not part of the Order.)

This order which applies throughout Great Britain, comes into operation on 1st July 1986 and establishes a development council for the horticulture industry (excluding apples, pears, hops and mushrooms) in Great Britain, to be known as the Horticultural Development Council (article 3).

The order sets out the Council's functions (article 3), specifies its constitution (article 4) and provides for its membership and proceedings (article 5). Provision is made for a register of growers (articles 6 and 7), for the collection of information (article 8), and for the imposition of a charge for enabling the Council to meet their expenses in the exercise of their functions (article 9). Offences are prescribed by article 12.

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