

2004 No. 964

**INDUSTRIAL ORGANISATION AND
DEVELOPMENT**

The Milk Development Council (Amendment) Order 2004

Made - - - - - 30th March 2004

Coming into force - - - - - 1st April 2004

The Secretary of State and the National Assembly for Wales, acting concurrently, in exercise of the powers conferred by sections 1, 3, 4 and 8 of the Industrial Organisation and Development Act 1947(a), and now vested in them(b), and with the consent of the Scottish Ministers(c), and after consultation, in accordance with sections 1(3) and 8(1) of that Act, with the Milk Development Council, with organisations appearing to them to be representative of substantial numbers of persons carrying on business in the milk industry and with such organisations representative of persons employed in that industry as appear to them to be appropriate, and having satisfied themselves (as required by section 4(3) of that Act) that the incidence of the charges as between different classes of undertakings in the milk 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 a resolution of each House of Parliament:

Title, commencement and interpretation

1.—(1) This Order may be cited as the Milk Development Council (Amendment) Order 2004 and shall come into force on 1st April 2004.

(2) In this Order “the principal Order” means the Milk Development Council Order 1995(d).

Amendment of the principal Order

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

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- (a) 1947 c. 40; section 4 was modified, in the case of any development council order relating to agriculture, by section 60 of the Agriculture Act 1993 (c. 37).
- (b) In respect of the Secretary of State, by virtue of S.I. 1955/554, 1978/272, 1999/672, 3141 and 2002/794; in respect of the National Assembly for Wales, by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (“the 1999 Order”), in so far as they are exercisable in relation to Wales. The Milk Development Council is a cross-border body as defined in Schedule 3, paragraph 3(2), to the Government of Wales Act 1998 (c. 38). By virtue of article 2(c) of the 1999 Order, functions under the Industrial Organisation and Development Act 1947 which are exercisable in relation to a cross-border body, and which cannot be specifically exercised in relation to Wales, are exercisable by the National Assembly for Wales in relation to that body concurrently with the specified Minister of the Crown.
- (c) By the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999 (S.I. 1999/1319), made under section 88(5) of the Scotland Act 1998 (c. 46), the Milk Development Council was specified as a cross-border public authority for the purposes of that Act. By article 3 of, and paragraph 3 of Schedule 17 to, the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999 (S.I. 1999/1747) it was provided, in respect of any function exercisable by a Minister of the Crown under the Industrial Organisation and Development Act 1947 to modify the Milk Development Council Order 1995 (S.I. 1995/356), that the Secretary of State for Scotland should cease to be such a Minister of the Crown, and that any such function should now be exercisable only with the consent of the Scottish Ministers.
- (d) S.I. 1995/356 as amended by S.I. 2000/878.

3. In article 2 (interpretation), in paragraph (1) after the definition of “producer”, there shall be inserted the following definition—

““production year” means a period of 12 months starting on 1st April and ending on 31st March;”.

4. For article 8 (returns and information) there shall be substituted the following article—

“Returns and information

8.—(1) Subject to paragraph (4), 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) Paragraph (3) applies where the Council, pursuant to paragraph (1), requires any Case B producer to make a return to the Council for any production year within one month after the end of that production year.

(3) Where a Case B producer fails to make a return within the period mentioned in paragraph (2), the following procedure shall apply—

- (a) the Council shall make an estimate of the producer’s milk production in the relevant production year by reference to information which is available to the Council concerning the extent of that production;
- (b) where such information is not available to the Council, they shall make an estimate of the extent of the producer’s milk production by reference to the quota registered in his name on 31st March in the production year pursuant to the Dairy Produce Quotas Regulations 2002(a), the Dairy Produce Quotas (Wales) Regulations 2002(b) or the Dairy Produce Quotas (Scotland) Regulations 2002(c), and any other relevant information which is available to the Council;
- (c) where an estimate is made under sub-paragraph (b), the amount of the estimate may be increased by up to 10% where it appears to the Council that the total milk production in the United Kingdom in the production year may exceed the total quota registered in that year pursuant to the Regulations referred to in sub-paragraph (b) above and the Dairy Produce Quotas Regulations (Northern Ireland) 2002(d);
- (d) the Council shall then give the producer notice in writing—
 - (i) that they have made such an estimate and the amount of it; and
 - (ii) that the amount of the estimate, increased (in accordance with sub-paragraph (c)) by up to 10% where an estimate is made under sub-paragraph (b), may, if the producer fails to make a return within 28 days of the date of the notice, be treated as his return for the production year;
- (e) the producer may within 28 days of the date of the notice make a return and the Council will accept this as his return;
- (f) if the producer fails to make such a return within 28 days of the date of the notice, then the amount of the estimate, or the amount of the estimate increased (in accordance with sub-paragraph (c)) by up to 10% where an estimate is made under sub-paragraph (b), may, if the Council so decides, be treated as his return.

(4) 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.

(5) In this article, a “Case B producer” means a producer liable to pay a charge to the Council in accordance with article 9(2)(b).”

(a) S.I. 2002/457.
(b) S.I. 2002/897 (W.103).
(c) S.S.I. 2002/110 as amended by S.S.I. 2002/228.
(d) S.R. (NI) 2002 No 88.

Saving

5. Notwithstanding the provisions of this Order, the provisions of the principal Order in force prior to the coming into force of this Order shall continue to apply in relation to any charge payable by producers in respect of any period ending on or before 31st March 2004.

9th March 2004 *Whitty*
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

30th March 2004 *D. Elis-Thomas*
Signed on behalf of the National Assembly for Wales

10th March 2004 We consent
Allan Wilson
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 1st April 2004, further amends the Milk Development Council Order 1995 (S.I.1995/356). The Council continues to have the power to require producers to furnish returns and information. In relation to Case B producers, this Order requires the Council to estimate milk production where an annual return is required and not submitted within one month of the end of a production year. It also enables the Council to increase that estimate by up to 10% in certain circumstances. Case B producers are producers who are required to pay a charge to the Council directly, rather than to a milk purchaser as agent for the Council.

A Regulatory Impact Assessment has been prepared and placed in the Library of each House of Parliament, in the Library of the National Assembly for Wales and in the Scottish Parliament Information Centre. Copies may be obtained from the Milk, Pigs, Eggs and Poultry Division of the Department for Environment, Food and Rural Affairs, Area 5D, 9 Millbank, c/o Nobel House, 17 Smith Square, London SW1P 3JR, the Agriculture and Fisheries Policy Division, National Assembly for Wales, Cathays Park, Cardiff CF10 3NQ and the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY.

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