

REGULATORY APPRAISAL

1. Title of Proposal

CHANGES TO PROCEDURE FOR ESTABLISHING MILK DEVELOPMENT COUNCIL LEVY DUE

2. Purpose and intended effects of measure

(i) Objective

To amend the Milk Development Council Order 1995 to modify the procedure for calculating Milk Development Council (“Council”) levy due from milk producers who do not submit production details to the Council. If figures are not submitted by a producer, by a certain date, the Council will have the power to estimate production and to base their calculations for levy due on this.

(ii) Background

The Council is a Defra sponsored Non-Departmental Public Body, which aims to advance the competitive position and enhance the technical strength of Great Britain’s dairy farmers. The Council does not cover Northern Ireland who have separate arrangements. The Council’s activities are funded by a levy on milk production. The Council collects the levy either from the first purchaser of milk, based on actual deliveries or, where the milk producer sells his or her product direct to the public or where the purchaser does not wish to collect the levy, from the farmer directly. The Council must establish the actual level of production on which the levy is due. The Council can require production information from a producer and if the producer refuses to provide the information then criminal proceedings can be instituted. The Council can pursue this themselves in England and Wales, but must proceed through the Procurator Fiscal in Scotland. Even if the criminal process is successfully pursued, the court cannot order the defendant to provide the information required, but only fine them for not doing so. The average level at which the fine is set is approximately £500, which in many cases is lower than the levy that would have been due if production information had been provided.

(iii) Risk Assessment

Under the current legislation, there is a risk that some dairy producers will refuse to pay Council levy, and will not submit production details. This risk could theoretically apply to the 20,000 or so GB producers in Wales England, and Scotland. However, for the majority of producers, their milk purchaser collects the Council levy on their behalf and forwards it to the Council. The main risk

therefore applies to the minority of dairy producers whose purchasers do not wish to collect Council levy on their behalf, or where the producer sells his or her milk product directly to the public (there were almost 1,050 of these latter producers in the GB in the 2001/02 quota year). In practice a small proportion of these producers fail to make a return.

3. Obligations

The Council sought amendment of their powers under the 1995 Order so as to enable levy to be calculated where a producer does not submit a return. This would bring the Order more into line with that of the Potato Industry Development Council Order 1997 (PIDCO). The PIDCO includes a provision for levy to be based on production figures from previous years when a return is not submitted. Where a return is not forthcoming, rather than basing levy on milk deliveries from the previous year, the Council would be able to calculate levy in two ways. These are:

- Calculation based on a producer's actual production figures. These figures would be forwarded to the Council by the *Rural Payments Agency (RPA)*. *This would provide the most accurate reflection of the production situation and would enable the Council to make an accurate calculation of levy due. The RPA cannot currently provide this information, but will be able to do so in the future.*
- Where the RPA are unable to provide actual production figures, the Council would be able to obtain end-year milk quota held by the producer and calculate levy from these figures. *Producers would still have an opportunity to submit actual production details to the Council. This would protect against the possible imposition of too high a levy where producers have under-produced against their quota.*

Adjustment of up to 10%

In cases where UK milk deliveries exceed UK milk quota, the Council would be able to increase the amount of the estimate by up to 10% and calculate levy due from this figure.

The purpose of this provision is to enable as accurate an estimate to be made as possible. In years where total production exceeds quota, reference only to the producer's quota is likely to lead to an under-estimate. The UK figures are to be used because separate figures for Great Britain are not available. In all cases including where this option has been used to make an estimate, there will be an opportunity for actual production figures to be submitted.

An alternative to these amendments would be to make no change to the procedure for establishing levy due. The Council would continue to have to chase up producers who do not submit production details. This costs time and money,

does not necessarily result in a successful outcome, and means the levy may be fixed at a higher rate than if all producers contributed equally.

4. Benefits

(i) Business Sectors Affected

Although there are 25,500 producers in the UK (including Northern Ireland), in practice only GB dairy producers in Wales, England and Scotland, which numbered 20,000 in 2002, could be affected. However, the new arrangements are unlikely to affect a majority of producers as their purchasers generally pay the levy on their behalf. The new arrangements will therefore primarily impact on those producers whose purchasers refuse to collect the levy. Additionally, since the Council have to collect levy from producers who hold direct sales milk quota on an individual basis, the new arrangements will potentially also affect producers who hold direct sales quota, of which there were almost 1,050 in the GB in the 2001/02 quota year. The number of producers who currently refuse to pay Council levy is small, amounting to 22 producers in the 2002/03 production year.

(ii) Benefits

It is estimated that the change in procedure should increase the number of production details provided and reduce significantly the amount of time that the Council spend on pursuing non levy payers. It is estimated that the Council currently spend on average 2100 staff hours per year on pursuing unpaid levy, with 1500 staff hours per year spent on obtaining the actual production details. This amounts to approximately £20,000, which is about 2.5% of the Council's administrative expenditure. It is also possible that the amendments would reduce the number of non-levy payers once the amount due has been established, and that the Council would need to bring fewer debt claims for recovery of levy in the civil courts. This would further reduce the time that Council spends on pursuing non-levy payers. Ultimately, these savings could impact on the charge the Council needs to levy to carry out their activities.

(iii) Issues of Equity and Fairness

The new arrangements are likely to result in the Council collecting levy from non-payers more quickly and successfully. This may also deter some of those reluctant to pay Council levy from avoiding payment, so ameliorating the current situation where levy payers are subsidising non-levy payers, contributing towards greater equity and fairness between those liable to pay Council levy. While the new arrangements are unlikely to eliminate all non-levy payers, it seems that the potential benefits outweigh the potential costs.

5. Costs

Total Costs

The extra costs of these provisions for producers are likely to be minimal, as most producers either already have their figures submitted by the purchaser, or submit the figures themselves. Those producers who currently refuse to provide returns and pay their levy may find that the Council is able successfully to collect unpaid levy as a result of the revised procedure for calculating levy due. The change is unlikely to result in increased costs to the Council or the RPA.

Implementation Costs

Any costs involved with implementing the amendments would be minimal, and would be outweighed by the potential benefits of the revised procedure for calculating levy due.

Costs for a Typical Business

The amendments are unlikely to result in any further costs for a typical business as the majority of producers pay their levy or submit production details in a timely manner. Those producers who refuse to pay levy that they are liable to pay may be subject to increased costs as a result of the revised procedure, as the Council is likely to be more successful in collecting levy due, but this would be offset by reduced costs for others.

6. Consultation with Small Business: The Small Firms' Impact Test

We have liaised with the Small Business Service who agree that the proposal will put no additional burden on milk producers since they already have an obligation to pay the Council levy.

7. Competition assessment

We anticipate that the implementation of the proposed Order is likely to have a broadly neutral effect on competition. It could be argued that the changes to arrangements could make it easier to pursue non-levy payers, removing what could be seen as an unfair advantage to non-payers. This should provide some benefits for competition.

8. Enforcement and Sanctions

Who will enforce this legislation?

Administration of the proposed changes will be undertaken by the Council.

9. Monitoring and Review

The revised arrangements can be monitored at the quarterly review meetings between Defra and the Council, as part of Defra's overall monitoring of the Council. Council are also likely to monitor the success of the new arrangements.

10. Consultation

Within Government

The following agencies and Departments were consulted:

The Rural Payments Agency, The Welsh Assembly, and The Scottish Executive, and they supported the proposed amendment.

Public Consultation

The following organisations were consulted:

Association of County Councils, Country Landowners and Business Association, Dairy Industry Association Ltd, Federation of Milk Groups, Holstein UK & Ireland, Milk Development Council, National Farmers Union, Royal Association of British Dairy Farmers and the Tenant Farmers Association

Responses were received from the National Farmers (NFU) and the Royal Association of British Dairy Farmers (RABDF). They would have consulted Welsh farmer members as a matter of course. Both organisations supported the proposal to base levy due on an estimate of production in cases where a return was not provided within the one month deadline. The NFU commented that the estimate should be based on actual production figures rather than quota as soon as these are available from the RPA. While the RABDF supported the proposal to adjust the estimate by up to 10% where estimates were based on end-year quota held and the UK exceeded its total quota, the NFU felt that an up to 10% increase could be too arbitrary. On reflection it was decided to retain this provision as it allows scope for a more accurate estimate to be calculated in years where production exceeds quota and actual production figures are not yet

available. Producers would have the opportunity to submit the correct production figures if they felt that the estimate did not reflect production in a given case.

11. Summary and Recommendation

It is recommended that the draft Order amending the Milk Development Council Order 1995 shall be made so as to give the Council the power to estimate milk production in cases where no return for calculating levy due is made within the specified deadline. When the RPA are able to provide actual milk production figures for individual producers, the Council will be required to use these figures as a basis for their estimate of levy due. However, until these are available, the Council will have the power to base estimates on end-year milk quota held, increased by up to 10% where national production exceeds the total quota. The producer will be able in all cases to submit his own return showing the actual production figures for the year in question.