
 STATUTORY INSTRUMENTS

1974 No. 2113

COUNTER-INFLATION**The Counter-Inflation (Price Code) Order 1974**

<i>Made</i>	- - -	<i>13th December 1974</i>
<i>Laid before Parliament</i>		<i>18th December 1974</i>
<i>Coming into operation</i>		<i>20th December 1974</i>

The Secretary of State in exercise of the powers conferred by section 2 of the Counter-Inflation Act 1973(a) as amended(b) and of all other powers enabling her 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 1974 and shall come into operation on 20th December 1974.

(2) The Interpretation Act 1889(c) 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this Order were an Act of Parliament and the Orders revoked by Article 3 of this Order were Acts of Parliament thereby repealed.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 and Pay Code) Order (No. 3) 1973(d), the Counter-Inflation (Price and Pay Code) (Amendment) Order 1974(e), and the Counter-Inflation (Price and Pay Code) (Amendment) (No. 2) Order 1974(f) are hereby revoked.

(2) Where notice of an increase in a price or charge given to the Price Commission under the Counter-Inflation (Notification of Increases in Prices

(a) 1973 c. 9. (b) S.I. 1974/1218 (1974 II, p. 4631). (c) 1889 c. 63.
 (d) S.I. 1973/1785 (1973 III, p. 5445). (e) S.I. 1974/661 (1974 I, p. 2632).
 (f) S.I. 1974/785 (1974 II, p. 3033).

and Charges) (No. 3) Order 1973(a) as varied(b) and received at the offices of the Commission before the date when this Order comes into operation falls to be considered by the Commission on or after that date, the Commission shall, in considering the increase, have regard to the Code set out in the Schedule to the Counter-Inflation (Price and Pay Code) (No. 3) Order 1973 as amended as if this Order had not been made.

Shirley Williams,
Secretary of State
for Prices and Consumer Protection.

13th December 1974.

(a) S.I. 1973/1786 (1973 III, p. 5488).

(b) S.I. 1974/543, 775, 840, 933, 1500, 1793 (1974 I, p. 2235; II, pp. 3021, 3265, 3562, III, pp. 5759, 6313).

(Article 2)

SCHEDULE**THE PRICE CODE**

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

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

General Principles

3. The general principles relating to prices are:

- (a) to limit the extent to which prices may be increased on account of increased costs, and to secure reductions as a result of reduced costs;
- (b) to reinforce the control of prices by a control on profit margins while safeguarding and encouraging investment;
- (c) to reinforce the effects of competition, and to secure its full benefits in the general level of prices.

Field of Application

4. With the exceptions specified in paragraphs 5 to 11 below, the prices of goods and services supplied to the United Kingdom home market are within the scope of the control.

5. The prices of goods and services exported (whether directly or through an agent or merchant) are not controlled.

6. The following are not controlled:

- (a) prices paid on first sale into the United Kingdom of imported goods and services;
- (b) prices of goods and services where the application of the control would be inconsistent with an international agreement or arrangement. For this purpose, an international agreement or arrangement is one between states or organisations of states, not between firms;
- (c) prices at sales by auction, where such sales are a normal practice in the particular trade;
- (d) 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;
- (e) prices of second-hand goods (other than second-hand road vehicles sold by distributors);

- (f) charges for the carriage of goods or passengers on international journeys; charges for air navigation, landing and related services and ship, passenger and goods dues, provided that they relate wholly or mainly to such traffic; charges for international mail, Giro, remittance and telecommunication services;
- (g) 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;
- (h) 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;
- (i) insurance premiums, which are subject to restriction by the Secretary of State for Trade;
- (j) taxi fares, where subject to control by the Home Secretary or the Secretary of State for Scotland;
- (k) charges payable to returning officers in connection with Parliamentary elections, determined under the Representation of the People Act 1949(a);
- (l) prices determined by a statutory body which, as a result of an order made under section 8 of the Counter-Inflation Act 1973(b), is required to apply the Code to the determination of those prices;
- (m) subscriptions and certain prices charged by non-profit-making organisations as in paragraphs 127 to 129;
- (n) charges being payments in respect of services provided under or pursuant to Part IV of the National Health Service Act 1946(c) to persons providing such services;
- (o) charges for services to the Post Office by sub-postmasters;
- (p) prices for the sale of tops of wool and other fine animal hair.

Application to food, farming and forestry products

7. 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.

8.—(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

(a) 1949 c. 68.

(b) 1973 c. 9.

(c) 1946 c. 81.

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.

9. 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.

10. The prices for milk for manufacture of products for sale in the United Kingdom will, however, be subject to the following requirements. Except where a Milk Marketing Board incurs additional allowable cost increases in marketing milk:

- (a) the price for the sale of milk for the manufacture of butter and skimmed milk powder may not be increased above the level prevailing at 30th April 1973 (adjusted as necessary to reflect later changes in the intervention prices); and
- (b) the price for the sale of milk for the manufacture of other products may not be increased above the sum of the maximum price permissible under sub-paragraph (a) above and half the sum of:
 - (i) the average premium received by the Board in respect of the product concerned in the year ending 30th April 1973 over the price of milk; and
 - (ii) an amount found by applying to the maximum price permissible under sub-paragraph (a) above the percentage which the average premium referred to in (i) above bears to the price of milk;

being, in either case the price of the milk for the manufacture of butter and skimmed milk powder in the year ending 30th April 1973.

11. What is said in paragraph 8(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.

Charges

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

Goods and services

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

Definition of Enterprise

14. With the exceptions described in paragraph 15, for the purposes of the Code an enterprise means either an enterprise as a whole or 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;
- (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.

15. The definition in paragraph 14 does not apply where the unit for net profit margin control, as defined in paragraphs 67 and 68, is the relevant one. Accordingly the definition in paragraph 14 does not apply in paragraphs 36, 38, 60, 64 to 80 and 82; or, where they deal with net profit margins, in paragraphs 21, 40, 51, 81, 83, 88, 93 and 94; or in other paragraphs which refer to these.

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

Mixed enterprises

17. Where the activities of an enterprise are not confined to manufacturing, distribution, or the provision of services, but include more than one of these, each of these activities must be treated separately for the purposes of allowable cost increases and gross percentage margins unless separate accounts satisfying paragraph 14 cannot be made available for each of them. Where these activities are not treated separately, the main activity of the enterprise will determine whether the provisions of the Code relating to manufacturing, distribution or services apply.

Costs and Prices

18. Prices which are within the control may not be increased unless there is an increase in total costs per unit of output. Without prejudice to the operation of paragraph 49, no price may be increased by a greater percentage than the percentage increase in total costs per unit of output for the product concerned.

19. Where there is an increase in total costs per unit, only those increases defined in the Code as "allowable cost increases" may be taken into account

in arriving at the permitted price increase, and they will be subject to a productivity deduction where appropriate.

20. A subsidy received or to be received by a 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.

Price reductions

21. Prices should be reduced whenever possible. Where there is a net reduction in allowable costs per unit of output, prices should be reduced by an amount equal to any percentage reduction in allowable costs calculated in a similar manner to that prescribed for calculation of permitted price increases under paragraph 24. Reductions are however not required to exceed the percentage fall in total costs per unit of output. In addition prices should be reduced as required in paragraphs 66 and 94 where, in the case of a distributor, its gross percentage margin, and in the case of any enterprise, its profit margin reference level is exceeded, or is likely to be exceeded.

Base date

22. The starting point for the calculation of permitted price increases is the level of costs per unit of output at 30th April 1973. In calculating permitted price increases, cost increases first incurred after 30th April 1973 may be taken into account, to the extent that they have not already been reflected in prices. Where the price of a particular product or of a range of related products has not been increased since 30th September 1972, that date may, at the option of the enterprise, be substituted for 30th April 1973 in paragraphs 24 and 32 below. However, except as in paragraph 23 the permitted price increase may not include any element of retrospective recovery of costs incurred before the date on which the price increase takes effect.

23. A permitted price increase may include recovery in cash terms of cost increases first incurred between 1st November 1973 and the date of the permitted price increase provided that:

- (a) the amount included for such costs is such as to recover the costs over a period of not less than six months beginning with the date of implementation of the permitted price increase;
- (b) the costs were allowable cost increases under the provisions of the Code in force at the time they were incurred; and
- (c) in the calculation of any subsequent price increase under the Code, the "selling price" referred to in paragraph 24(c) should exclude any element which represents a recovery of costs under this paragraph.

(a) 1974 c. 24.

An enterprise may take full account of cost increases which have not been fully recovered before the date of the price increase under this paragraph. A price increase which includes an element of recovery of costs under this paragraph may exceed the increase in total costs per unit by the amount necessary to permit the recovery of those costs.

Calculation of Permitted Price Increase

24. The maximum permitted price increase should be arrived at as follows:

- (a) calculate the change in total costs per unit and allowable cost increases per unit (as reduced by the productivity deduction) between the base date and the date of the price increase; cost increases which have already been reflected in prices should be excluded;
- (b) express allowable cost increases per unit as a percentage of total costs per unit at the base date;
- (c) apply the resulting percentage to the selling price at the base date in order to establish the new permitted price level.

In (a), (b) and (c) above, “base date” means 30th April 1973, or, at the option of the enterprise, the date of any subsequent price increase.

25. The calculation of the level of costs per unit referred to in paragraph 24(a) should be based on the levels of pay and other costs ruling at the base date and on the level of output over the most recent representative period completed by that date (eg the previous quarter) for which adequate records are available. Similarly the calculation of costs per unit at the date of the price increase may take account, in accordance with the normal practice of the enterprise, of increases in raw material prices and other allowable cost increases up to the date of the price increase and should reflect the output level achieved in the most recent representative period (eg the quarter preceding the date of the price increase).

26. The levels of unit costs calculated in this way will not necessarily be the same as the average figures recorded for the whole of the period chosen, eg if pay or other costs changed during the period. If output in the period was materially affected by abnormal factors such as holidays, an appropriate adjustment should be made. If this is impossible, the previous normal operating period should be chosen with appropriate adjustments to allow for changes in the level of pay or other costs.

27. Where price increases are being made not on a single product but on a range of related products (under paragraphs 48 and 49) the procedure in paragraphs 24 to 26 still applies. But in this case the group of related products should be considered as a single product; the costs per unit can be expressed either as costs per unit of volume of output or if a volume measure is impracticable as costs per £ of sales value. Where the calculated

permitted percentage price increase is not applied uniformly to the whole range of products, the weighted averaged percentage price increase made on the selling prices of the products within the group may not exceed this percentage.

28.—(1) Where after 25th March 1974 an indirect tax has been increased an addition not exceeding the cash amount of the increase borne by the vendor may be made to the prices permitted by other provisions of the Code for goods bearing the increased tax. Where an indirect tax is reduced the reduction must be fully reflected in prices.

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

(3) In calculating maximum permitted price increases after 25th March 1974, the figures for total costs per unit and the selling price at the base date must exclude any additions or reductions under this paragraph.

(4) VAT is not regarded as part of the price for calculating prices and price increases for manufacturing and service enterprises, and this paragraph does not affect the treatment of VAT for this purpose.

Frequency of price increases

29. The price of a product to which the provisions on allowable cost increases apply may not be increased within three months or, at the option of the enterprise, within 13 weeks of its last increase, unless—

- (a) the price increase permitted by the Code is at least 10 per cent; or
- (b) the costs of materials, fuel and power in the product account for at least 75 per cent of total costs at the time of the price increase; or
- (c) the price increase permitted by the Code is at least 5 per cent and the costs of materials, fuel and power account for at least 50 per cent of total costs at the time of the price increase; or
- (d) the price increase is permitted under paragraphs 37 to 39 (safeguards), the second sentence of paragraph 61 (special offers), paragraphs 77 or 78 (low profits), paragraphs 79, 81 or 82 (investment), or paragraph 83 (shortage of supplies).

30. In applying paragraph 29 price increases under paragraph 28 attributable solely to increases in indirect taxes should be disregarded.

Transitional Provisions

31. Where an increase in a price or charge was implemented while the Code set out in the Counter-Inflation (Price and Pay Code) Order 1973(a) or the Code set out in the Counter-Inflation (Price and Pay Code) (No. 2) Order 1973(b) as amended was in force and was not permissible under whichever of those Codes was for the time being in force, the price or

(a) S.I. 1973/658 (1973 I, p. 2106).

(b) S.I. 1973/1785 (1973 III, p. 5445).

charge in question should be reduced to the level that would have been permitted under the appropriate Code and this lower price should then be taken as the “selling price at the base date” in calculating any price increase permitted under paragraph 24 of this Code on account of subsequent cost increases.

Allowable Cost Increases

32.—(1) Subject to the following paragraphs, a cost increase may be regarded as an allowable cost increase for the purpose of paragraph 19 if—

- (a) it was first incurred after 30th April 1973; and
- (b) it was incurred for one of the following:
 - (i) labour;
 - (ii) materials, components, consumable stores and supplies, fuel and power;
 - (iii) rent of premises, rates, payment for licences over or in respect of land;
 - (iv) interest charges, as defined in paragraph 33, and depreciation, calculated in accordance with generally accepted accounting principles consistently applied by the enterprise concerned, but based on the historic cost 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;
 - (v) certain bought-in services, not of a capital nature, that is: transport, hire of equipment, insurance, storage, postage, maintenance, telephone and engineering services, research and development, security services, computer services, editorial contributions;
 - (vi) commission processing and other subcontracted operations on materials or components incorporated into the product;
 - (vii) fees for professional services, payments by the Post Office to sub-postmasters;
 - (viii) royalties; and
- (c) it has not already been reflected in prices.

(2) Sub-paragraph (1) does not apply to cost increases if they were first incurred before 1st November 1974 for—

payment for licences over or in respect of land; bought-in research and development, computer services, security services and editorial contributions; and items referred to in sub-paragraph (1)(b)(vii) and (viii).

Interest charges

33. Increases in interest charges payable by an enterprise are allowable cost increases, unless the charges or the increases in them—

- (a) represent a distribution of profits rather than a true interest charge; or
- (b) where they arise on loans between related undertakings, relate to loans which are not strictly required for the business or represent interest in excess of that which would be charged in a transaction at arm's length; or
- (c) represent interest which would properly be regarded as capital expenditure in the period in which it is incurred; or
- (d) relate to the acquisition after 29th April 1973 of a new member in a group of companies.

Productivity Deduction

34.—(1) In order to ensure that the benefits of increased productivity are passed on to the consumer, a deduction should be made from allowable cost increases. Enterprises are required to absorb 20 per cent of allowable cost increases arising from increases in labour costs (excluding the labour costs listed in paragraph 35) except that—

- (a) where the share of labour costs in total costs exceeds 35 per cent enterprises are required to absorb an amount equal to the percentage of total costs which would apply if labour costs represented 35 per cent of total costs;
 - (b) where the share of labour costs in total costs is less than 15 per cent enterprises are required to absorb an amount equal to the percentage of total costs which would apply if labour costs represented 15 per cent of total costs.
- (2) The rate of productivity deduction shall in no case exceed 35 per cent
- (3) Where, however, the increase in labour costs applied to any period—
- (a) before the date of the last price increase which was implemented before 1st November 1974, this paragraph shall have effect with the substitution of 50 per cent for 20 per cent in sub-paragraph (1) and for 35 per cent in sub-paragraph (2);
 - (b) after the date of the last price increase which was implemented before 1st November 1974 but before 1st November 1974, this paragraph shall have effect with the substitution of 35 per cent for 20 per cent in sub-paragraph (1) and of 50 per cent for 35 per cent in sub-paragraph (2).

35. The deduction for productivity under paragraph 34 need not be applied to increases in or arising from—

- (a) employers' national insurance contributions;

- (b) training costs;
- (c) the cost of improvements in respect of progress towards the achievement of the requirements of the Equal Pay Act 1970(a);
- (d) the cost of improvements to meet the purposes of section 8 of the Terms and Conditions of Employment Act 1959(b), the Road Haulage Wages Act 1938(c) and similar legislation, and the Fair Wages Resolution of 1946;
- (e) new or improved benefits under occupational pension or death benefit schemes which are tax approved, or under comparable schemes not requiring tax approval, any deficiency payments to such schemes, and any reimbursement of a corresponding increase in employee contributions. However, where a change in a pension scheme has the effect of increasing the pay, net of any pension contribution, of a substantial proportion of the group of employees covered by the scheme, that increase shall be subject to the productivity deduction unless—
 - (i) a revaluation of the scheme, made in accordance with generally accepted principles for such revaluations, has shown a surplus in respect of those receiving the increase, the value of which equals or exceeds the increase; or
 - (ii) there has been a corresponding reduction in benefits to those receiving the increase; or
 - (iii) the change had been proposed before 6th November 1972;
- (f) new or improved benefits under schemes which—
 - (i) provide payments to employees who leave an employer's service or are redeployed to a job with lower earnings because of redundancy in the circumstances described in (a) and (b) of section 1(2) of the Redundancy Payments Act 1965(d); and
 - (ii) require a minimum of at least 52 weeks continuous service as a condition of such payments.

Benefits which become payable after six months of incapacity are similarly not subject to the productivity deduction.

Safeguards

36. A unit of an enterprise for profit margin control may have relief under paragraphs 37 to 39: Provided that—

- (a) if it applies paragraph 37 or paragraph 39, it shall not at any time apply paragraph 38; and
- (b) if it applies paragraph 38, it shall not at any time apply paragraph 39.

(a) 1970 c. 41.

(b) 1959 c. 26.

(c) 1938 c. 44.

(d) 1965 c. 62.

Safeguard against low profits on products

37. Subject to paragraph 40, where the price of a product (excluding any increase under paragraph 79) does not afford a margin over total costs per unit of output of 2 per cent, an enterprise may increase the price of the product concerned to the extent required to give such a margin.

Safeguard to limit reduction of profit margins

38.—(1) Where the effect of one or more of the provisions of the Code listed in subparagraph (2) below would be to reduce the net profit margin of the enterprise, as defined in paragraphs 67 and 68, by more than one-tenth below the level in the period before the base date used in calculating a permitted price increase under paragraphs 22 to 24, the enterprise may limit that reduction to one-tenth in calculating permitted price increases for the purposes of the Code.

(2) The provisions referred to in sub-paragraph (1) are—

- (a) paragraph 32(1)(b) and (2), which determines those cost increases which rank as allowable cost increases;
- (b) paragraph 34, which prescribes the productivity deduction to be made from certain labour cost increases.

(3) The permitted increase calculated under sub-paragraph (1) may not exceed the increase in total costs per unit for the product or range of related products concerned.

(4) This paragraph does not apply where the profit margin reference level is or is likely to be exceeded; or where prices are being reduced (or price increases restricted) to eliminate the excess over profit margin reference levels in an earlier period.

Safeguard against erosion of profit margins on products

39.—(1) Subject to paragraph 40, where the price of a product (excluding any increase under paragraph 79) does not afford a margin over total costs per unit of output of seven-tenths of the percentage margin at 30th April 1973, or at 30th September 1972 where the margin has declined by one-quarter or more between 30th September 1972 and 30th April 1973, an enterprise may increase the price of the product concerned to the extent required to give such a margin.

(2) For the purposes of this paragraph, the calculation of total costs per unit of output (including any modification permitted under paragraph 82) shall be based on the levels of pay and other costs at the relevant dates and the level of output over the most recent representative period completed by those dates.

Additional provisions relating to paragraphs 37 and 39

40.—(1) The provisions of this paragraph shall have effect for the purposes of paragraph 37 and of paragraph 39.

(2) Any increase shall be limited so far as is necessary to ensure that the reference level is not exceeded.

(3) Once an increase has been made, no further increase shall at any time be made in respect of cost increases incurred before the increase was made under any provision of the Code other than either of those paragraphs: Provided that an increased price permitted under either of those paragraphs may be implemented in more than one stage.

(4) Paragraph 37 and paragraph 39 each has effect in relation to a range of products within the meaning of paragraph 27 as it has effect in relation to a single product; and a product shall not be treated as a single product for the purposes of either of those paragraphs if it has normally been treated as one of a range of related products for the calculation of permitted price increases since 30th April 1973.

Further Provisions Relating to Costs and Prices

Allocation of costs to controlled prices

41.—(1) Allocation of costs to particular controlled goods or services for the calculation of allowable cost increases or increases in total costs 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; or
- (c) makes sales of different products or groups of products which are within the control, and has to divide costs between them for the purposes of the Code.

(2) Where such an enterprise—

- (a) has made allocations which represent a fair division of costs 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 costs in proportion to the value of sales in each area, or on any other basis which represents good accounting practice, provided that it adheres to the chosen basis for all calculations relevant to the Code.

Stocks

42. In calculating the cost of current production or sales, enterprises may need to include an element for stocks of raw materials, of components or of finished goods, used for production or sales. When making such calculations in order to arrive at costs per unit of output and at any allowable cost increases, enterprises should adhere to the practice they have followed consistently for the treatment of such costs for pricing purposes.

Transfer prices

43. 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

allowable cost increases or 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 cost increases or profit margins which in their judgement fairly reflect what would be appropriate on that basis.

Costs of sectors including small enterprises

44. Where the Commission are satisfied that—

- (a) significant reductions or increases in allowable costs have occurred or are about to occur in a sector of industry or commerce which includes a considerable number of small enterprises, especially those providing services; and
- (b) the information available to them indicates that these changes in costs are likely to be of broadly the same order for a substantial number of such enterprises, in respect either of some or all of the goods or services which they supply;

the Commission, after consulting any body or persons which they regard as representative of enterprises affected and after taking into account information supplied by them, may calculate average allowable cost increases or reductions for the relevant goods or services. In the case of cost increases, these increases should then be taken as the allowable cost increases for the relevant goods or services; in the case of cost reductions, the Commission may specify reductions under paragraph 21 in the prices of the relevant goods or services which should then be made by all the enterprises concerned.

45. In calculating average allowable cost changes under paragraph 44 the Commission will take account of—

- (a) all relevant information available to them on cost changes for the goods or services concerned, including information supplied by any trade association or other body which they consider is representative of the enterprises concerned; and
- (b) any other relevant provision of the Code.

46. The Commission will publish information about any average allowable cost changes which they have determined under paragraphs 44 and 45 together with an indication of any price changes which they regard as justified or required under the Code on the basis of those average allowable cost changes.

47. Where the allowable cost changes of a particular enterprise differ from those published by the Commission under paragraph 46 that enterprise may apply the normal provisions of the Code relating to allowable cost increases or price reductions. It will be the responsibility of the enterprise to satisfy the Commission if required that this was justified.

Product Costs and Allowable Cost Increases

Single product enterprises

48. Where an enterprise makes a single product or a single range of products the calculations required by the Code may be carried out by reference to the costs and prices of that enterprise as a whole.

Multi-product enterprises: related products

49. This paragraph applies to enterprises making a variety of products. Where—

- (a) allowable cost increases arise on one or more of a range of related products; and
- (b) a price increase in respect of them is permissible under the Code; the enterprise need not relate the price increase for individual products within the range closely to the cost increase for each product, provided—
 - (i) it has been established practice to treat the range of products in this way; and
 - (ii) the average increase in price, weighted by the value of sales in a recent period, will not exceed the sum of what the Code would permit on the products affected by the cost increases.

50. In cases not covered by paragraphs 48 and 49 the calculations required by the Code should be made by reference to individual products.

Common Pricing Agreements upheld by the Restrictive Practices Court

51.—(1) Where a number of enterprises are parties to a common pricing agreement which has been declared by the Restrictive Practices Court to be not contrary to the public interest, they may increase prices for products to which the agreement applies by not more than the average (weighted by quantity delivered or value of sales in a recent representative period) of the increases otherwise permitted by the Code (except paragraph 79 and without any restriction imposed by the provisions relating to net profit margins) to each enterprise which is party to the agreement, notwithstanding that, in the case of any enterprise, the increase exceeds its permitted price increase. Cost increases reflected in price increases implemented under this paragraph may not be taken into account in calculating any subsequent price increases under any provision of the Code.

(2) The weighted average increase permitted under sub-paragraph (1) should not be applied in full if the profit margin reference level of any of the enterprises concerned is exceeded or, in the light of interim accounts or other evidence, is likely to be exceeded.

(3) Nothing in this paragraph shall prohibit any enterprise which is party to the agreement from implementing an increased price under paragraph 79.

Anticipation of cost increases

52. Prices may not be increased in anticipation of cost increases, except as described in paragraphs 53 to 55. However—

- (a) an enterprise may determine and announce a price increase consistent with the Code which takes account of future allowable cost increases which are already known as to both date and amount, provided that the price increase is not implemented before the allowable cost increases are incurred; and

- (b) an enterprise required to pre-notify an intended price increase to the Commission may seek the agreement of the Commission to a price increase consistent with the Code which takes account of such known future cost increases, subject to the same proviso as in (a).

53. Where—

- (a) a future allowable cost increase is already known, as to both date and amount; and
- (b) it is proposed to quote a price for supply on demand which will not be increased for at least three months from the date on which it takes effect,

an enterprise may average the future allowable cost increase over the period of not less than three months for which it quotes the price in arriving at a price increase for that period, provided that—

- (i) the total amount raised will not be increased by the averaging; and
- (ii) the averaging is in accordance with a well-established practice in the trade concerned.

54. Paragraph 53(a) may be read as applying to an estimated future cost increase if—

- (a) it relates to a material which fluctuates frequently and unpredictably in price; and
- (b) the use of estimates of such cost increases is a well-established practice of the trade; and
- (c) in framing the estimates the enterprise adheres to the methods it has consistently used for the treatment of such costs for pricing purposes.

55. This paragraph applies to tenders to the extent that they are at fixed prices. In framing such tenders, those concerned should have regard to the Code, but where tenders are the custom of the trade—

- (a) competitive tenders may provide for estimated future cost increases;
- (b) non-competitive tenders may provide for estimated future cost increases if the contract is to run for at least six months from the date on which work is to begin.

Escalation and variation of price clauses

56.—(1) Price increases made under an escalation or variation of price clause may reflect cost increases for items listed in paragraph 32(1)(b) to the extent that the increase is permitted under the contract.

(2) The productivity deduction specified in paragraph 34 must be applied to any labour cost increase under any such clause, but there may be subtracted from any deduction required to be made under that paragraph any similar deduction required to be made under the contract calculated by reference to any such

labour cost increase. But if the application of the productivity deduction (modified, if appropriate, under this sub-paragraph) causes or increases a loss on a particular contract taken as a whole, the terms of the clause may be applied to the extent necessary to avoid the loss or the increase in it.

(3) In addition to new contracts, this paragraph applies to existing contracts and to increases in prices under those contracts, to the extent that they relate to cost increases after 6th November 1972.

57. Price increases under an escalation or variation of price clause should be taken into account in applying paragraph 29 only if they are pre-notifiable to the Commission under an order under section 5 of the Counter-Inflation Act 1973(a).

Prime cost and cost reimbursement contracts

58. Where a claim for payment by a contractor under any form of prime cost or cost reimbursement arrangement includes an element for increased labour cost levels since the start of the contract or since 6th November 1972, whichever is the later, the productivity deduction specified in paragraph 34 must be applied but subject to paragraph 56. But if the application of the productivity deduction causes or increases a loss on a particular contract, taken as a whole, the terms of the contract may be applied to the extent necessary to avoid the loss, or the increase in it. This paragraph applies to new and existing contracts.

59. Paragraph 58 does not apply where the terms of a prime cost or cost reimbursement arrangement ensure that the benefit of economies in the use of labour pass directly to the client. For non-competitive contracts of this type placed after 1st November 1973 the contractor may not quote a rate of fee which is higher than that which he has charged since 30th April 1973 for the same service or a similar one.

Safeguard against erosion of profit margins on contracts

60. Where, in the case of a contract to which paragraph 56 or 58 applies, the net profit margin (excluding the amount of any increase in the reference level permitted under paragraph 79) of the unit for profit margin control as defined in paragraphs 67 and 68 is more than three-tenths below the reference level, the productivity deduction need not be applied for so long as the net profit margin remains below seven-tenths of the reference level.

Discounts and rebates

61. The withdrawal or reduction of a discount or rebate, including a discount or rebate to a particular customer, is equivalent for the purposes of the Code to an increase in the price. This does not apply, however, to a discount or rebate directly related to the promotion of one or more products or services for a limited period or in a limited area.

Quantity or quality change and new products

62. A change in the quantity or quality of goods is equivalent for the purposes of the Code to a change in the price. Quality change in goods or services, quantity change in sales units, or artificial creation of new products should not be used as a means of avoiding the requirements of the Code. Where the Commission form the opinion that this has been done, they may seek price reductions, or disallow or reduce price increases.

63. However, where a new product is marketed on an experimental and restricted basis for a period of not more than 12 months, the price charged by the manufacturer need not be treated for the purposes of the Code as establishing a price for the product.

Prices and Profit Margins

64. Prices should be determined so as to secure that net profit margins, as defined in paragraph 65 do not exceed the average level of the best two of the last five years of account of the unit to which net profit margin control applies ending not later than 30th April 1973 (the "reference level").

65. "Net profit margin" means the margin of net profit expressed as a percentage of sales or 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 depreciation and interest as defined in paragraphs 32 and 33, but before deducting corporation tax or income tax.

Action where profit margin is likely to be exceeded

66. Where—

- (a) the reference level has been exceeded; or
- (b) in the light of interim accounts or other evidence, is likely to be exceeded;

abatements in allowable cost increases or price reductions should be made, provided that in either case account has been taken of seasonal and other distorting factors. The abatements or 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.

Unit for profit margins

67. In calculating the net profit margin under paragraph 64, the unit for profit margin control shall be either—

- (a) the enterprise as a whole; or
- (b) an activity treated separately under paragraph 17; or

- (c) a unit of an enterprise, being a separate constituent company or subdivision, 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.

The same unit should then be adhered to for all the purposes of the Code to which the net profit margin is relevant, except paragraphs 37 and 39 and the first sentence of paragraph 93.

68. For the purpose of paragraph 67, 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, but includes only members of the group carrying on business in the United Kingdom; and in this paragraph—

- (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

69. Allocation of profits between prices within the control and those which are not may be necessary for the calculation of net profit margins. The requirements of paragraph 41 apply to such allocations of profits as they do to allocations of costs.

Profit margins and indirect taxes

70. 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. 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.

71. 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.

Modified base period for profit margin calculation

72. 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 for paragraph 64 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; 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

73. For a new enterprise formed from a reconstruction or amalgamation of existing enterprises the reference level will be calculated as defined in paragraph 64 by using the aggregate net trading profits of the constituent enterprises expressed as a percentage of their aggregate sales. The same principles may be applied to an amalgamation of partnerships.

74. Where at any time before or after this Code comes into operation the membership of a group of companies has changed by the acquisition of a new member company or the disposal of an existing member company, then, subject to paragraph 75, in calculating net profit margins and reference levels in relation to the group and its members after the acquisition or disposal, the sales and profits or losses of the member acquired (before and after the acquisition) shall be included and the sales and profits or losses of the member disposed of (before and after the disposal) shall be excluded, and no account shall be taken in the case of an acquisition after 29th April 1973 of money borrowed or interest paid in connection with the acquisition.

75.—(1) Where the membership of a group of companies has changed by the acquisition of a new member company after 29th April 1973—

- (a) the words “constituted, before 30th April 1973, and still” in paragraph 67(c) will not apply in relation to the new member company; and

- (b) the new member company may be integrated into a unit for profit margin control which has been or could have been established under paragraph 67, so long as the conditions of paragraph 67(b) or (c) are or continue to be met where applicable.

(2) Where the new member company is integrated into such a unit, the unit's reference level may be adjusted to include an element reflecting any relief which the new member could have obtained under paragraph 77 or 78 immediately before the acquisition (paragraphs 77 and 78 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 member company is the result of a transaction at arm's length; and
- (b) the new member company existed outside the group before the transaction.

Modification of reference level

76. Where the Commission are satisfied that the reference level of an enterprise, calculated as in paragraphs 64 to 68, 72 to 75, 77 to 78 requires modification, for example because of—

- (a) a substantial reconstruction of the enterprise during the base period; or
- (b) a substantial change in the character of the business; or
- (c) a substantial change in the ratio between the value of net fixed assets (other than land and buildings) and the value of sales, arising from investment which has enabled the enterprise either—
 - (i) to undertake an earlier stage of production of goods or services;
 - or
 - (ii) to achieve substantial savings in labour costs per unit of output;

they may permit some departure from that reference level. In deciding whether, and to what extent, to permit such a departure the Commission should have regard, as appropriate, to the principles referred to in paragraph 73 and, for example, to the profit history of the main parts of the business which now make up the enterprise; the profits of any substantial parts of the business acquired or added to the enterprise during the base period, excluding any such parts which have been disposed of or discontinued; the change in the relative importance of different elements of the business; the extent of the change in the ratio between the value of net fixed assets and sales referred to in subparagraph (c).

Relief for low profits

77. Where the Commission are satisfied that the net profit margin calculated as described in paragraphs 64 to 68 or 72 to 75 represents a return on

capital of less than 10 per cent, the restrictions on price increases and on gross percentage and net profit margins shall not be applied so as to restrict the return below 10 per cent. In such cases the net profit margin which would be needed to produce a return of 10 per cent on capital may be treated as the reference level. Where in the earlier of the two best years referred to in paragraph 64 the net profit margin represented a return on capital of less than 10 per cent, a figure equivalent to a 10 per cent rate of return may be used for that year in calculating the reference level. "Capital" means the net assets employed excluding any part of them which is represented by borrowings the interest on which is deducted in arriving at net profit as defined in paragraph 65. 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.

78. At the option of the enterprise paragraph 77 may be read as referring to a net profit margin of 2 per cent on turnover rather than a 10 per cent return on capital.

Relief for Investment

79.—(1) Enterprises may increase net profit margin reference levels, the levels of gross percentage margins and prices, by reference to their estimated capital expenditure on investment in the United Kingdom, in accordance with the provisions of this paragraph.

(2) In this paragraph and in paragraph 80—

"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 that 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) capital expenditure on new and second-hand plant and machinery (except road vehicles) other than under agreements within (b) below;
- (b) payments—
 - (i) under leasing and hiring agreements for terms of not less than 2 years; and
 - (ii) under hire-purchase, credit sale and conditional sale agreements; relating to new and second-hand plant and machinery (except road vehicles); and
- (c) capital expenditure on the construction of industrial buildings and of warehouses;

less the disposal value of any plant and machinery (except road vehicles), industrial buildings and warehouses disposed of in the investment year: Provided that—

(i) expenditure relating to trading operations outside the control shall be left out of account ; and

(ii) expenditure which cannot be appropriated to each activity within the meaning of paragraph 17 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;

“the investment year” means a period of 12 months chosen by the enterprise beginning on or after 1st December 1974 and not later than the beginning of the relief year;

“the relief year” means a period of 12 months chosen by the enterprise—

(a) in the case of an enterprise required to furnish periodical returns pursuant to an order (a) under section 15 of that Act, beginning not earlier than 56 days after the enterprise concerned has informed the Commission that it intends to apply this paragraph; and

(b) in the case of any other enterprise, beginning not earlier than 1st December 1974;

“relevant expenditure” means an amount (revised from time to time to take account of revision of expenditure on investment) being $17\frac{1}{2}$ per cent of expenditure on investment;

“turnover”, in relation to the 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.

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

(a) may, for the 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;

(b) in respect of its distribution activities, may, for the relief year, treat the level of the gross percentage margin from time to time ascertained under paragraph 86 as increased by the addition of a figure found by expressing the relevant expenditure as a percentage of turnover; and

(c) in respect of its manufacturing and service activities, may increase any price within control for a period of 12 months beginning in the relief year by an amount the additional yield from which, taken with the additional yield from all other such increases, will not exceed the relevant expenditure; and the total increase under this head in the price for any individual product shall not exceed a percentage equal to four times the percentage points by which the

(a) See S.I. 1974/2115 (1974 III, p. 8306).

net profit margin reference level may be increased under head (a) above but, where an increase to be made in any price under this head is less than a whole number of pence, the increased price may be rounded up to the next halfpenny.

(4) If the application of sub-paragraph (3) has not caused the relevant expenditure to be recovered in sales, an enterprise for so long as may be necessary—

- (a) may, in respect of its manufacturing and service activities, treat the reference level as increased by an amount sufficient to permit a price calculated under sub-paragraph (3)(c) to remain in force until the relevant expenditure has been recovered;
- (b) may, in respect of its distribution activities, treat the reference level and the level of the gross percentage margin ascertained under paragraph 86 as increased by an amount sufficient to permit the recovery of any part of the relevant expenditure which has not been recovered;

Provided that where the amount of the relevant expenditure has been recovered (and any adjustments required under paragraph 80 to the amount actually recovered have had effect) net profit margin reference levels, gross percentage margins and prices may until 31st March 1976 continue at levels determined under sub-paragraph (3).

(5) Investment expenditure in respect of which the enterprise has benefited from a modification under paragraph 81 or any provision which it replaces may not be included in the calculation of relevant expenditure—

- (a) where the modification is to the provisions relating to profit margins, for the purposes of sub-paragraph (3)(a): Provided that for the purposes of sub-paragraph (3)(c), sub-paragraph (3)(a) shall have effect without adaptation; and
- (b) where the modification is to the provisions relating to allowable cost increases or to increases in total costs, for the purposes of paragraph (3)(b) and (c).

(6) Increases in prices under this paragraph must be disregarded in determining increases in any price under any other provisions of this Code.

80.—(1) If relief under paragraph 79 is likely to exceed the relevant expenditure, relief under paragraph 79 shall cease or shall be reduced to the extent necessary to ensure that no more than the relevant expenditure is recovered by its operation.

(2) If relief under paragraph 79 has exceeded the relevant expenditure then, notwithstanding any other provisions of the Code (except the proviso to paragraph 79(4)), net profit margin reference levels, the levels of gross percentage margins and prices shall each be reduced by an amount necessary to ensure that no more than the amount of the relevant expenditure is recovered.

81. Where the Commission are satisfied that in a particular case it is necessary in order to encourage or ensure investment to modify the application of the

provisions relating to allowable cost increases or to increases in total costs or to profit margins, they may permit some modification of any of those provisions. In deciding whether, and to what extent, to permit such a departure the Commission should have regard to the following criteria—

- (a) whether there is satisfactory evidence that if this is done expenditure on the investment will begin within 12 months of the date of the price being increased or the profit margin limit being modified; and
- (b) whether—
 - (i) the application of the limits would deprive the enterprise of funds essential for investment which it could not reasonably be expected, or would not be able to raise in some other way, or would reduce the prospective rate of return on the investment to a level which would deter the enterprise from undertaking it; or
 - (ii) there is satisfactory evidence that the enterprise had absorbed cost increases to an exceptional degree as a result of voluntary price restraint and in consequence had significantly reduced profit margins in the 12 months ending 30th September 1972; and
- (c) the extent to which prices, gross percentage margins and net profit margin reference levels are modified by the application of paragraph 79.

Capital-intensive enterprises

82. Where the Commission are satisfied that—

- (a) an enterprise as defined in paragraphs 67 and 68 has net tangible fixed assets, excluding land and buildings, per employee which exceed £2,000 per head; and
- (b) has a plant or group of plants and facilities, employed in the manufacture of a group of related products, which had a fixed asset value at original cost of at least £10m; and
- (c) that the capacity of this plant or group of plants was seriously under-used over the most recent representative period before 30th September 1972 or before the base date, as defined in paragraphs 22 and 24; and
- (d) that the rate of utilisation has since risen by $12\frac{1}{2}$ percentage points;

the Commission may, on application from the enterprise, modify the calculation of allowable and total costs per unit at the base date by substituting the figures for unit costs that, in the Commission's view, would have applied at that time if the plant had been operating at the average rate of capacity use which applied over the most recent representative period before the date of the application. Where, however, an enterprise has already received approval under this paragraph for a price increase after 1st November 1973, the date of that price increase shall be substituted for 30th September 1972 or the base date in sub-paragraph (c).

Shortage of Supplies

83. Where, 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—

- (a) there is a severe shortage of supplies in the domestic market or serious threat of such shortage; and
- (b) significant damage is being thereby caused or threatened to the interests of particular industries or of consumers in the United Kingdom;

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

Particular Sectors

84. The paragraphs which follow deal with the application of the Code to certain important sectors. Unless there is express provision to the contrary in those paragraphs, however, paragraphs 3 to 83 must be taken as applying to all enterprises.

Manufacturing and Mining

85. Paragraphs 3 to 83 above apply in their entirety.

Distribution

86.—(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 do not exceed the proportion specified in sub-paragraph (2) of the level of the gross percentage margin in either—

- (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 has not traded long enough to establish a gross percentage margin under (a) or (b), there shall be substituted the margin for a 12-month period ending not later than 31st March 1974 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 will however apply from 6th May 1974 to:

- (a) distributors engaged mainly in retailing with total annual sales of less than £250,000;
- (b) other distributors with total annual sales of less than £500,000;
- (c) all sales of goods exempted from restrictions on resale price maintenance by an order under section 5 of the Resale Prices Act 1964 (a).

87. 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 charged by distributors. Where indirect taxes are reduced, the reduction must be fully reflected in prices. The cash amount of the increase or reduction need not however be applied precisely to the goods bearing the indirect taxes.

Safeguard for net profit margins

88. Where the net profit margin of the enterprise as defined in paragraphs 67 and 68 is reduced or is likely to be reduced to a level more than one-fifth below the reference level, gross percentage margins may be increased (though not above 105 per cent of the figure determined under paragraph 86(1)) to the extent necessary to restore the net profit margin to a level one-fifth below the reference level. No increase under paragraph 79 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

89. For all the purposes of the Code “gross percentage margin” means the aggregate difference between the cost to the distributor of all the goods he sells in the home market in a period 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. In arriving at sales and costs of sales, indirect taxes should be treated on the same basis as for calculating net profit margins in paragraph 70. In particular the cash value of increases in indirect taxes after 25th March 1974 should be deducted from both sales and costs of sales in arriving at current gross percentage margins. Similarly the cash equivalent of any tax reductions should be added to costs and sales.

90. The provisions of the Code relating to allowable cost increases do not apply to distribution.

Distributors' stocks

91. 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.

(a) 1964 c. 58.

Repricing

92.—(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 goods on which the average rate of annual stockturn 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

93. An enterprise engaged in distribution may increase prices to cover its total costs plus a margin (excluding any increase under paragraph 79) of 2 per cent notwithstanding the limitation on gross percentage margins. Price increases may not be made under this paragraph if they cause the profit margin reference level referred to in paragraphs 64 to 78 to be exceeded.

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

94. Where—

- (a) a distributor's net profit margin or gross percentage margin has exceeded the level allowed under this Code; or
- (b) in the light of interim accounts or other evidence, that level is likely to be exceeded;

price reductions should be made: Provided that in either case account has been taken of seasonal and other distorting factors. The reduction should be sufficient to eliminate the actual or expected excess 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.

Variation of gross percentage margins

95.—(1) Where in the judgement of the Commission the conditions in sub-paragraph (3) are met, they shall—

- (a) consult any body or person whom they regard as representative of enterprises affected and take into account all relevant information supplied by them;

- (b) consider whether the proportion of the gross percentage margin specified in paragraph 86(2)(b) should be varied accordingly whether by way of reduction or increase; and
 - (c) after consultation with the bodies or persons referred to in sub-paragraph (a) inform them of any variation in gross percentage margins which they consider appropriate in the light of the conditions in sub-paragraph (3) and notify this to any enterprise.
- (2) Where a variation in gross percentage margins is notified under this paragraph, paragraph 86(2)(b) shall be modified accordingly in its application to that enterprise.
- (3) The conditions referred to in sub-paragraph (1) are that as a result of changes in value of turnover or operating costs for any enterprise or group of enterprises, the gross percentage margin control in paragraph 86 affects net profit margins in a way that is substantially different from the general position in distribution, or which leads to widespread application of the safeguard in paragraph 88.

Agriculture

96. The Code does not apply to agricultural enterprises engaged in the production and sale of unprocessed agricultural produce. Where such enterprises are engaged in manufacturing or processing, however, their prices are controlled by reference to allowable cost increases and net profit margins. Where they are engaged in distribution, their prices are controlled by reference to gross percentage margins and net profit margins.

Nationalised Industries

97. Paragraphs 98 to 105 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.

98.—(1) The provisions of the Code, except paragraphs 37 to 39 and 77 to 82, apply to the controlled activities of the nationalised industries listed in paragraph 97, according to the nature of the business of the industry as they apply to private sector undertakings. This paragraph and paragraphs 99 to 106 apply in addition.

- (2) (a) In particular, a nationalised industry which is not in deficit on controlled activities may increase prices in accordance with those provisions of the Code.
 - (b) However, a nationalised industry which is in deficit on controlled activities may increase prices in accordance with those provisions, calculated without any deduction under paragraph 34.
 - (c) A nationalised industry, whether or not it is in deficit on controlled activities, may, in addition to any increase under sub-paragraph (a) or (b) above and paragraph 101 below, increase prices on controlled activities by such further amount necessary to provide sufficient revenue in the accounting year in question to ensure a surplus in that year of 2 per cent calculated on turnover on controlled activities in that year; or, at the option of the industry, a return of 10 per cent on net assets employed in controlled activities. Should the date on which the price increase takes effect fall within the second half of the accounting year, the amount of the price increase so calculated shall be restricted so that the additional revenue required to achieve this result shall be obtained over a period of six months from the date of the price increase. Allowance shall be made in either case for any change in the volume of sales which may reasonably be expected to result from increased prices and for any estimated cost increase during the remainder of the accounting year. In the case of any conflict between the provisions of this sub-paragraph and those of paragraphs 57 and 59, this sub-paragraph shall prevail.
- (3) A nationalised industry may apply sub-paragraphs (2)(a) to (c) separately to a separate activity as defined in paragraph 17 or to a separate unit as defined in paragraph 67(c) whether or not the industry is in deficit.
- (4) For the purpose of this paragraph—
- (a) subject to the provisions of paragraph 104—
 - (i) a nationalised industry or a separate activity referred to in sub-paragraph (3) above is in deficit if it incurred a deficit on revenue account in the previous accounting year after providing for interest and depreciation;
 - (ii) in calculating a surplus all trading costs, and provision for interest and depreciation shall be deducted from revenue;
 - (iii) depreciation for the purposes of (i) and (ii) above includes provision for the writing off of displaced plant and deferred charges, and shall be calculated in accordance with accounting principles consistently applied by the industry concerned (including the supplementary provision for depreciation at replacement cost made by the Post Office and British Transport Docks Board).
 - (b) return on net assets shall be calculated by expressing net revenue as a percentage of net assets, where—
 - (i) “net revenue” means revenue in the accounting year in which the price increase takes effect less trading costs and

after making provision for depreciation, calculated in accordance with accounting principles consistently applied by the industry concerned and including provision for the writing-off of displaced plant and deferred charges (but excluding supplementary provision for depreciation at replacement cost) and before taking account of interest and taxation; and

- (ii) “net assets” means the net book value of total assets less current liabilities at the end of the industry’s accounting year preceding the accounting year in question; and
- (c) no account shall be taken of Government compensation or grants taken directly to revenue account.

99. In determining sales value for the purpose of paragraph 27, no account shall, in the case of a nationalised industry, be taken of Government compensation or grants taken directly to revenue account.

100. The calculation of permitted tariff increases in the gas and electricity supply industries should be made having regard to the likely demand and consumption in the light of their statutory obligation to meet that demand.

101.—(1) If the operation of a system of multi-part tariffs in the gas and electricity supply industries reduces the average revenue per unit, the following additional provisions apply. In this paragraph, “revenue” means average revenue per unit and “costs” means average costs per unit.

(2) Where, since the base date—

- (a) revenue has fallen more than costs, prices may be increased by an amount sufficient to restore the average cash margin per unit at the base date;
- (b) revenue has fallen and costs have risen, prices may be increased to the extent needed to restore revenue to the level at the base date and also by allowable cost increases; and
- (c) prices have been increased and revenue has risen by less than costs have risen, prices may be increased to the extent needed to produce a revenue which is equivalent to the revenue at the base date plus allowable cost increases incurred since the base date (including any cost increases already reflected in prices but excluding those which are to be reflected in future price increases to be made under any formula which allows for increases in the industry’s prices on account of variation in costs).

102. Where the responsible Minister notifies the Commission that a price increase resulting from the application of paragraph 98 would have an unacceptable effect on the general level of prices, the Commission will limit the permitted price increase to the amount specified as acceptable by the Minister, but not so as to reduce the increase below what is per-

mitted by paragraph 98(2)(a) or (2)(b) as appropriate or paragraphs 100 and 101. Furthermore, any increase (restricted if that be the case, under this paragraph) permitted under paragraph 98(2)(c) may be charged after the end of the accounting year in which it was first charged or after the end of the period of six months therein referred to as the case may be; but the responsible Minister—

- (a) may from time to time direct that any such increase shall, after the end of that accounting year or of that period, as the case may be, be reduced by such amount or amounts as he shall specify; and
- (b) may direct that any such increase shall be extinguished on such date at or after the end of that accounting year or of that period, as the case may be, as he shall specify.

103. The application of the Code is subject to paragraph 106 in the case of the National Coal Board and the British Steel Corporation. In the case of the Post Office and those industries concerned with air and sea transport, it is subject to the exclusion from control under paragraph 6 of charges for international traffic. The prices of subsidiary companies of nationalised industries, including subsidiaries of the National Bus Company, National Freight Corporation and the Scottish Transport Group, are governed by paragraph 108(1)(b). The prices charged for electricity by Area Electricity Boards and the Scottish Boards will be subject to the provisions of the Code applying to manufacturers.

104. Where the finances of a nationalised industry are, as a result of any statute, reconstructed in or after 1974, the following provisions apply—

- (a) where the base date for the purpose of calculating the allowable cost increases of the industry precedes the reconstruction and the date of implementation of the increased price follows the reconstruction, it shall be assumed for the purposes of the calculation that the reconstruction had taken effect on a date one year before the date on which it actually came into effect; and
- (b) any changes arising from the reconstruction in the accounting practices of the industry or in the value of its assets and liabilities shall be taken into account in calculations under this Code.

105. Subject to paragraphs 98 to 101, the principles set out in paragraph 108(2) apply also to the Northern Ireland Electricity Service.

Coal and Steel

106. Prices charged by producers for coal, coal-based solid fuels, and most iron and steel products are outside the scope of the control by virtue of paragraph 6(b). They are subject to international obligations through United Kingdom membership of the European Coal and Steel Community. Prices of non-ECSC iron and steel products are controlled like those of other manufactured products. Enterprises which produce both ECSC and non-ECSC iron

and steel products will be subject to price control on the latter only. Prices of coal merchants and iron and steel merchants in the United Kingdom will be subject to the control on gross percentage margins and net profit margins applied to wholesaling and retailing enterprises.

Other public sector trading enterprises

107. The Commission will apply to proposals for price increases which are referred to them by Government Departments engaged in substantial trading operations the same principles as to proposals by the nationalised industries.

108.—(1) The Code applies to the prices of the following enterprises, according to the nature of the business of the undertaking, as it applies to the prices of private sector enterprises:

- (a) trading services (but not including on-street parking, or off-street parking where the charges are for periods of four hours or more) of local authorities, local authority joint boards, public utility undertakings and other similar public sector undertakings (not being a nationalised industry listed in paragraph 97 or an undertaking to which paragraph 109 relates); and
- (b) companies registered under the Companies Acts which are wholly or partly owned by Her Majesty's Government or by a nationalised industry;

except that the net profit margin control does not apply to the trading services of local authorities.

(2) The charges for local authority trading services shall be calculated with regard to the established accounting practices of the enterprise concerned and to changes in those practices resulting from reorganisation. Local authorities may adjust their charges taken as a whole in each activity within the overall levels permitted by the Code to take account of the steps which they may take towards the restructuring of charges within their areas.

(3) The principles set out in sub-paragraph (2) above apply also to Passenger Transport Executives and to the London Transport Executive.

Water Undertakings

109.—(1) Water authorities and water undertakers in England and Wales must comply with their obligations under statute (including, in the case of a company, any agreement between a water authority and the company under section 12 of the Water Act 1973(a)) 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 these obligations.

(2) Sub-paragraph (1) applies to regional water boards or to water authorities in Scotland as it applies to water authorities in England and Wales, but in relation only to water supplied by meter.

(a) 1973 c. 37.

(3) The principles set out in paragraph 108(2) above apply also to the enterprises covered by this paragraph.

Services

110. In general, paragraphs 3 to 81 of the Code apply to the prices of service enterprises as they apply to those of manufacturers, so that the system of allowable cost increases and the limitation on net profit margins as a percentage of sales or turnover apply to them. There will be an offset to allowable cost increases as a result of the abolition of Selective Employment Tax for service enterprises where this was paid without refund. Paragraphs 44 to 46 permit the Commission to calculate average allowable cost changes for certain small service enterprises where the circumstances are appropriate. Paragraph 78 would permit services enterprises with low profits to calculate their reference levels for the limit on net profit margins by reference either to turnover or capital employed. Paragraphs 111 to 126 deal with the application of the Code to some particular service sectors, and explain any modifications of the general principles which apply to them.

Banks, finance houses and similar enterprises

111. 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 costs and profits between the two classes of business for the purpose of the control on non-interest charges. Paragraph 41 applies.

112. For the purposes of the Code the enterprises described in paragraph 111 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.

113. The provisions of the Code relating to allowable cost increases and to the limitation on net profit margins, defined in the case of these enterprises as in paragraphs 116 and 117, apply to their non-interest charges. These include commissions, fees and all similar charges. Where *ad valorem* rates are charged and these rates are charged generally, they must be treated as maxima. Enterprises will, however, be free to adjust their rates to match the credit status of a client provided such adjustments are in accordance with normal practice in such cases. In calculating charges these enterprises should take fully into account all factors including customers' balances which enter the costing of the class of transaction for which the charge is made. They should treat changes in those factors as the basis for increases or reductions in the charges in accordance with the Code.

114. The provisions of the Code will apply in full to charges in hire purchase, conditional sale and plant and machinery leasing agreements. Changes in the

monthly Finance Houses Base Rate may be taken as the measure of increases or reductions in interest costs for the calculation of allowable cost increases, provided that rate is used consistently for all the purposes of the Code.

115. In the case of an agreement for the leasing of any equipment on which the lessor's capital expenditure is more than £5,000, increases in rentals may be made under a formula, specified in the agreement, providing for variation of rentals on account of changes in the rate of corporation tax to the extent that the rate of return to the lessor on his capital expenditure net of corporation tax is not greater than it would have been if the rate of corporation tax had remained at that in force at the date of the agreement or, if the formula specifies another date for that purpose, at that date.

116. For the purposes of paragraph 64 "net profit margin" means—

- (a) in the case of enterprises undertaking hire purchase, conditional sale or 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 all other enterprises of the kind described in paragraph 111 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).

117. In comparing net profit margins, as defined in paragraph 116, with the reference level, account should be taken of the total profitability of the non-interest business of the enterprise concerned in determining the permitted level of charges.

Construction

118. In determining prices for construction contracts enterprises should have regard to the Code as it applies to manufacturing enterprises. Of particular relevance to construction are paragraph 55 which applies to tenders for construction work to the extent that they are at fixed prices, and paragraphs 56 to 60 which apply to variation of price clauses, prime cost and cost reimbursement arrangements.

Transport

119. The Code applies to transport undertakings as it does to other service enterprises. Charges for international freight and passenger traffic are outside the control under paragraph 6(f). Charges of nationalised transport undertakings, passenger transport authorities, local authority transport undertakings and transport companies owned by nationalised industries and their subsidiaries are governed by paragraphs 97 to 104 and 108.

120. Charges of private road haulage undertakings are subject to the provisions relating to allowable cost increases and to the limitations on net profit margins.

Vehicle sales and services

121. Charges for repair, maintenance and servicing of vehicles are subject to the provisions relating to allowable cost increases and to the limitation on net profit margins. The prices of vehicles sold by distributors, whether new or second-hand, are subject to the limitations on gross percentage margins and on net profit margins. Paragraph 17 applies to enterprises which both sell and maintain vehicles.

Hotels and catering enterprises

122. What is said in paragraph 110 applies to these enterprises also, in respect both of charges for food and drink and for accommodation.

Professional or other services

123. Fees and charges for professional or other services by firms or by individuals who are self-employed are governed as prices by the Code, except where the disbursements or expenses wholly and exclusively laid out or expended for the purposes of the enterprise concerned do not exceed 10 per cent of the profits or gains of the enterprise.

124. Where scales or rates of charges of general application, whether calculated per item, at an hourly rate or *ad valorem*, are in use in a profession under instructions or advice issued by a professional organisation, those scales or rates must be treated as maxima and may not be increased without the agreement of the Commission. Where rates above scale have normally been agreed and have become normal charges, such rates need not be reduced but the margin by which such rates exceed the scale may not be increased. The Commission will apply the provisions relating to allowable cost increases to increases in scales or rates. Those provisions will also apply to increases in fees or charges calculated on a time basis, except that the productivity deduction in paragraph 34 need not be applied where the fee or charge reflects only the labour cost of any employees' time.

125. Where there are no scales or rates of general application, the rates or scales charged for a professional service may not be increased except to reflect increases in allowable costs. Increases in labour costs under paragraph 32(1)(b)(i) may not include any element in respect of proprietors' or partners', as distinct from employees', time.

126. The limitation on net profit margins will apply to profits of firms or individuals providing professional or other services irrespective of the method by which fees are determined. Where the number of partners in a professional practice 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 73 applies to amalgamations of partnerships. In applying the provisions relating to allowable cost increases to scales or rates of charges, the Commission will have regard to profit margins in the profession generally and will apply paragraphs 36 to 40, 66, 77 and 78 as necessary.

Non-profit-making organisations

127. 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;

will not be controlled.

128. The Code will not apply to prices charged by an organisation satisfying the tests in paragraph 127, or by any properly authorised person acting on behalf of that organisation, if they are charged in order to raise funds for the purposes of the organisation, and involve no substantial or continuing competition with trading enterprises.

129. Except where they are outside the control under paragraph 128, prices charged in any trading activity carried on by an organisation which meets the requirements of paragraph 127 are governed by the Code, unless the customers of the trading activity are confined to members of the organisation.

General

130. 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.

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 November 1973 (as amended from time to time). The substitution takes effect on 20th December 1974.

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