

EXPLANATORY MEMORANDUM TO
THE AGRICULTURE AND HORTICULTURE DEVELOPMENT BOARD
ORDER 2007

2007 No.

1. 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This Order abolishes the existing five statutory levy boards: British Potato Council, Home-Grown Cereals Authority, Horticultural Development Council, Milk Development Council and the Meat and Livestock Commission. It also creates a new levy board – the Agriculture and Horticulture Development Board, which may establish subsidiary companies covering the UK cereals and oilseeds sector, the GB horticulture sector, the GB milk sector, the English beef and sheep sector, the English pig sector, and the GB potato sector.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Chapter 2 of the Natural Environment and Rural Communities (NERC) Act 2006 provides powers to reform agricultural levy boards.

4.2 During pre-legislative scrutiny of the draft NERC Bill by the Environment Food and Rural Affairs Committee, in their Fifth Report published on 26 March 2005 they recommended (Recommendation 32, para 172) that *'Ministers give an undertaking to publish any orders made under this chapter in draft for 'pre-legislative scrutiny' by this Committee, and to allow adequate time for the Committee to carry out such scrutiny if it chooses to do so.'* The Government in their official response to the report, which was published on 26 May 2005, confirmed that it was content to publish the order for scrutiny by the Committee and others, as part of the normal 12-week consultation period, when implementing any findings of the Levy Boards Review (Section 32 of the official response). A copy of the draft statutory instrument and

consultation letter was laid in the House library at the start of the public consultation on 14 March 2007.

4.3 During the debate on the NERC Bill, the Defra Minister of State, Lord Bach, confirmed that Orders made under Chapter 2 would be '*subject to strong parliamentary scrutiny by virtue of the affirmative resolution procedure....*'. (Hansard v.679/110 column 226) He confirmed that the Delegated Powers and Regulatory Reform Committee (DPRRC) had scrutinised the Bill and, in particular, the rationale behind why Defra had chosen to use order-making powers, and that the DPRRC had not responded adversely. It was noted that three of the existing levy bodies were set up under the Industrial Organisation and Development Act 1947 by way of secondary legislation. (Hansard v.679/110, column 227).

5. Territorial Extent and Application

5.1 This Order applies to England, Scotland, Wales and Northern Ireland for cereals and oilseeds. This Order applies to England, Scotland, and Wales for horticulture, potatoes and milk. This Order only applies to England for the beef and sheep industry, and the pig industry, as separate arrangements are being made in Scotland and Wales for these two industries.

6. European Convention on Human Rights

The Minister of State for Sustainable Food and Farming and Animal Health has made the following statement regarding Human Rights:

In my view the provisions of the Agriculture and Horticulture Development Board Order are compatible with the Convention rights.

7. Policy background

7.1 In April 2005, Defra and Devolved Administration Ministers commissioned a review by an independent economist, Rosemary Radcliffe, of the statutory levy arrangements in the agriculture and horticulture sectors. Rosemary Radcliffe submitted her report to Ministers in Autumn 2005, following which there was a full public consultation on the recommendations in her report.

7.2 There were separate consultations in England, Scotland, Wales and Northern Ireland. There were 228 responses to the public consultation in England. There was widespread support for continuation of the statutory levies but a more mixed response to the proposals on restructuring. In particular, the Scottish Executive and the Welsh Assembly decided that red meat, i.e. beef, sheep and pigs, should be covered by separate arrangements in Scotland and Wales.

7.3 Following consideration of the consultation responses and discussions with stakeholders, Ministers announced in June 2006 that they accepted the main recommendations in the Radcliffe Report, namely retention of the statutory levy and changes to the current levy structure. Further public consultation was undertaken from 14 March to 6 June this year on the detailed proposals to give effect to the Radcliffe recommendations. These detailed proposals were explained in a consultation document that accompanied a draft of the statutory instrument and a regulatory impact assessment.

7.4 There has been widespread interest across the horticulture and agriculture sectors in the proposed changes to the levy boards. The response of the horticulture sector, in particular, has been generally in opposition to the proposed restructuring. Other sectors have been more supportive of the changes.

7.5 The Natural Environment and Rural Communities Act 2006 (NERC) was being debated at the time of the Radcliffe Review and the subsequent consultation on the recommendations in the Radcliffe Report. The Act provides general powers to establish levy boards with the functions provided for in the NERC Act, and sets out how a board may be constituted, the functions of such a board, and ancillary provisions such as the ability to act through subsidiaries, to seek returns of information, raise levies and to create offences (Schedules 8 to 10 to NERC).

8. Impact

8.1 A full Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is that the restructuring should bring about efficiency savings for the sectors involved as well as greater collaboration on research and development. The benefits from the restructuring are detailed in the Regulatory Impact Assessment and, in summary, the business case identifies Net Present Value savings of £12.7 million in the five year period from 2009/10 to 2013/14.

9. Contact

Denise Haycock at the Department for Environment, Food and Rural Affairs, Tel: 0207 238 1194 or e-mail: denise.haycock@defra.gsi.gov.uk can answer any queries regarding the instrument.

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Statutory Instrument – Agriculture and Horticulture Development Board Order 2007 Full Regulatory Impact Assessment

(1) Title of proposal

1. The Agriculture and Horticulture Development Board Order 2007.

(2) Purpose and Intended Effect

Objective

2. Replacing the five existing levy bodies with one levy board (Agriculture and Horticulture Development Board, a Non-Departmental Public Body) that oversees six sector-specific companies and one commercial sector company. To improve accountability to agricultural and horticultural levy payers, and improve effectiveness and efficiency.
3. It is intended that these arrangements will come into full effect on 1 April 2008.

Background

4. There are five main statutory agriculture and horticulture levy bodies: the British Potato Council (BPC), the Home-Grown Cereals Authority (HGCA), the Horticultural Development Council (HDC), the Milk Development Council (MDC) and the Meat and Livestock Commission (MLC) which incorporates the English Beef and Lamb Executive (EBLEX), British Pig Executive (BPEX), Hybu Cig Cymru (HCC), and Quality Meat Scotland (QMS) which has delegated responsibility for MLC functions in Scotland. Primary legislation for each of the bodies dates back 30 years or more (pre-EU accession). The purpose of the existing bodies is to promote and develop specific sectors of the agriculture and horticulture industries.
5. These levy bodies are funded by a statutory levy on producers and, in the case of cereals, potatoes and meat, by an additional levy on buyers and/or processors within the supply chain. Statutory levies are currently raised on a Great Britain basis, with the exception of the Home-Grown Cereals Authority which raises a levy on cereals and oilseeds throughout the United Kingdom. As the bodies are funded by a levy raised by statute, they are accountable to Ministers and to Parliament, and are sponsored by Defra. The levy bodies operate from separate locations and make their own arrangements for corporate service provision such as IT, human resources,

accounting and finance. Most services are provided by their own dedicated in-house teams of staff.

6. The restructuring follows an independent review of the agricultural and horticultural levy bodies that was undertaken in 2005 by Rosemary Radcliffe, who was appointed by UK and Devolved Administration Ministers. She reported her findings and recommendations to Ministers at the end of October 2005. In summary, she recommended that there was still a case for statutory levies to address issues of market failure in the sectors in question, but she made recommendations for a new levy board structure to improve governance and accountability and to provide a more efficient and effective service to levy payers. In essence she proposed replacing the current five levy bodies with one levy board and a number of subsidiary companies, covering the different sectors and one providing shared services. (A copy of the full [Report](#) is on the Defra website).

7. Two of the levy bodies, the British Potato Council (BPC) and the Home-Grown Cereals Authority (HGCA) were also included as in-scope bodies in the Hampton Review. The proposed restructuring of the levy bodies is in line with the Hampton recommendations on structural mergers, and facilitates the new arrangements, operating in line with the Hampton principles for better regulation, e.g. asking for information only once and sharing data.

Rationale for Government Intervention

8. The key findings of the Radcliffe Review, as mentioned in paragraph 6, were subject to public consultation. Ministers announced in June 2006 that they accepted the continuing need for government intervention, through the raising of statutory levies, and announced other measures including the formation of a single levy board to replace the current ones. The Agriculture and Horticulture Development Board Order 2007 is needed to introduce the restructuring and other improvements to the levy board system announced by Ministers.

(3) Consultation

- Within Government

9. In exploring the options available for the future structure of the agricultural and horticultural levy bodies, the following Government Departments and Agencies were consulted: Department for Trade and Industry, Department for Health, Her Majesty's Treasury, Her Majesty's Revenue & Customs, Veterinary Laboratories Agency, Environment Agency, Welsh Development Agency, Food Standards Agency, Northern Ireland Department for Agriculture and Rural Development, Government Actuary Department, the Pensions Regulator, National Audit Office, and the Cabinet Office.

10. We have worked closely with the devolved administrations in Scotland, Wales and with the Northern Ireland Office, and with the Government Actuary Department, the Pensions Regulator, HM Revenue & Customs, the National Audit Office, HM Treasury and the Cabinet Office.

- Public consultations

11. A twelve week public consultation on the Radcliffe Report's recommendations was launched on 11 November 2005 and finished on 3 February 2006. Levy payers and stakeholders' views were sought on a number of issues covered by the Report, including continuation of the statutory levy, the future structure of the levy bodies, the type of activities that should be undertaken, accountability to levy payers, and matters surrounding the collection of levy. Public consultation showed that there was a desire to see more co-operation between levy bodies and support for most of the proposals in the Radcliffe Report. However, there was a more mixed response on the Radcliffe model for restructuring with concerns expressed around the establishment of a separate service company and contracting out levy collection services. There was opposition from a large percentage of the horticultural sector respondents to the proposed model. Following the public consultation, Ministers considered the responses received and, after careful analysis, they decided to proceed with a modified version of the Radcliffe model. A summary of the consultation responses is available in the Defra Library. Separate consultations were undertaken in Scotland, Wales and Northern Ireland. These are available from the [Scottish Executive](#), the [Department for Agriculture and Rural Development](#) Northern Ireland and the [National Assembly for Wales](#).

12. A public announcement, concerning the continuation of the statutory levy and the restructuring of the existing bodies by 1 April 2008, was made by Ministers on 28 June 2006. Ministers in the Devolved Administrations in Scotland and Wales announced different arrangements for the meat sector. Quality Meat Scotland (QMS), which has delegated responsibility for MLC functions in Scotland, and Hybu Cig Cymru (HCC) will not be part of the future Agriculture and Horticulture Development Board structure but instead will be devolved organisations reporting directly to Scottish and Welsh Ministers respectively.

13. A twelve week public consultation on the draft affirmative statutory instrument (SI) to be made under the Natural Environment and Rural Communities (NERC) Act 2006 was launched on 14 March 2007 and closed on 6 June 2007. Officials met with all the existing levy boards prior to consultation to ensure that the draft Agriculture and Horticulture Development Board Order adequately covered the needs of the industry. 48 substantive responses were received by Defra to the consultation (plus a further 3 nil responses whose comments did not provide any input to either the draft Order, partial RIA or the levy reform process). Three responses were received in Scotland, and one in Northern Ireland.

14. Responses to the consultation were broadly supportive with varying degrees of acceptance of the need for reform. The majority of respondents acknowledged that there was a need to modernise and simplify levy arrangements, reducing burdens where possible. There were some reservations of the benefits that could be achieved and concern about how the changes would work in practice. Moreover, the horticultural sector, which accounted for 37% of the responses, remained adamant that the Horticultural Development Council should not be included in the reform process. A number of suggested amendments were received and these were incorporated where practicable. These changes include an additional Schedule to cover transfer arrangements for pension schemes, changes to collection of the meat levy, and ring fencing of levy for the sector from which it was raised.

15. Copies of responses and a summary of the consultation responses are available in the Defra Library (copies of the responses are only held in the library for 6 months from the date of publication – 29 August 2007). Separate consultations were undertaken in Scotland, Wales and Northern Ireland. These – and summaries of consultation responses - are available from the [Scottish Executive](#), the [Department for Agriculture and Rural Development](#) Northern Ireland and the [National Assembly for Wales](#).

16. This document updates, finalises and supersedes the analysis provided in the partial RIA published on 14 March 2007.

17. Two main options were considered in developing this policy following the public consultation on the Radcliffe Report and subsequent Ministerial announcement. The first assumes that the Government does nothing and the second assumes full implementation of the policy announced by Ministers on 28 June 2006.

(4) Options

Option 1 – Do Nothing

18. All five current levy bodies remain in their present structures and continue functioning within the limits of their existing legislation. Under this option the British Potato Council, the Horticultural Development Council, the Home-Grown Cereals Authority, the Milk Development Council, and the Meat and Livestock Commission would continue to operate under legislation designed for the agricultural and horticultural industries prior to European Union accession. The legal basis for the existing bodies is the Industrial Organisation and Development Act 1947 (for milk, potatoes and horticulture), the Cereals Marketing Act 1965 (for cereals and oilseeds) and the Agriculture Act 1967 (for red meat).

Option 2 – Agriculture and Horticulture Development Board

19. Following public consultation (see para. 11 above) Ministers announced this option, in a Ministerial Written Statement on 28 June 2006, of one over-arching levy board (the Agriculture and Horticulture Development Board) and a number of subsidiary sectoral companies to replace the existing five statutory levy boards.

20. This option will require the passing of an affirmative statutory instrument (a draft of this accompanies this RIA), under the Natural Environment and Rural Communities Act 2006. The passing of an affirmative statutory instrument (SI) is the only way to achieve the policy objective announced by Ministers. It is intended that the vesting date of this new body will be 1 April 2008. A public consultation on the statutory instrument was held from 14 March to 6 June 2007 and details are provided in paragraph 13 – 15 above.

21. This option - which is a variation on the Radcliffe recommendation – addresses some of the concerns raised in the earlier public consultation on the Radcliffe Report but still meets the criteria set out in that Report concerning increased industry ownership, efficiency, effectiveness and flexibility. The Agriculture and Horticulture Development Board will be responsible to Government for levy expenditure and will provide some common services, eg. human resources, to the sector companies, while the sector companies will be responsible for the provision of services direct to levy payers. There will be no separate service company or third party tax collecting body (as proposed in the Radcliffe Report).

22. The Board of the Agriculture and Horticulture Development Board, which currently exists as a non-statutory shadow board, consists of the 6 Chairs of the sector companies and 4 independent members, one of whom is the Chairman. All the members were appointed under the Office for the Commissioner of Public Appointments (OCPA) rules and the appointments approved by the appropriate Agriculture Ministers relevant to the geographical scope of the sector. For example, the meat sector's remit is England only and so the relevant board members were appointed solely by Defra Ministers but the cereals and oilseeds sector has a UK remit and, therefore, required the approval of all the Agriculture Ministers.

23. The appointment process for the individual sector company boards (except the Chairs) is the responsibility of the Shadow Board of the Agriculture and Horticulture Development Board. These boards currently act as non-statutory shadow boards responsible for setting their relevant companies business plan. They have been formed with the objective of placing the sector companies closer to the industries they serve. Appointments to the sector company boards (which will be Companies Limited by Guarantee) were not public appointments and were not bound by Office for the Commissioner of Public Appointments (OCPA) rules. However, the Shadow Board of the Agriculture and Horticulture Development Board used best Human Resources practice, and abided by OCPA principles in making these appointments.

24. The Radcliffe Report also recommended a 'Fresh Start' initiative to examine the sectors' needs and requirements; consider what activities would best meet those needs; and so ascertain the rate of levy required. Following strong support in last year's public consultation, Ministers announced, in June 2006, that a 'Fresh Start' review would be undertaken, and it commenced in October 2006. All main stakeholders, including the levy bodies in each sector, were consulted to ensure that their views were reflected in a report compiled by Accenture consultants. Accenture undertook a telephone survey of over 430 levy payers; a web-based survey with 546 respondents; a stakeholder conference; as well as attendance at significant trade/sector events and meetings directly with representatives of the levy bodies. Accenture's report is available on the Defra website (UK levy boards: Research to underpin the Fresh Start Review).

25. Accenture have also prepared a detailed business case for the Agriculture and Horticulture Development Board, which takes into account the needs of the different sectors. This business case sets out those services which the shadow board have decided should be provided to the sector companies on a shared basis, and the division of responsibilities between the Agriculture and Horticulture Development Board and its subsidiaries. The full business case can be found on the Defra website (Agriculture and Horticulture Development Board Business Case Report). Following the recommendation of the shadow board of the Agriculture and Horticulture Development Board, that they endorsed the conclusion and recommendations of the Accenture business case, Ministers announced on 19 September 2007 that the Agriculture and Horticulture Development Board and the sector companies would be co-located at a new site in Stoneleigh from April 2009.

26. Ministers in the Devolved Administrations in Scotland and Wales announced that Quality Meat Scotland (QMS) and Hybu Cig Cymru (HCC), respectively, would not be subsidiary companies of the Agriculture and Horticulture Development Board. Quality Meat Scotland will become a Non Departmental Public Body reporting direct to Scottish Ministers on 1 April 2008. Hybu Cig Cymru will become an Assembly Sponsored Public Body reporting direct to Welsh Ministers on 1 April 2008. The Devolved Administrations of the Scottish Executive and the Welsh Assembly Government have produced separate consultations and Regulatory Impact Assessments for Quality Meat Scotland and Hybu Cig Cymru respectively.

(5) Costs and benefits

Sectors and groups affected.

27. Under both options the following groups will be directly affected:

- Levy payers in the UK cereals and oilseeds sector;
- Levy payers in the GB horticulture sector;
- Levy payers in the GB milk sector;
- Levy payers in the GB potato sector; and

- Levy payers in the English pig, beef and lamb sectors.

28. Other groups directly affected are the staff of the five existing levy bodies: British Potato Council, Horticultural Development Council, Home-Grown Cereals Authority, Milk Development Council and the Meat and Livestock Commission.

29. Option 2 has implications for the levy bodies' current Council members. The current levy bodies board/council structures, and future sector company board structures are at Annex A.

30. Indirectly affected would be the main research institutes that benefit from funding support for research in the fields of horticulture, potatoes, milk, meat, and cereals and oilseeds, and other agricultural and horticultural stakeholders.

Option 1. Do Nothing

31. **Sectors affected** - doing nothing would affect everyone involved in the agriculture and horticulture sector in GB (and the UK for cereals and oilseeds). Those who would be adversely affected would be levy payers (listed above) as they would be unable to benefit from the efficiencies to be gained by reviewing the activities and structure of the current levy bodies.

32. Staff in the existing levy bodies might prefer this "no change" option as it would remove uncertainties concerning the impact of the restructuring on posts in the five levy bodies and possible rationalisation of work.

Costs

33. No improvements in effectiveness and efficiency would be achieved. Opportunities for the levy bodies to undertake cross cutting work, rationalise activities to avoid duplication of services, and benefit from group negotiated contracts would not be realised. Co-ordination of issues such as R&D would continue to be limited to collaborations through forums such as the Applied Research Forum. Accountability and improved governance - issues of significant importance to levy payers as indicated through their consultation responses - would not be addressed.

34. Levy payers would continue to be liable to pay statutory levies, totalling about £55 million in 2005/6. The opportunity to reduce the administrative burdens on certain groups of levy payers would also be lost.

Benefits

35. No new benefits would be achieved for levy payers or the levy bodies through this option, although levy payers would continue to benefit from the work of the existing levy bodies.

Option 2 - Agriculture and Horticulture Development Board

36. **Sectors affected** – this option will, for the benefit of levy payers and industry stakeholders, improve accountability and industry-ownership of levy-funded activities. The sector companies will ensure that the levy board structure retains its close links with the various sectors, especially as the majority of members of each sector company board are levy payers. This will help ensure that the sector companies undertake activities that are relevant to levy payers. The “Fresh Start” initiative has resulted in a business planning process which has identified activities that are more closely related to sector needs, and of benefit to levy payers.

37. Moreover the draft statutory instrument (Article 11) provides dissatisfied levy payers with the power to demand that the Agriculture and Horticulture Development Board holds a ballot on whether a statutory levy should continue or be wound up, although there is an initial four year moratorium to allow the new arrangements time to prove themselves. Levy payers and stakeholders will obtain greater value for money from the restructuring, as the new structure will increase efficiency within the levy structure and reduce the amount of money spent on administration.

38. The staff of the current levy bodies will be directly affected by this option. There are approximately 650 staff in the five levy bodies, but this figure includes approximately 320 staff in Meat and Livestock Commercial Services Ltd (MLCSL). MLCSL will transfer as an asset to become a commercial sector company in the new structure, this will not create staff transfer issues. Transfer of Undertakings (Protection of Employment) Regulation 1981 (as amended) (TUPE) will apply to the staff transferring from the existing levy bodies to the Agriculture and Horticulture Development Board and its subsidiaries. Staff have been kept up-to-date with developments since last year’s Ministerial announcement via monthly newsletters issued by Defra, and internal levy bodies staff briefings.

39. Government will benefit as less central oversight will be needed due to the reduction of Non Departmental Public Bodies from the current five levy bodies to one. The restructuring will be consistent with the recommendation in the Hampton and Gershon Reports.

Costs

40. The full costs of implementing this option are given in the detailed business case which can be found on the Defra website (Agriculture and Horticulture Development Board Business Case Report). The transitional costs are significant in year 2009/2010, at £12.5 million. The main elements of these transitional costs are listed in table 1 below. These costs are offset by savings in other areas leading to net saving in the year 2009/2010 of approximately £1.5 million.

Transitional Cost	Cost (£000)
Redundancy	£5,136
Relocation	£2,518
Pension for HGCA	£2,000

Recruitment	£955
Set-up	£832
Implementation	£740

Table 1 Main elements of the transitional costs from the Accenture business case.

41. The new structure will have an impact on staffing levels. The provision of some services by the Agriculture and Horticulture Development Board, with a concomitant reduction in corporate service provision in the subsidiary companies, will lead to a reduction in 22 posts. The Accenture business case identifies a redundancy cost of £5 million based on a working assumption that up to 176 staff might decided not to relocate. The estimated numbers of redundancies is significantly higher than the proposed reduction in posts since co-location at Stoneleigh might result in a large number of staff opting for redundancy rather than transferring into the new organisation. However the new organisation is developing a number of mitigation strategies to help it reduce the risk of losing expertise due to the move to Stoneleigh.

42. There will also be costs associated with the setting up of the AHDB. The annual cost of £134,200 plus expenses (based on a time commitment of 16 days a year for board members and 3-3.5 days a week for the chairman) for the AHDB board will need to be met by levy payers. However the efficiency savings which will be gained from the increased collaboration overseen by the overarching board will more than outweigh these costs. Although there is some variation within sectors overall the sector company board costs are broadly similar with those of the existing levy boards.

43. Rosemary Radcliffe assumed that the changes to the levy board structure could be made cost-neutral on taxation and pensions. On taxation Her Majesties Revenue and Customs (HMRC) have agreed that the current VAT arrangements will continue under the new structure with the exception of horticulture which will now be brought within the scope of VAT to ensure a consistent treatment across all sectors. HMRC will not pre-approve corporate tax returns but we have been informed by independent tax consultants (Deloitte) that there is no goodwill¹ present in the current levy bodies. On pensions, following discussions with the Government Actuary Department (GAD) it has been agreed that the current pension schemes will be transferred from the existing bodies to the Agriculture and Horticulture Development Board, but that they are closed to new members. This transfer is achieved via Schedule 4 of the draft statutory instrument. A new Defined Contribution pension scheme for new employees of the Agriculture and Horticulture Development Board and its subsidiaries has been developed by a pensions working group, consisting of representatives of the existing levy bodies.

Benefits

¹ Goodwill is an accounting term used to reflect the portion of the value of a business not directly attributable to its assets and liabilities.

44. The restructuring will result in a saving of approximately £1.5 million in the year 2009/2010 rising to approximately a £3.5 million saving per annum for the following four years. The Accenture business case identifies Net Present Value (NPV) savings of £12.7 million in the five year period from 2009/2010 to 2013/2014.

45. These savings will be achieved through efficiencies as a result of reduced duplication of activities, and the amalgamation of corporate services. The Agriculture and Horticulture Development Board will also facilitate the better co-ordination of research and development and knowledge transfer, improving the focus and effectiveness of such work. The Accenture business Case identifies the following efficiency savings:

Function	Headcount efficiency savings (%)	Running Cost efficiency savings (%)
Finance, HR, IT	30-50	10-15
Facilities and Fixed Assets	50	60
Market Intelligence	15	5
Business Analysis, Promotion, Coping with Crisis	nil	5
Media Space and Marketing	nil	5
Knowledge Transfer, R&D and Promotion	nil	5

Table 2 Assumptions on efficiency savings from the Accenture business case.

These efficiency savings will provide the following annual savings:

Area	Annual Saving (£000)
All Staff Costs	£1,011
Project Costs	£1,626
Other Running Costs	£805

Table 3 Annual savings from the Accenture business case

46. Levy payers will also benefit from cost savings arising from a reduction in the number of properties and their respective lease costs. The greatest property savings will arise in the year 2009/2010 due to profits of £5 million realised from the sale of the MLC property at Milton Keynes and an incentive payment of approximately £7 million from Advantage West Midlands. The saving in the year 2009/2010 will be approximately £11 million with a £85,000 saving per annum for the following years.

47. There will be a number of unquantifiable benefits of the reform such as:

- Improved governance and transparency, e.g. decisions on levy expenditure taken closer to levy payers;
- Improved performance evaluation and opportunity for shared learning between sectors;

- Activities meeting the needs of levy payers (identified in the Fresh Start consultation);
- Improved co-ordination of research and development;
- Increased flexibility to adapt to changes in sectors/industry;
- Strategic coherence – better “joining up” across sectors.

48. The restructuring of the UK Levy bodies will mean that joint research and development programmes can be undertaken into areas such as biodiversity, efficient use of resources and energy. A more coherent common framework of activities has been developed, linked to the needs of the industries and providing assistance to meet these needs, for example, adapting to changing consumer tastes, quality schemes, etc. A common reporting framework will allow for comparisons of performance of the sector companies - an aspect of the Radcliffe Report which was particularly well received.

49. Throughout the restructuring project the better regulation agenda and opportunities to reduce administrative burdens have been key drivers. These aims would be significantly achieved for all sectors under Option 2 as the legislation to implement the restructuring also removes some current burdens on levy payers, for example, under the current arrangements levy payers are obliged to register (and in some sectors even non-levy payers are obliged to register) as well as furnish returns. However, the data included in statutory returns provides sufficient information to enable levy to continue to be calculated and collected and so the statutory requirement for levy payers to register has been removed from the draft Agriculture and Horticulture Development Board Order 2007. By combining two regulatory requirements into a single more concise format this should substantially reduce the administrative burden on both levy payers and the Agriculture and Horticulture Development Board and its subsidiary companies.

50. To continue to keep administrative burdens to a minimum, the Agriculture and Horticulture Development Board will support the data requirements of the new ballot provision by maximising the use of data transferred from current levy bodies to their successor companies. Data transfers would follow the requirements of the Data Protection Act.

51. Further reductions in administrative and/or regulatory burdens include:

- The general and promotional (species) levy for meat has been combined; this simplifies arrangements for levy collection in all meat categories;
- The Corn Returns Act 1882 will be repealed. The main function that is still required by the industry are the weekly returns, and so these will be retained under the Agriculture and Horticulture Development Board Order 2007.
- There will no longer be a requirement for an annual Levy Rate Order for Cereals and Oilseeds; the AHDB will set the rate of levy, this will be approved by the 4 Agriculture Ministers. Any such rate must not exceed the maximum levy rate set out in the legislation. Having a maximum rate set in the legislation is consistent with other

sectors. This will reduce the regulatory and administrative burden on the agricultural departments and the parliamentary calendar.

- The threshold for paying levy on horticultural produce (excluding mushrooms) will be raised from £50,000 to £60,000 of adjusted sales turnover. In addition, the statutory obligation for those growers with a turnover under the levy threshold but above £25,000 to provide returns (even though no levy is due) has been removed. This will reduce the number of growers who will submit a return to the horticulture sector company, removing an unnecessary administrative and regulatory burden for both the growers and the horticultural sector company. It should mean that, in future, those producers below the £60,000 threshold will no longer have to submit returns, removing a burden on the smallest horticultural producers.
- Levy arrangements for apple and pear growers are currently on a hectareage not turnover basis; an arrangement inherited when the Apple and Pear Research Council merged into the Horticultural Development Council. The results of the Economic Evaluation of the Apple and Pear Research Council report, undertaken by the University of Reading in 2002, concluded that both systems of raising levy would result in approximately the same amount of levy being raised from growers. In standardising the arrangements for raising levy on all horticultural products (except mushrooms) based on turnover, the administrative burden for the horticultural sector should be substantially reduced without significant impact on apple and pear growers. Indeed, where horticultural producers grow different types of top fruit it will simplify their returns.
- Maximum rate of levy for horticultural produce (except mushrooms) has been increased to 0.6 % from 0.5%. (The maximum rate of levy set for horticulture is identified as a % of turnover). The current rate of 0.5% no longer provides any headroom, particularly for differential rates for late payment. The inclusion of an appropriate increase in the maximum rate of levy in the Agriculture and Horticulture Development Board Order 2007 allows for a similar margin as that applicable to other sectors and significantly reduces the need to amend the legislation in the near future.
- The list of excluded varieties of cider apples and perry pears is extensive and subject to frequent change so it was not considered appropriate to continue to include the list in the legislation although the exemption for cider apples and perry pears will continue. The list will be maintained and updated by the horticultural company and publicised by them. This provides for a considerably less burdensome method of keeping a significant document up to date and modernises the way in which it can be accessed by levy payers.
- Under the Agriculture and Horticulture Development Board Order 2007 the requirement for co-operatives in the potato sector to pay buyers levy when purchasing potatoes from their own members has been removed. This removes an administrative and financial burden for the co-operatives.

52. The restructuring provides an opportunity to modernise the legislative frameworks of the current levy bodies to introduce a more simplified, harmonised and transparent piece of legislation. The principles of better regulation have been applied in drafting the new legislation which will underpin the Agriculture and Horticulture Development Board. Annex B details the legislation that will be repealed and revoked as a result of the statutory instrument, Agriculture and Horticulture Development Board Order 2007.

53. The restructuring also enables changes to be made to legislation to increase fairness and efficiency of levy collection. Examples include:

- The levy rate for mushroom growers is based on litres of mushroom spawn purchased (more than 700 litres) and the basis of levy will remain unchanged. However, at the suggestion of the HDC, a differential rate has been introduced for agaricus and non-agaricus mushrooms to reflect the fact that the yield from spawn for non-agaricus mushrooms is significantly lower. The new maximum rate of levy for agaricus mushrooms has therefore been raised to 20 pence per litre and for non-agaricus it has been reduced to 8 pence per litre. (The current maximum rate of levy is 15 pence per litre).
- In the horticulture sector the adjusted sales figure is the turnover of the grower once deductions are made for packaging, transport and some primary processing. Following representations made by some sectors of the horticultural industry concerning the disparity in the amount of levy paid by growers who are also retailers of their own produce (where the value they add is effectively levied) in comparison to those who sell horticultural produce wholesale (where the levied has been paid on the wholesale price) a new deduction of 50% is applied to the retail sales value of horticultural produce and forms part of the calculation for adjusted sales figures. This reduces the impact on the grower/retailer whilst maintaining the same amount of levy paid to the horticulture sector company. As for all other deductions the production of accounting certificates will be the basis for enforcement/verification.
- To ensure that the milk company/AHDB have the necessary powers to collect levies from dairies, in line with arrangements for other AHDB subsidiary companies, a statutory obligation has been introduced for milk buyers to provide returns. This presents no change in real terms to the current arrangements for collecting levy, where buyers currently voluntarily provide returns, other than to provide the milk company/AHDB with the powers to require returns from milk buyers.
- Under the Agriculture and Horticulture Development Board Order 2007, potato buyers will be required to complete monthly returns (rather than annual returns) although we understand from the British Potato Council that this will not cause any additional administrative burden as buyers already submit returns on a monthly basis. In the consultation respondents stated categorically that monthly returns were essential to provided useful statistics and that this would represent no change from current practice.

54. While the structure is largely designed to benefit levy payers, Defra will make savings by having to sponsor only one Non-Departmental Public Body rather than five, enabling a reduction to a single sponsorship team in Defra (there are currently two). Moreover, under this option, Defra will no longer meet the remuneration and expenses currently paid, under the Agriculture Act 1967, to Meat and Livestock Commissioners. This means that there will be a saving of approximately £280,000 per annum. (Defra paid a total of £282,000 in remuneration and expenses to the Meat and Livestock Commissioners in the 2006/07 financial year).

55. Consumers might benefit from the new structure as increased efficiency and closer working in the supply chains should have a beneficial effect.

(6) Small Firms Impact Test

56. Rosemary Radcliffe consulted the Federation of Small Businesses directly, as the majority of levy payers met the definition of small businesses, including many which would be considered micro businesses. An advertisement was published through the Federation of Small Businesses explaining the scope of the review and inviting input specifically from small businesses and levy payers. It also provided advice as to the various avenues of communication to use including through the current levy bodies.

57. Following the public consultation last year, a total of 228 responses (including responses from Scotland, Wales and NI) were received by Defra, 135 of which were from individual levy payers. This feedback was fed in to the policy making process and helped inform the Ministerial decisions announced in June 2006.

58. In addition to involvement in the initial review and providing responses to the public consultation, small businesses and levy payers were contacted again as part of the Fresh Start initiative. This included a telephone survey conducted on 430 levy payers including both farmers and processors, an online questionnaire completed by 546 levy payers, a stakeholder conference and attendance by the consultants Accenture at key events in the farming calendar.

59. Based on the comments received the Agriculture and Horticulture Development Board option was not considered to have a significant and/or disproportionate effect on small businesses. The new arrangements should have a positive effect on small businesses in the agriculture and horticulture sector.

(7) Competition Assessment

60. The assessment was undertaken based on the Office of Fair Trading competition filter guidance. Four filter test questions were applied to each sector; meat, potatoes, milk, horticulture and cereals and oilseeds. The assessment suggested that the effects of this proposal on any of the markets covered by the existing sector areas is minimal with no significant impacts on the businesses that pay levy and/or benefit from the services, technical support and research and development provided by the current bodies.

State Aids

61. The current levy bodies have state aids clearance for the activities they undertake, but this approval will lapse when the existing levy bodies are abolished. Revised applications for state aids approval from the European Commission, for activities to be undertaken by the proposed Agriculture and Horticulture Development Board and its subsidiaries have been submitted. Of the five applications submitted, two have already been approved: the Technical Support and Quality Products applications. Clearance of the Advertising and Promotion application is currently progressing. The remaining two applications for the English Pig Health Scheme and Grant in Aid are subject to a simplified process that does not require formal approval.

Rural Proofing

62. The proposed restructuring of the UK levy boards will not impact adversely upon rural communities, neither will it have any differential social impacts.

(8) Enforcement, Sanctions and Monitoring

63. The Natural Environment and Rural Communities Act 2006, which is the enabling legislation for the Agriculture and Horticulture Development Board Order 2007, provides that all offences will now be summary offences only.

64. The following is a list of offences under the draft Agriculture and Horticulture Development Board Order 2007:

- knowingly providing false or misleading information;
- failure to keep sufficient records to enable the Agriculture and Horticulture Development Board or a subsidiary to establish how much levy is due;
- failure to produce them to an officer of the Agriculture and Horticulture Development Board or a subsidiary on demand to enable them to establish how much levy is due;
- failure to provide a return by the specified date;
- obstruction of any authorised person entering a slaughterhouse (meat Sector companies only)

65. The Macrory Review of Regulatory Penalties was taken into account when assessing the appropriate sanctioning regimes for non-compliance in relation to offences under the Agriculture and Horticulture Development Board Order 2007. The level of penalty applicable to all offences has been increased from a Level 3 fine of £1000, to a Level 5 fine of £ 5000, on the standard scale.

66. Levies that are not paid within the required timeframe, may be pursued as a civil debt but it is unnecessary to stipulate this in the SI or that interest is payable on the debt.

67. The offence of failure to register has been removed as the details necessary for the claiming of levy are now included under the requirement to provide a return. Failure to provide a return is an offence. In accordance with the principles of better regulation it was judged to be inappropriate to retain a statutory registration requirement.

68. A provision has been included to enable the Agriculture and Horticulture Development Board or a subsidiary company to estimate the amount of levy due and apply a higher rate of levy should they wish to (provided it is within the maximum rate of levy stipulated in the statutory instrument and is only to recoup increased administrative cost) following a failure to submit a return.

69. The continuous offence penalty has also been removed. This was a fine (£100 per day) applied in respect of each day a business continues to operate without having applied for registration, produced a return, or provided documents to enable calculation of levy, following a conviction for non compliance of any of the current offences. It was considered that the removal of the continuing offence was adequately balanced by the introduction of the power to estimate, scope to apply a higher rate of levy and the increase to a level 5 fine of £5000. This is a proportionate penalty system for the offences covered by the statutory instrument, Agriculture and Horticulture Development Board Order 2007.

70. The differing harvesting times and planting periods for the potato, horticulture and cereals sectors, and the linking of milk production returns to Rural Payments Agency's Quota return dates, has meant it has not been possible to apply a consistent methodology across all sectors for returns. However where possible we have provided for a structure that keeps the administrative process for both the levy payer and the levy board to a minimum.

71. Records currently held by the existing levy boards will transfer to the Agriculture and Horticulture Development Board. Details will be used only for the purposes of obtaining levy due, and organising a ballot on the continuation of a levy.

72. Flexibility in relation to who may prosecute has been achieved by standardising the current arrangements. This avoids overburdening a single entity or bringing into question the validity of a case, on the basis of who is eligible to bring a prosecution.

(9) Implementation and Delivery Plan

73. The implementation plan showing key deliverables is given in table 4 below:

Key deliverable	Actual or planned implementation date
Fresh Start review completed	January 2007
Appointment of Shadow Board	February 2007
Business Case published	September 2007
Statutory Instrument laid	October 2007
AHDB becomes a legal entity	December 2007
AHDB goes live	April 2008
Co-location at Stoneleigh	April 2009
Review of restructuring	April 2014

Table 4 Implementation plan

(10) Post Implementation Review

74. The performance of AHDB will be assessed through periodic light touch reviews in accordance with Cabinet Office guidance on the reviews of Non Departmental Public Bodies. In addition a review will be undertaken following the five year period covered by the business case to assess the degree to which the identified efficiencies have been achieved.

(11) Summary and recommendation

75. Whilst option 1 will not deliver any benefits, option 2 has the following cost benefits:

- The business case identifies a saving of circa £1.5 million in 2009/2010.
- This saving rises to circa £3.5 million each year for the following four years.
- Defra will benefit from a reduced sponsorship role and savings of circa £280k per annum from not having to meet MLC commissioners remuneration and expenses.

76. There will also be the following non cost benefits:

- Improved governance and transparency, e.g. decisions on levy expenditure taken closer to levy payers;
- Improved performance evaluation and opportunity for shared learning between sectors;
- Activities meeting the needs of levy payers (identified in the Fresh Start consultation);
- Improved co-ordination of research and development;

- Increased flexibility to adapt to changes in sectors/industry;
- Strategic coherence – better “joining up” across sectors.
- Reductions in administrative and regulatory burdens for both levy payers and AHDB.
- Increased fairness and efficiency of levy collection.

78. Table 5 below shows the costs and benefits identified in the business case for the five year period from 2009/2010 to 2013/2014²:

Option 2 Savings	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014
All Staff Costs	£1,011	£1,011	£1,011	£1,011	£1,011
Project Costs	£1,626	£1,626	£1,626	£1,626	£1,626
Other Running Costs	£805	£805	£805	£805	£805
Property & Capital Costs	£11,033	£85	£85	£85	£85
Transition Costs	-£12,507	£0	£0	£0	£0
Contingency Costs	-£500	£0	£0	£0	£0
TOTAL	£1,468	£3,526	£3,526	£3,526	£3,526

Table 5 Costs and benefits for option 2 - Agriculture and Horticulture Development Board

77. In view of the overall benefits of Option 2 – Agriculture and Horticulture Development Board, it is recommended that this policy is taken forward.

(12) Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date

Lord Rooker, Minister of State (Lords), Department for Environment, Food and Rural Affairs

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² The £12.7 million cash flow saving has been calculated using a NPV analysis and therefore will not be the same as the sum of the totals from table 5.

Annex A

Structure of the current levy boards/councils

British Potato Council

16 Members – 9 grower representatives, 4 industry beyond farm, 2 independents and 1 labour representative. Appointed for 3 years.

Horticultural Development Council

15 Members – 12 grower representatives, 1 labour representative, 1 independent and 1 with knowledge of marketing/distribution. Appointed for 3 years.

Home-Grown Cereals Authority

At least 12 but no more than 21 members – currently 16 members – 2 independents, 7 representing dealers and processors and 7 grower representatives.

Milk Development Council

11 members : 2 independents (including the chairman), 2 representing those employed in the industry, 1 marketing specialist and 6 producer representatives.

Meat and Livestock Commission

Maximum of 15 Commissioners – Currently 11 – Chairman, Deputy Chairman, representatives of EBLEX, BPEX, HCC and QMS, a consumers commissioner, a GB abattoir/processor representative, a multiple retailer and food service sector representative and an independent sector/organic farming representative.

Structure of the sector company boards.

Potato Sector Company

15 Members – 1 Chairman, 10 grower representatives, 2 post production representatives, and 2 independents. Appointed for up to 3 years.

Horticultural Sector Company

15 Members – 1 Chairman, 13 grower representatives, and 1 independent. Appointed for up to 3 years.

Cereals and Oilseeds Sector Company

13 members – 1 Chairman, 7 farmer representatives, 4 key sub sector representatives, and 1 independent. Appointed for up to 3 years.

Milk Sector Company

12 members – 1 Chairman, 8 farmer representatives, 1 processor representative, and 2 independents. Appointed for up to 3 years.

Beef and Lamb Sector Company

15 members – 1 Chairman, 8 farmer representatives, 3 processor representative, 1 Auctioneer, and 2 independents. Appointed for up to 3 years.

Pig Sector Company

12 members – 1 Chairman, 6 producer representatives, 4 processor representative (1 current vacancy), and 1 independent. Appointed for up to 3 years.

Annex B

Repeals and revocations

The following are repealed to the extent specified.

<i>Title</i>	<i>Extent of repeal</i>
Corn Returns Act 1882 (c.37)	The whole Act.
Corn Sales Act 1921 (c.35)	Section 2.
Agriculture (Miscellaneous Provisions) Act 1943 (c.16)	Schedule 3.
Cereals Marketing Act 1965 (c.14)	The whole Act.
Parliamentary Commissioner Act 1967 (c.13)	In Schedule 2, the entries relating to the British Potato Council, the Home-Grown Cereals Authority, the Horticultural Development Council, the Meat and Livestock Commission and the Milk Development Council.
Agriculture Act 1967 (c.22)	Sections 1 to 25. Schedules 1 and 2.
Agriculture Act 1970 (c.40)	Section 106(6). Section 108.
Superannuation Act 1972 (c.11)	In Schedule 4, the entry relating to the Meat and Livestock Commission.
Agriculture (Miscellaneous Provisions) Act 1972 (c.62)	Section 16.
House of Commons Disqualification Act 1975 (c.24)	In Schedule 1, in Part 2, the entry relating to the Meat and Livestock Commission, and, in Part 3, the entry relating to the chairman of the Home-Grown Cereals Authority.

<i>Title</i>	<i>Extent of repeal</i>
Northern Ireland Assembly Disqualification Act 1975 (c.25)	In Part 2 of Schedule 1, the entry relating to the Home-Grown Cereals Authority.
Agriculture (Miscellaneous Provisions) Act 1976 (c.55)	Section 3. Schedule 1.
Race Relations Act 1976 (c.74)	In Part 2 of Schedule 1A, the entries relating to the British Potato Council, the Home-Grown Cereals Authority, the Meat and Livestock Commission and the Milk Development Council.
Animal Health Act 1981 (c.22)	In Schedule 5, paragraph 7.
Weights and Measures Act 1985(c.72)	In Schedule 12, paragraph 2.
Agriculture Act 1986 (c.49)	Sections 4 to 7. In Schedule 3, paragraph 2.
Trustee Act 2000 (c.29)	In Schedule 2, paragraphs 35 and 36.
Freedom of Information Act 2000 (c.36)	In Part 6 of Schedule 1, the entries relating to the British Potato Council, the Home-Grown Cereals Authority, the Horticultural Development Council, the Meat and Livestock Commission and the Milk Development Council.
Criminal Justice Act 2003 (c. 44)	In Schedule 26, paragraph 19. In Schedule 27, paragraph 2.

The following are revoked to the extent specified.

<i>Instrument revoked</i>	<i>Extent of revocation</i>
The Cereals Marketing Act 1965 (Amendment) Regulations 1977 (SI 1977/181)	The whole Regulations.
The Cereals Marketing Act 1965 (Amendment) Regulations 1979 (S. I. 1979/26)	The whole Regulations.
The Horticultural Development Council Order 1986 (S. I. 1986/1110)	The whole Order.
The Cereals Marketing Act (Application to Oilseeds) Order 1989 (SI 1989/1200)	The whole Order.
The Horticultural Development Council (Amendment) Order 1990 (S. I. 1990/454)	The whole Order.
The Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991 (S. I. 1991/1997)	Paragraphs 13 and 16 of the Schedule.
The Beef Carcase (Classification) Regulations 1991 (S. I. 1991/2242)	Regulation 10(12).
The Horticultural Development Council (Amendment) Order 1992 (S. I. 1992/1836)	The whole Order.
The Pig Carcase (Grading) Regulations 1994, S. I. 1994/2155	Regulation 7(12).
The Milk Development Council Order 1995 (S. I. 1995/356)	The whole Order.
The Deregulation (Corn Returns Act 1882) Order 1996 (S. I. 1996/848)	The whole Order.
The Potato Industry Development Council Order 1997 (S. I. 1997/266)	The whole Order.
The Potato Industry Development Council (Amendment) Order 1999 (S. I. 1999/1413)	The whole Order.

<i>Instrument revoked</i>	<i>Extent of revocation</i>
The Milk Development Council (Amendment) Order 2000 (S. I. 2000/878)	The whole Order.
The Horticultural Development Council (Amendment) Order 2000 (S. I. 2000/1975)	The whole Order.
The Race Relations Act 1976 (General Statutory Duty) Order 2001 (S. I. 2001/3457)	In the Schedule the entries for the British Potato Council, the Home-Grown Cereals Authority, the Meat and Livestock Commission and the Milk Development Council.
The Intervention Board for Agricultural Produce (Abolition) Regulations 2001 (SI 2001/3686)	Regulation 6(1).
The Horticultural Development Council (Amendment) Order 2002 (S. I. 2002/1676)	The whole Order.
The Potato Industry Development Council (Amendment) Order 2002 (S. I. 2002/3062)	The whole Order.
The Horticultural Development Council (Amendment) Order 2003 (S. I. 2003/908)	The whole Order.
The Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003 (S. I. 2003/1326)	Articles 5 and 6.
The Milk Development Council (Amendment) Order 2004 (S. I. 2004/964)	The whole Order.
The Parliamentary Commissioner (No. 2) Order 2005 (S. I. 2005/3430)	In Schedule 2 the entries for the British Potato Council, the Home-Grown Cereals Authority, the Horticultural Development Council, the Meat and Livestock Commission and the Milk Development Council.