

**EXPLANATORY MEMORANDUM TO**  
**THE AGRICULTURE AND HORTICULTURE DEVELOPMENT BOARD**  
**(AMENDMENT) ORDER 2022**

**2022 No. [XXXX]**

**1. Introduction**

- 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. Purpose of the instrument**

- 2.1 This instrument amends the Agriculture and Horticulture Development Board (AHDB) Order 2008 (S.I. 2008/576) (“the Order”), which establishes the Agriculture and Horticulture Development Board (AHDB) and requires it to impose levies to deliver services in certain agricultural sectors, to:
  - remove the statutory levies in the horticulture and potato sectors in Great Britain (GB);
  - impose a new duty on the AHDB to deliver a regular vote of levy payers at least once every five years on what any levy will be spent on in each levy paying sector;
  - enable the AHDB to charge for services it delivers to all agricultural industries that are in scope of the Order and ensure that where an industry is paying a levy, additional charges can only be made for the cost of services that are not already covered by the levy.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument comes into force on the day after the day on which it is made. This is necessary to ensure the provisions come into force as early as possible into the start of next financial year (2022/2023) to give horticulture and potato sector levy payers certainty that their obligations to make levy returns during next financial year have been removed. Levy payers in these sectors will have already factored this into their financial planning as the intention to remove the levy has already been publicised through our consultation response<sup>1</sup>. However, providing legal certainty as soon as possible is also very important. This instrument places no additional burdens on levy payers in the other sectors as the changes only provide them with more choice and flexibility. For example, to engage with how the levy is spent through the new regular vote or engage the AHDB to deliver additional services if they wish to.
- 3.2 As a consequence of revoking the provisions allowing for the imposition of a levy on the horticulture industry, the definition of the horticulture industry in the Order will be

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<sup>1</sup> [Agricultural and Horticultural Development Board \(AHDB\) reform - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/agricultural-and-horticultural-development-board-ahdb-reform)

broadened to cover the growing of a wider group of horticultural crops by way of business. This will ensure that there is more flexibility for business in this sector to work with the AHDB should they wish to in future on a voluntary levy or commercial basis. The growing of potatoes is excluded from the definition of horticulture industry because the definition of the potato industry remains as a separate and unchanged definition in the Order and so should not be duplicated within the new definition of horticulture industry.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

#### **5. European Convention on Human Rights**

- 5.1 Victoria Prentis MP, Minister of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

“In my view the provisions of the Agriculture and Horticulture Development Board (Amendment) Order 2022 are compatible with the Convention rights.”

#### **6. Legislative Context**

- 6.1 The AHDB was established by the Order under powers provided in the Natural Environment and Rural Communities Act 2006 (the NERC Act). This instrument amends the Order and is made by the Secretary of State under powers conferred by sections 87(1)(a), 88 and 97(1) of, and paragraphs 5 and 6 of Schedule 10 to, the Natural Environment and Rural Communities Act 2006.

#### **7. Policy background**

##### *What is being done and why?*

- 7.1 In January and February 2021, levy payers triggered democratic ballots in the horticulture and potato sectors on whether they wanted the statutory levy to continue in these two sectors in Great Britain. These ballots were triggered under provisions in the Order that enable such a ballot following valid requests from more than 5% of levy payers in any levy paying sector. The horticulture ballot closed on 10th of February 2021 with 61% voting “no” to the levy continuing (from a 69% turnout of those eligible to vote). The ballot on the potato levy closed on 17th of March 2021 with 66% voting “no” to the levy continuing (from a 64% turnout of those eligible to vote).
- 7.2 This instrument respects the outcome of these ballots by removing all the legislative provisions for the statutory levy in these two sectors in Great Britain. Whilst the statutory levy provisions for the horticulture and potato sectors are being removed these two sectors will remain in scope of the Order so that businesses in both these sectors can continue to work with the AHDB on a voluntary or commercial basis if they wish too. It will also enable the AHDB to continue to deliver legacy research and plant protection services to these sectors during a transition period. As a consequence of removing the horticultural levy provisions, the definition of the horticulture industry in the Order will be broadened to cover the growing of a wider range of horticulture products by way of business. This will provide greater flexibility enabling

more businesses in the horticulture sector to work with the AHDB in future if they wish to.

- 7.3 This instrument also introduces a new duty on the AHDB to hold a regular vote at least once every five years on proposals for how the levy will be spent in each of the levy paying sectors. This is being done to make the AHDB more accountable to levy payers. This delivers on industry feedback (collected through the 2018 Request for Views on the future of AHDB<sup>2</sup>) and responses to the recent consultation on reforms to the AHDB Order<sup>3</sup> that levy payers want to have a greater say on how the levy is spent. AHDB have already made a public commitment that they will run the first votes on how the levy will be spent in April 2022, therefore we have not specified in the instrument a date for when the first votes must take place as we have confidence this will be delivered very soon. In addition whilst the new duty means AHDB must run a vote at least once every five years, in practice AHDB is planning on more frequent engagement with levy payers throughout the five-year period to ensure levy payers have a vote whenever the sector plan priorities are updated.
- 7.4 In addition this instrument makes a technical amendment to the Order to enable the AHDB to charge for services to clarify that this includes all industries in scope of the Order (and is not limited as currently to only those sectors that pay a levy). This is being done to ensure the AHDB can cover the cost of any services that might be delivered in future to parts of the horticulture or potato sectors that no longer pay a levy but may wish to contract with the AHDB for specific services in future. This amendment also clarifies the existing provision on charges for services to ensure that where an industry is paying a levy, additional charges can only be made for the cost of services that are not already covered by the levy. This is being done to make it clear that a levy paying industry cannot be charged twice for the same service.

### ***Explanations***

#### *What did any law do before the changes to be made by this instrument?*

- 7.5 Currently, the Order places a duty on the AHDB to impose a levy for each industry covered by the Order, including on the horticulture and potato sectors in Great Britain. Part 4 and Part 6 of Schedule 3 to the Order sets out the details of how the levy should be applied and calculated in the horticulture and potato sectors. The Order also currently defines “horticulture industry” as the growing of horticultural products that are listed in Part 4 of Schedule 3 by way of business.
- 7.6 The Order also makes provision to enable levy payers to request a ballot on whether the levy should continue or not (if 5% of eligible voters request it). However, there are no provisions that enable a regular vote by levy payers on the priorities for how the levy will be spent.
- 7.7 Currently, the Order enables the AHDB to charge for any services they might provide to levy paying sectors that are additional to services already covered by the levy, but this does not include making charges for services to non-levy paying sectors.

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<sup>2</sup> [Agriculture and Horticulture Development Board \(AHDB\): Request for views - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/agriculture-and-horticulture-development-board-ahdb-request-for-views)

<sup>3</sup> [Agricultural and Horticultural Development Board \(AHDB\) reform - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/agricultural-and-horticultural-development-board-ahdb-reform)

Why is it being changed?

- 7.8 Changes are being made to deliver on the outcome of the ballot of levy payers in the horticulture and potato sectors to remove the levy in these two sectors in Great Britain (see paragraphs 7.1 and 7.2 above). Because of the changes to remove the statutory levy provisions in the horticulture sector (including removing Part 4 of Schedule 3, the levy mechanism), changes are also being made to the definition of the horticulture industry in Great Britain so that it includes a broader range of horticultural crops. This change will provide greater flexibility enabling a broad range of businesses in the horticulture sector to work with the AHDB in future if they wish to. As a consequence of removing the horticulture and potato levy provisions these two sectors are being removed from the provisions that list the sectors and levy payers eligible to vote in relation to the levy as they are no longer relevant.
- 7.9 Changes are also being made to improve the accountability of AHDB to other levy paying sectors and deliver value for money by giving levy payers a regular vote at least once every five years on how the levy is spent in their sector (see paragraph 7.3 above). Consequential drafting changes are also being made to the provisions that enable levy payers to request a ballot on whether or not the levy should continue to ensure it is clear these relate specifically to a ballot on the continuation of the levy which is separate from the new provision enabling a regular vote at least every five years on how the levy is spent. The provision introducing the new vote on levy spend priorities purposely uses the word ‘vote’ and not ‘ballot’ as levy payers associate ‘ballot’ with the binary ‘yes/no’ question of whether the levy should continue, and it is important that the new process of voting on levy spend priorities is recognised as a separate and different process. In addition changes are being made to clarify that the AHDB can charge for any services that might be delivered in future to non-levy paying sectors that are in scope of the Order (see paragraph 7.4 above) and to ensure that levy paying industries cannot be charged twice for the same service.

What will it now do?

- 7.10 The statutory duty to impose a levy on the horticulture and potato sectors in Great Britain will be removed and the detailed levy mechanism provisions (Part 4 and Part 6 of Schedule 3) that are linked to the statutory levy duty will also be removed. This will end the statutory levies in these two sectors. However, these two sectors remain in scope of the Order (for Great Britain) so that legacy services can continue to be delivered during a transitional period and to provide flexibility to enable them to work with the AHDB on a commercial or voluntary basis in future should they wish to. In addition the broader definition of “horticulture industry” will enable those horticulture sectors that were previously excluded from working with the AHDB to do so in future if they wish to on a commercial or voluntary basis.
- 7.11 Levy paying industries in other sectors will have a regular say in how their levy is spent through a new vote every 5 years on sector plans. The AHDB has committed to delivering the first votes on sector priorities this Spring 2022. The AHDB will be able charge for any services it might provide in future to non-levy paying sectors in scope of the Order such as the horticulture and potato sectors.

**8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

9.1 No consolidation exercise has been carried out.

## **10. Consultation outcome**

10.1 A joint UK Government and Devolved Governments public consultation on these proposals to reform the Order ran between 17th November 2021 and 10th January 2022. We received 476 responses and most of these were from agricultural and horticultural businesses impacted by the proposed changes. Most of the consultation proposals were either supported by most respondents or received an even balance of mixed responses from those who supported the proposals to those who did not and those who were not sure. Having considered the consultation responses, the UK Government and Devolved Governments have decided to proceed with most of the proposed changes to the Order except for the proposal to extend the scope of the Order to other agricultural industries on a UK-wide basis (which requires further exploration before being implemented), and the proposal to raise the maximum allowable ceiling for the English sheep levy (which was not supported by most consultation responses). On the 8<sup>th</sup> March 2022 the UK Government and Devolved Government published a summary analysis of consultation responses and next steps (available in English and Welsh)<sup>4</sup>.

## **11. Guidance**

11.1 As this instrument removes regulations on industry or makes changes that are only applicable to the operation of the AHDB guidance is not required. However, in relation to the new duty to deliver a vote for levy payers every five years on sector priorities, the AHDB has provided information and guidance on their website and through newsletters to raise awareness and encourage all levy payers to register to participate in this new activity which will give them more say in how the levy is spent (AHDB Shape the Future<sup>5</sup>).

## **12. Impact**

12.1 The impact on business, charities or voluntary bodies is deregulatory as the financial burden of statutory levies is removed from businesses in the horticulture and potato sectors, and no new regulatory burdens are placed on business from the other changes in this instrument.

12.2 The impact on the public sector is the loss of levy funding for AHDB horticulture and potato services.

12.3 An Impact Assessment has not been prepared for this instrument as statutory levies are outside of the regulatory provisions of the Small Business, Enterprise, and Employment Act 2015.

## **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

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<sup>4</sup> [Response to the consultation](#)

<sup>5</sup> [Shape the Future of farming - vote on the work AHDB delivers for you | AHDB](#)

13.3 The basis for the final decision on what action to take to assist small businesses is that no assistance is needed as this instrument is deregulatory. It removes the burden of statutory levies for some businesses and no new burdens are being imposed on small businesses.

#### **14. Monitoring & review**

14.1 DEFRA and the AHDB will monitor and review the impact of this instrument to ensure that the provisions are implemented. As part of our ongoing engagement with levy payers we will monitor the impact of this instrument to ensure that improved accountability and value for money is delivered to them.

14.2 The instrument does not include a statutory review clause because statutory levies are outside of the regulatory review clause provisions of the Small Business, Enterprise, and Employment Act 2015.

#### **15. Contact**

15.1 Jenny Barker at the Department for Environment, Food and Rural Affairs Telephone: 02080268773 or email: [Jenny.Barker@defra.gov.uk](mailto:Jenny.Barker@defra.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Tim Mordan, Deputy Director for Agri-Food Chain Innovation, Productivity & Science, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Prentis MP, Minister of State for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.