EXPLANATORY MEMORANDUM TO

THE AGRICULTURE AND HORTICULTURE DEVELOPMENT BOARD (AMENDMENT) ORDER 2023

2023 No. 1055

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 His Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Agriculture and Horticulture Development Board Order 2008 (S.I. 2008/576) ("the 2008 Order"), which established the Agriculture and Horticulture Development Board ("the AHDB"), to deliver modernising and financial improvements to the AHDB's operations as set out in section 7 below.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 Mark Spencer MP, Minister of State for Food, Farming and Fisheries has made the following statement regarding Human Rights:

"In my view the provisions of the Agriculture and Horticulture Development Board (Amendment) Order 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The AHDB was established by the 2008 Order under powers provided in the Natural Environment and Rural Communities Act 2006 ("the NERC Act"). This instrument amends that Order and is made by the Secretary of State under powers conferred by sections 87, 88 and 97(1) of, and paragraph 6(a) of Schedule 8 and paragraphs 5 and 8 of Schedule 10 to, the NERC Act.

7. Policy background

What is being done and why?

7.1 This instrument is delivering a set of modernising updates to the 2008 Order that will enable the AHDB to deliver operational and financial improvements as explained in subsections 7.2 to 7.23 below.

Explanations

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

7.2 Article 2 of the 2008 Order sets out the industries that the AHDB can operate in, which are currently: the beef and sheep industry in England; the cereal and oilseed industries in the UK; the horticulture industry in GB; the milk (bovine dairy) industry in GB; the pig industry in England and the potato industry in GB.

Why is it being changed?

7.3 The limited scope of the 2008 Order means that currently the AHDB cannot work with other agricultural industries across the UK even though there is demand for this from other industries such as the poultry industry, the wine industry, and other related industries in the agri-food chain (such as some supermarkets). This means that currently some industries are prevented from accessing and benefiting from the AHDB's expertise in export development, consumer education, research and development and market intelligence. This will be addressed by expanding the scope of the 2008 Order as set out at subparagraph 7.4 below so that in future the AHDB will have increased flexibility to work with other agricultural and related industries in the UK where there is demand for that from other industries.

What will it now do?

7.4 The scope of the 2008 Order will be expanded to include other agricultural industries in the UK that are not already listed in the 2008 Order, and also to include industries related to any of the industries that are listed. The 2008 Order will set out a definition of "agricultural industry" for these purposes, while "related industry" is defined in section 88(5) of the NERC Act. It should be noted that any activities that the AHDB undertakes with other agricultural industries through this expanded scope will be funded on a commercial basis by those industries in accordance with article 8 of the 2008 Order (charges for services) and will not involve a statutory levy.

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

7.5 Article 6 of the 2008 Order places a duty on the AHDB to impose a levy on some (but not all) of the industries that are in scope of the 2008 Order to enable it to fund the delivery of services to those industries. It also provides that where a levy is imposed on an industry the rate of the levy (or any higher rate for late payment) must be approved annually by the appropriate authority. Currently the 2008 Order does not provide certainty that a zero rate levy can be set.

Why is it being changed?

7.6 Currently levy rates have to be approved every year by the appropriate authority (usually at the start of each financial year) regardless of whether they are changing or not. An annual approval process for levy rates that are not changing and have already been approved by the appropriate authority is unnecessary and inefficient. It also limits the ability of the AHDB to put forward proposals for changes to levy rates during the year to meet industry needs. In addition, as it is currently unclear whether a zero rated levy can be set, the AHDB's ability to provide short term financial assistance for an industry in extenuating circumstances (such as a disease outbreak or market crash) is limited.

What will it now do?

7.7 Article 6 of the 2008 Order will be amended so that in future the appropriate authority (as defined in section 96(1) of the NERC Act) will no longer have to approve levy rates on an annual basis. This means that, if the current levy rate has been approved and is not changing, the AHDB will not have to seek approval again until such time as they propose to change the levy rate. Final decisions on approving a proposed change to the levy rate will remain with the appropriate authority.

7.8 Article 6 of the 2008 Order will be amended so that in future it expressly enables a zero rated levy to be imposed on an industry (with approval by the appropriate authority) for a temporary period where there are exceptional circumstances justifying this.

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

7.9 Article 12(1) of the 2008 Order sets out the eligibility criteria for who can vote on matters relating to the statutory levy in each industry where a levy is imposed. For the pig industry this is currently defined as any person who keeps pigs in England and any person who slaughters or exports pigs in England.

Why is it being changed?

7.10 Over the last few years the pig industry has undergone significant consolidation and now consists of a smaller number of large commercial pig producers. As a result, the current criterion of any person who keeps pigs is considered too broad and there is a risk that pig keepers that do not pay the levy could have an undue influence on the outcome of a vote on how the levy is spent.

What will it now do?

7.11 The criteria for who is eligible to vote will be changed so that in future voting rights will be limited to 'a person who pays the producer levy related to pigs. This will remove the risk of people who do not contribute to the levy having undue influence.

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

7.12 Paragraph 2(1) of Schedule 2 to the 2008 Order provides that the term of office of the chair or of a Board member may not exceed four years. Paragraph 2(4) of Schedule 2 provides that a person who ceases to be a Board member or the chair or deputy chair of the Board is eligible to be reappointed to that position.

Why is it being changed?

7.13 This provision is out of step with current guidance from the Cabinet Office on public appointments. While the guidance is that Ministers can decide on length of tenure of Board members, there is a strong presumption that no individual should serve more than two terms, or more than ten years in total, in a particular post.

What will it now do?

7.14 Paragraph 2 of schedule 2 will be updated to provide that a person may be reappointed to a particular position on the AHDB once only. This means that a person may serve up to 8 years in total in a particular position. Other minor amendments are made to paragraph 2 of Schedule 2 to reflect the fact that the chair is a Board member and that there is no deputy chair.

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

7.15 Schedule 3 of the 2008 Order sets out the details of how the levies are calculated and collected in each of the industries where a levy is imposed and sets maximum rates for the levy. For some but not all of the industries that pay a levy it also enables levy deductions to be made by third party levy collectors (cereal buyers, slaughterers, and exporters) to cover the administration cost they may incur from collecting the levy from the grower or producer and holding it in trust for the AHDB. For cereal buyers, a specific 5% levy deduction is provided for in the 2008 Order, whereas for slaughters and exporters a specific rate is not set in the Order and it is left open for the AHDB to provide for and set a levy deduction rate. Currently there is no provision for oilseed buyers or milk buyers to make a levy deduction to cover collection costs.

7.16 Schedule 3 also sets out details of the timeframe for when the levy returns must be made and when levy invoices must be paid.

Why is it being changed?

7.17 The current sheep levy rate is at the maximum allowable ceiling under the 2008 Order, whereas the other industries still have about 25% to 29% headroom between the current levy rate and the maximum rate allowed. The sheep sector levy rate has stayed the same for over a decade, meanwhile inflation over the last ten years has reduced the spending power of the levy by 37.6%. Raising the maximum allowable ceiling for the sheep levy by 25% will enable the AHDB to consult the industry on the full range of potential levy rate changes in future (to keep it the same, reduce it or increase it).

7.18 The levy deduction provisions to cover administration costs of collecting the levy are inconsistent across the different industries and have not been reviewed or updated for many years. Since they were put in place financial systems and invoicing/receipts have become far more automated which has significantly reduced the workforce requirements and costs of collecting the levy for buyers, slaughters, and exporters. Levy deductions for administration costs currently account for around £600,000-£700,000 a year in lost levy income. This could be significantly reduced in future if a more flexible approach is taken which leaves the levy deduction rate open to be reviewed and agreed between third party levy collectors and the AHDB rather than being set in statute at a specific rate which cannot easily be updated to reflect changing costs. This will deliver better value for money to levy payers.

7.19 The provisions in the 2008 Order for when the levy must be paid are inconsistent across the industries and out of date with modern standard invoice and payment practices of payment within 30 days of invoice.

What will it now do?

7.20 The maximum ceiling for the sheep levy rate per head will be increased by 25% in each of the categories of producer, slaughterer, and exporter. This will give 25% more headroom between the current sheep levy rates and the maximum rate allowed enabling the AHDB to consult on the full range of levy rate options in future.

7.21 The levy deduction provisions in the cereals sector will be changed so that the current specific 5% levy deduction rate is removed and replaced with a more flexible provision which is consistent with the levy deduction provisions currently applied in the red meat sectors. The new provision will state that the AHDB may reduce the levy that the buyer would otherwise be required to pay to the AHDB to cover the administrative costs of the buyer. The same provisions will also be applied to oilseed buyers and milk buyers for consistency and fairness. This will enable the AHDB to review current levy deduction rates in a more flexible way going forward and consult buyers, slaughterers and exporters on setting fair and appropriate deduction rates based on cost recovery principles in future.

7.22 The levy payment provisions in Schedule 3 will be updated for all of the industries that pay a levy so they are in line with modern standard invoicing practices. This means in future the levy will be payable to the AHDB within 30 days beginning with the date on which the invoice for the levy is issued.

7.23 Other minor and consequential amendments have been made to Schedule 3 which do not change the policy or impact of the provisions.

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 industry consultation on proposals to modernise the 2008 Order was delivered between December 2022 and February 2023. The majority of respondents agreed with all of the proposals we consulted on that are included in this instrument. However, one proposal consulted on which is not included in this instrument was to establish a statutory register of levy payers. On this proposal most respondents were either unsure or disagreed with it because of practical and cost challenges of collecting the information necessary to maintain the register. Therefore it was decided not to proceed with that proposal and instead the government will work with the AHDB on a voluntary approach to establishing a register of levy payers in the future.

11. Guidance

11.1 The AHDB will communicate the changes through its sector councils and sector trade bodies which are representative of levy payers. In relation to an expanded scope for the AHDB to work with other agricultural sectors across the UK, it has been agreed that the AHDB will put in place a set of clear and transparent governance principles to guide this activity including collaborating and consulting with Devolved Governments and other statutory levy bodies where any such activities are GB or UK wide.

11.2 In relation to the changes to levy deduction rates, the AHDB will work with sector trade bodies representing third party levy payers to review and agree appropriate levy rates on a cost recovery basis going forward. In relation to raising the sheep levy rate maximum ceiling, the AHDB will consult industry on the range of levy rate options setting out the implications, business case and value for money of any proposed changes to the sheep levy rate in future.

12. Impact

12.1 There is no significant impact on business, charities, or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is a low level of impact per business, no new regulations are being imposed and 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.

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 not imposing any new regulatory burdens on small businesses.

14. Monitoring & review

14.1 The government and the AHDB will monitor and review the impact of this instrument to ensure that the provisions are implemented and that the follow up engagement and consultation activities with industry are delivered.

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: 07836765878 or email: Jenny.Barker@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Gill Laishley, Deputy Director for Farming and Primary Production, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mark Spencer, Minister of State for Food, Farming and Fisheries can confirm that this Explanatory Memorandum meets the required standard.