Rural Affairs and Islands Committee

20th Meeting, 2023 (Session 6), Wednesday, 28 June

UK subordinate legislation

Introduction

1. This paper supports the Committee's consideration of the Agriculture and Horticulture Development Board (Amendment) Order 2023 which was laid in the UK Parliament on 6 June 2023.

2. The instrument is a UK SI made under the Natural Environment and Rural Communities Act 2006. The 2006 Act provides that the Order cannot be made without the Scottish Ministers' consent, which can only be given after a draft Order has been laid before, and approved by, the Scottish Parliament. The instrument was laid in the Scottish Parliament on 14 June 2023.

3. The draft Oder is subject to the affirmative parliamentary procedure. Further information about this procedure is set out in paragraphs 16 to 20.

The draft Agriculture and Horticulture Development Board (Amendment) Order 2023

4. This instrument amends the Agriculture and Horticulture Development Board Order 2008 (S.I. 2008/576) which established the Agriculture and Horticulture Development Board (AHDB). These amendments—

   - extend the scope of the AHDB to work with non-levy paying agricultural and related sectors across the UK;
   - change the levy approval process whereby the obligation for the AHDB to seek Ministerial approval of the levy rate annually is replaced with the obligation to seek Ministerial approval for new levy rates only;
   - provide for the ability to seek Ministerial approval to charge a levy rate of zero for particular sectors for a period of time in exceptional circumstances;
   - clarify that the term of office for the AHDB Chair or a Board member can be for up to two terms and no more than eight years in total
   - update provisions that enable levy deductions to be made by third party levy collectors to cover any administration costs they may incur; and
   - make technical changes to the levy payment processes for cereals and oilseeds.

5. The Delegated Powers and Law Reform Committee will consider the instrument at its meeting on 27 June 2023.

6. Further information on the instrument is set out in the UK Government's draft explanatory memorandum and the Scottish Government's policy note, set out in Annexe A.

Policy background

7. The 2008 Order places a duty on the AHDB to impose a levy for each industry covered within its scope. In 2022, the UK and devolved governments delivered legislative reforms to the 2008 Order which ended statutory levies in the horticulture and potato sectors and implemented a new regular vote for levy payers in the remaining AHDB sectors of cereals and oilseeds (UK-wide) and dairy (GB-wide), as well as to beef, lamb and pork in England only.

8. The policy note describes the amendments made by this instrument, the draft 2023 Order, as "a further set of modernising amendments to the 2008 Order to enable financial and efficiency improvements to AHDB operations".

9. The instrument expands the scope of the 2008 Order in relation to the range of agricultural industry sectors that the AHDB may operate in across the UK and which the policy note states "will benefit from AHDB expertise". The additional activities that the AHDB may undertake under its expanded scope are to be funded on a commercial basis through those industry sectors and will not involve a statutory levy.

10. Whereas the 2008 Order requires that levy rates must be approved on an annual basis by the appropriate authority regardless of whether those rates are being changed, this instrument provides that the AHDB will not have to seek approval from the appropriate authority for levy rates until such time as those levy rates are proposed to be changed.

11. The instrument allows for a zero-rated levy to be imposed on an industry sector, subject to approval by the appropriate authority, for a temporary period where extenuating circumstances are judged to justify the provision of short-term financial assistance to an industry. Currently, it is not possible to set a zero-rated levy under the 2008 Order.

12. This instrument clarifies that the term of office for the AHDB Chair or a Board member can be for up to two terms and no more than eight years in total. The current maximum term of office under the 2008 Order is for four years and this change will bring the provisions of the 2008 Order in line with Cabinet Office guidance on public appointments.

13. The policy note states that the current regulations allow that in the case of some industries that pay a levy, third party levy collectors may cover the administration cost that they may incur from collecting the levy. These levy deduction provisions

are therefore “inconsistent across the different industries and have not been reviewed or updated for several years”. This instrument will amend the levy deduction provisions so that the AHDB may reduce the levy a buyer would have been required to pay to the AHDB to cover the administrative costs of the buyer, and it will also allow the AHDB to apply the same provisions across all sectors “for consistency and fairness”.

14. The instrument would make technical updates to the provisions for when a levy must be paid by industries. The policy note sets out that the changes would make consistent across all industry sectors that a levy must be paid within 30 days of receiving the levy invoice, thereby bringing the 2008 Order in line with modern standard invoice and payment practice.

15. A joint consultation exercise by the UK and devolved governments on the proposed changes was conducted between 4 December 2022 and 28 February 2023. The consultation was targeted at representative trade bodies from across the UK. The NFU Scotland responded on behalf of Scottish interests. The policy note states that most respondents agreed with all the proposals except for a proposed establishment of a statutory register of levy payers which, consequently, has been omitted from the draft 2023 Order.

Parliamentary procedure

16. As set out above, although the draft Order is a UK SI, it must first be approved by the Scottish Parliament under the affirmative procedure.

17. The affirmative parliamentary procedure is set out in Chapter 10 of the Parliament’s Standing Orders. Instruments subject to the affirmative procedure cannot come into force unless they are approved by Parliament.

18. It is usual practice for subject committees to take evidence from the Scottish Government in advance of considering the instrument. The Committee will take evidence from the Minister for Energy and the Environment, and from Scottish Government officials, at **agenda item 2**.

19. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up too 90 minutes to debate the motion. The Committee will consider the motion at **agenda item 3**.

20. The lead committee must normally report its recommendation to the Parliament within 40 days of the SSI being laid; where the lead committee recommends the instrument be approved, the Parliamentary Bureau will propose a motion that the instrument be agreed. Clerks aim to publish the report the afternoon of 28 June in order for the Parliament to consider the instrument in advance of summer recess.

For decision

21. The Committee is invited to—

- take evidence from the Minister for Energy and the Environment and Scottish Government officials on the instrument (agenda item 2);

- ask the Minister to move, and then debate, the motion on the instrument (agenda item 3); and

- delegate authority to the Convener to sign off the Committee’s report to the Parliament on the instrument.

Rural Affairs and Islands Committee clerks
June 2023

Policy Note
The Agriculture and Horticulture Development Board (Amendment) Order 2023
Si 2023 No. [Xxxx]

The above instrument is made by the Secretary of State in exercise of the powers conferred by sections 87, 88 and 97(1), and paragraphs 6(a) of Schedule 8 and paragraphs 5 and 8 of Schedule 10 to, the Natural Environment and Rural Communities Act 2006 (1) ("the Act"). The instrument may not be made by the Secretary of State unless a draft has been laid before, and approved by a resolution of, each House of Parliament. The Secretary of State also requires the approval of Scottish Ministers before making the instrument. The Scottish Ministers may not give their approval unless a draft of the order has been laid before, and approved by a resolution of, the Scottish Parliament.

Summary Box

This instrument amends the Agriculture and Horticulture Development Board (AHDB) Order 2008 (S.I. 2008/576) ("the 2008 Order"), which establishes the Agriculture and Horticulture Development Board (AHDB). The amendments facilitate the process of reform and modernisation by enabling financial and efficiency improvements to AHDB operations. It:

- Expands the scope of the agricultural and related industries in relation to which the Board is permitted to carry out functions.
- Removes the obligation for the appropriate authority to approve the levy rate annually. Instead, only new levy rates require approval.
- Enables the approval of the appropriate authority to charge a levy rate of zero for a period of time in exceptional circumstances.
- Amends the rules regarding eligibility to vote in relation to the pig levy (applies to England only).
- Ensures that a Board member may be reappointed to a particular position on the Board once only. Clarifying that the term of office for the Chair or a Board member can be for up to two terms and no more than eight years in total
- Updates current provisions that enable levy deductions to be made by third party levy collectors to cover any administration costs they may incur.
- Sets out the required time-frame within which levy returns must be made and when levy invoices must be paid.
- Amends the maximum levy rates for the levy category of sheep (applies to England only).

Policy Objectives

In May 2022, the UK and Devolved Governments delivered priority legislative reforms to the Agriculture and Horticulture Development Board (AHDB) Order 2008 ("the 2008 Order"). This ended the statutory levies in the horticulture and potato sectors and implemented a new regular vote on sector priorities for levy payers in the remaining AHDB sectors of cereals and oilseeds (UK-wide), dairy (GB-wide), beef and lamb (England only), and pork (England only). This present instrument now introduces a further set of modernising amendments to the 2008 Order to enable financial and efficiency improvements to AHDB operations.

The proposed amendments are detailed in section 7 of the UK Government Explanatory Memorandum and outlined below:

Article 2: Expands the scope of the agricultural and related industries in relation to which the Board is permitted to carry out functions.

Currently, Article 2 of the 2008 Order sets out that the AHDB can operate in the beef and sheep industry in England; the cereal and oilseed industries in the UK; the milk (bovine dairy) industry in GB and the pig industry in England. There has been opportunities to work with other industries such as poultry and agri-food chains which will benefit from AHDB expertise. 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. 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.

Article 6: Removes the obligation for the appropriate authority to approve the levy rate annually. Instead, only new levy rates require approval.

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. Currently levy rates have to be approved every year by the appropriate authority regardless of whether they are changing or not. 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.

Article 6: Enables the approval of the appropriate authority to charge a levy rate of zero for a period of time in exceptional circumstances.

Currently the 2008 Order does not enable a levy to be set at a zero rate. A zero levy may be necessary to provide short term financial assistance for an industry in extenuating circumstances such as a disease outbreak or market crash. Article 6 of the 2008 Order will be amended so that in future, a zero rated levy can be imposed on an industry (with approval by the appropriate authority) for a temporary period where there are extenuating circumstances justifying the provision of short term financial assistance to an industry.

Article 12(1): Amends the rules regarding eligibility to vote in relation to the pig levy (applies to England only).

Article 12 (1) of the 2008 Order defines the eligibility criteria for who can vote on matters relating to the statutory levy in each industry where a levy is imposed. For pig producers this is currently defined as any person who keeps pigs in England. This current criterion 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. 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’.

Paragraph 2 of Schedule 2: Ensures that a Board member may be reappointed to a particular position on the Board once only. Clarifying that the term of office for the Chair or a Board member can be for up to two terms and no more than eight years in total.

Paragraph 2 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. This provision is out of date with current guidance from the Cabinet Office (CO) on public appointments. Currently the length of term for an AHDB member is three or four years. Schedule 2 will be updated to provide that the term of office of the chair or of a Board member may not exceed eight years.

Schedule 3: Updates current provisions that enable levy deductions to be made by third party levy collectors to cover any administration costs they may incur.

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, levy deductions can be made by third party levy collectors (cereals buyers, slaughterers, and exporters) to cover the administration cost they may incur from collecting the levy. However, 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. 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 Board 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. The levy deduction provisions in the cereals sector will therefore 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.

Schedule 3: Sets out the required time-frame within which levy returns must be made and when levy invoices must be paid.

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. 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.

Amends the maximum levy rates for the levy category of sheep (applies to England only).

The current sheep levy rate is at the maximum allowable ceiling under the 2008 Order, whereas the other industries still have approximately 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). 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.

Consultation

A joint UK Government and Devolved Governments consultation on proposals to reform the Order ran between 4th December 2022 and 28th February 2023. The proposals were intended to deliver modernising updates to AHDB operations to help deliver financial and operational improvements and as such were considered to be of limited public interest. The consultation was therefore targeted at representative trade bodies of the sectors that have an interest in these modernising changes. This is in line with requirements in the Natural Environment and Rural Communities Act 2006 to consult organisations that are representative of the interests substantially affected by changes to the AHDB Order.

Sector stakeholders were invited by email to respond to the proposals. Industry consultation meetings for each levy paying sector of the AHDB were held throughout January 2023. In total, the consultation generated 17 responses and included trade organisations from UK, GB, England, Wales, Scotland and NI. NFUS responded for Scottish interests.

The majority of respondents agreed with all of the proposals consulted on that are included in this instrument. The exception was the proposed establishment of 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 UK Government will work with the AHDB on a voluntary approach to establishing a register of levy payers in the future.

Impact Assessments

The purpose of this instrument is to deliver modernising and financial improvements to the AHDB's operations. No new regulatory burdens are placed on businesses or the public from changes in this instrument. A high level assessment of the business impact of delivering modernising reforms to the AHDB Order 2023 has been undertaken by DEFRA. Each amendment was considered individually:

Expand the scope of the AHDB Order to other agricultural industries across the UK

Sectors already included in the 2008 AHDB order will not be impacted by this proposal. There will be no immediate direct impact on businesses in the sectors newly covered by the order. This proposal only gives AHDB the flexibility to deliver services to those sectors on a commercial or voluntary basis in the future if the strategic need arises. This is likely to be important over the next few years as all sectors face significant changes in trade and markets, climate change and the transition to domestic agriculture policies.

Raising the maximum allowable ceiling for the sheep levy in England

There will be no immediate direct impact on businesses because of changes made in this proposal. With levy rates in the sheep sector currently being at the maximum per head, an increase in the maximum levy rate means in the future the 38,700 sheep farm businesses currently paying the levy in England could face higher rates. However, an increase in the levy would only occur following a full consultation with these levy payers and a costed business case for increasing the levy to meet demand from these businesses for continuing or increased services provide by the AHDB. Given the recent introduction of a vote in 2022 on costed proposals and priorities for how the levy is spent, if levy rates were raised, the services would likely be in line with feedback from levy payers votes and therefore deliver value for money for the lamb sector.

Ministerial approvals process for levy rates and the ability to set a temporary zero rated levy

There will be no immediate direct impact on businesses because of changes made in this proposal. The proposal provides flexibility in future for AHDB to reduce the levy rate to zero (subject to approval from Ministers) for a temporary period in exceptional circumstances. If this flexibility was enacted it would provide some short term financial relief to a sector in crisis so for those businesses it will have a beneficial impact.

Other amendments

There are no significant impacts on businesses from updating the levy payment provisions. This is already the normal business practice and the change is to bring the SI provisions up to date with current practice. Changing the eligibility to vote in the English pig sector will reduce the number of businesses that can vote on how the pork levy is spent to an estimated 8,000 pork levy payers. This means that businesses who are contract pig producers (i.e. they do not own the pigs but rear them on a contract basis for the owner) will not be able to vote on how the levy is spent. However this is the intended outcome and it is fair that only those who pay the levy should influence levy spend priorities. However, AHDB will work with the National Pig Association to ensure that the views of pig contractors are still fed into the AHDB and they will still be able to access all of the AHDB's pork sector work and resources. There is no business impact of updating the term of office for the AHDB chair and board members.

Financial Effects

The financial effects of the SI relate to amending the levy deduction provisions. Specifically, Changes to the levy deduction provisions will lead to financial savings for the AHDB and levy payers of around £500,000 to £700,000 a year by reducing the amount of levy income that is lost to third party levy collectors. An independent audit of average costs of large, medium, and small cereals buyers showed that actual administration costs from levy collection were much lower than the 5% deduction rate currently allowed, so cereal buyers are currently being over-compensated for collecting the levy. In turn this means that currently cereals levy payers are losing more money than they should be to third party levy collectors. As a result of this change AHDB will consult the sector on setting a new and most likely lower levy deduction rate for cereals buyers that is more in line with actual levy deduction costs. Whilst this will lead to a financial loss for some cereal buyers (due to the current overcompensation for costs) they will still be able to recover their actual costs as any new levy deduction rate must be set in line with cost recovery principles as set out in HMT's managing public money guidance. It will also mean that more levy money will be retained for investing in AHDB's services to the sector, deliver better value for money overall for levy payers.

Scottish Government
Agriculture and Rural Environment Directorate

13 June 2023