

# Rural Affairs, Islands and Natural Environment Committee

## 12<sup>th</sup> Meeting, 2022 (Session 6), Wednesday, 20 April

### Subordinate legislation

#### Introduction

1. This paper supports the Committee's consideration of the [Agriculture and Horticulture Development Board \(Amendment\) Order 2022](#).
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.
3. The draft Order is subject to the affirmative parliamentary procedure. Further information about this procedure is set out in paragraphs 15 to 20.

### The draft Agriculture and Horticulture Development Board (Amendment) Order 2022

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—
  - remove the statutory levies in the horticulture and potato sectors in Great Britain;
  - create a new duty on the AHDB to poll levy payers at least once every five years on how any levy will be spent; and
  - enable the AHDB to charge for services it delivers to all agricultural industries within the scope of the Order and ensuring 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.
5. This SI comes into force the day after the instrument is made. According to the explanatory memorandum, this is necessary to ensure the provisions come into force as early as possible into the start of the new financial year to give horticulture and potato sector levy payers certainty that their obligations to make levy returns during the new financial year have been removed.
6. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 22 March 2022 and agreed that no points arose.

7. Further information on the instrument is set out in the UK Government's [explanatory memorandum](#) and the Scottish Government's policy note, set out at Annexe A

## Policy background

8. The 2008 Order places a duty on the AHDB to impose a levy for each industry covered within its scope. 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.
9. The 2008 Order also 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.
10. 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. The horticulture ballot closed on 10 February 2021 with 61% voting "no" to the levy continuing. The ballot on the potato levy closed on 17 March 2021 with 66% voting "no" to the levy continuing.
11. This instrument gives effect to 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 to. It will also enable the AHDB to continue to deliver legacy research and plant protection services to these sectors during a transition period.
12. 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.
13. 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.
14. 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.

## Parliamentary procedure

15. 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.
16. 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.
17. 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 Environment and Land Reform and Scottish Government officials at **agenda item 3**.
18. 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 to 90 minutes to debate the motion. The Committee will consider the motion at **agenda item 4**.
19. 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.
20. The Scottish Government, however, has asked the Scottish Parliament to consider this instrument on an expedited timetable to ensure the provisions come into force as early as possible into the start of the new financial year to give horticulture and potato sector levy payers certainty that their obligations to make levy returns during the next financial year have been removed. The Committee will, therefore, report on the instrument as soon as possible following today's meeting.

## For decision

### 21. The Committee is invited to—

- **take evidence from the Minister for Environment and Land Reform and Scottish Government officials on the instrument (agenda item 3);**
- **ask the Minister to move, and then debate, the motion on the instrument (agenda item 4); and**
- **delegate authority to the Convener to sign off the Committee's report to the Parliament on the instrument.**

## POLICY NOTE

### THE AGRICULTURE AND HORTICULTURE DEVELOPMENT BOARD (AMENDMENT) ORDER 2022

#### SI 2022 No. [XXXX]

The above instrument is made by the Secretary of State in exercise of the powers conferred by sections 87(1)(a), 88 and 97(1), and paragraphs 5 and 6 of schedule 10, of the Natural Environment and Rural Communities Act 2006. 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 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.

#### Policy Objectives

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).

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.

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) and responses to the recent consultation on reforms to the AHDB Order 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 the instrument does not specify a date for when the first votes must take place as this should 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.

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.

Further details are provided in the separate UK Government Explanatory Memorandum.

## **Consultation**

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. 476 responses were received and most of these were from agricultural and horticultural businesses impacted by the proposed changes. These included 24 responses from Scottish levy payers/stakeholders, with a further 33 from levy payers/stakeholders with interests covering the whole of GB/UK. 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 was not supported by a majority of respondents from Scotland and 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 8th March 2022 the UK Government and Devolved Governments published a summary analysis of consultation responses and next steps at the following link: [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).

### **Impact Assessments**

The impact on businesses in the horticulture and potato sectors is the removal of compulsory statutory levies for AHDB services, following ballots of levy payers in each of those sectors which supported this outcome. No new regulatory burdens are placed on businesses from changes in this instrument. As noted above, other amendments made by the instrument 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.

### **Financial Effects**

As noted above, the impact of the instrument is the loss of compulsory levy funding for AHDB horticulture and potato services. AHDB will remain able to provide services to those sectors or parts of them should they wish to contract with the AHDB for specific services in future.

Scottish Government  
Agriculture and Rural Environment Directorate  
9 March 2022