

DEPARTMENT FOR ENVIRONMENT, FOOD & RURAL AFFAIRS

# AGRICULTURE AND HORTICULTURE DEVELOPMENT BOARD ORDER 2008

## GUIDANCE NOTE

## **IMPORTANT NOTE**

This note has been produced with the purpose of providing informal, non-statutory guidance that aims to clarify provisions within the Agriculture and Horticulture Development Board Order 2008. This guidance note should not be regarded as an authoritative statement or interpretation of the law. It provides advice only on how the Agriculture and Horticulture Development Board will function and how levy payers should comply with the provisions within the legislation.

It has not been possible to publish the guidance within the recommended timescales of at least 12 weeks before the legislation is due to come into force. The development of the Agriculture and Horticulture Development Order has however been the subject of consultation and regular discussion with levy boards, levy payers and stakeholders since July 2006. Every effort has been made to ensure that those who will be affected by the new legislation have been kept informed of the changes that will come into effect from 1 April 2008.

Guidance on an affirmative resolution Statutory Instrument would not normally be published before the legislation is registered. However the Parliamentary process for the Agriculture and Horticulture Development Board Order will not be complete until the beginning of March 2008 leaving only 4 weeks before the legislation comes into force on 1 April 2008. In view of these circumstances this guidance is therefore being published in advance of the completed Parliamentary process.

## SCOPE

1. The AHDB Order is made under the Natural Environment and Rural Communities (NERC) Act 2006 which made provision for the reform of agricultural bodies. It dissolves the following Non Departmental Public Bodies (NDPB):

British Potato Council,  
Home-Grown Cereals Authority,  
Horticulture Development Council,  
Meat and Livestock Commission, and  
Milk Development Council

And establishes one Non Departmental Public Body: the Agriculture and Horticulture Development Board (AHDB). AHDB will establish six subsidiary companies covering the different sectors:

Beef and Lamb (Eblex Ltd)  
Cereals and Oilseeds (HGCA Ltd)  
Horticulture (Horticultural Development Company Ltd)  
Milk (DairyCo Ltd)  
Pigs (BPEX Ltd)  
Potatoes ( Potato Council Ltd)

2. **Schedule 5** of the Order sets out the legislation affected by this Order, in particular the legislation that is repealed or revoked by it. Other legislation referring to the dissolved bodies will be amended on an ad hoc basis.

3. Throughout the Order the term 'appropriate authority' is used and the definition of 'appropriate authority' is set down in the NERC Act (Section 96) to cover arrangements for cross border functions. The same terminology as specified by the NERC Act is used throughout the AHDB Order. The Act should be consulted for the legal definition of the Appropriate Authority but, in essence, it means:

- ( a ) in relation to matters concerning England only, the Secretary of State;
- ( b ) in relation to matters concerning Wales only, the National Assembly for Wales;
- ( c ) in relation to matters concerning Scotland only, the Scottish Ministers;
- ( d ) in relation to matters concerning Northern Ireland only, the relevant Northern Ireland Department;

( e ) in relation to matters such as exercising cross border functions or making appointments, the Secretary of State acting with the approval of the National Assembly for Wales, the Scottish Ministers or (as the case maybe) the relevant Northern Ireland department.

4. The Agriculture and Horticulture Development Order will come into full effect on 1 April 2008 but some parts of the Order will come in force in advance of that date, on the day after the date that the Order is made. The early commencement of some provisions in this Order is to help ensure a smooth transition, from the five levy boards to the one board and six sector companies. **Article 1(2)** lists those provisions which come into effect when the Order is made, ahead of 1 April.

5. The Order covers England, Wales, Scotland and Northern Ireland. **Article 2(1)** describes the geographical scope for each industry to which the Order relates:

Pigs, and Beef and Sheep have an England only scope.  
Horticulture, Milk, and Potatoes have a Great Britain scope.  
Cereals and Oilseeds have a UK wide scope.

#### **Article 5 – Acting through subsidiaries**

6. Article 5 allows AHDB to create subsidiary bodies for each of the industries covered by the Order. The following sector companies will be created:

Beef and Lamb - Eblex Ltd  
Cereals and Oilseeds - HGCA Ltd  
Horticulture - Horticultural Development Company Ltd  
Milk - DairyCo Ltd  
Pigs - BPEX Ltd  
Potatoes - Potato Council Ltd

7. In addition the Order also provides that AHDB may establish subsidiary bodies ‘conducive or incidental to its functions’. Commercial subsidiaries such as MLCS Ltd fall into this category as they are ‘conducive or incidental’ and will provide services to more than one sector company.

8. AHDB has the power to delegate any of its functions (which are listed in Schedule 1) to its subsidiary companies but retains the right to carry them out itself as well. This allows, for example, targeted R&D to be undertaken by sector

companies whilst enabling AHDB to conduct R&D on broader issues which are beneficial to all industries. Subsidiary companies are obliged to carry out any functions delegated to them by AHDB, and delegation agreements will be negotiated and agreed between AHDB and each of the sector companies.

### **Article 6 – Levies**

9. AHDB will raise levies to fund the services it provides, via the sector companies, and to cover administrative expenses, as set down in the Order. All the levy rates in the Order are exclusive of VAT, and HMRC have confirmed that VAT is payable on levies. Under the previous arrangements, four of the five levy boards charged VAT on their levies; only the Horticultural Development Council did not, although recently it sought to change the situation with HMRC. Charging VAT on levies, allows the boards to recover VAT on their costs from HMRC and this saves the boards about £6 million per annum so helping keep levy board costs down. All agriculture and horticulture businesses that are VAT registered will also be able to reclaim any VAT paid. The new threshold for paying horticulture levy has been increased to £60,000 of adjusted sales turnover and as this is at a similar level to VAT registration, no horticultural growers should be disadvantaged by this change.

10. The Order allows that the collection of levies may be delegated to the subsidiary companies, and AHDB has stated that from 1 April 2008, levies will be collected for each sector by the relevant sector company. Levy raised by a particular sector will be ring-fenced for the use of that sector.

11. As the levies are raised on a statutory basis, annual approval by the appropriate authority is required for all levy rates including any higher rate that may be applied in relation to estimates. The levy rates for 2008/9 will be announced in March 2008.

### **Article 7 – Estimates**

12. The sector company may estimate the amount of levy due if a return (that is the information required) is not received from a person liable to pay levy by the due date. This person will then be notified of the estimated amount of levy due. If, within 28 days of being notified of the estimate, a return is not made, levy will become due based on the estimated amount. A higher rate of levy may be applied to the estimated amount if AHDB or the subsidiary company chooses to do so in order to recover increased administrative costs associated with the late payment. The higher levy rate, if applied to any estimate, may not exceed the maximum rates of levy as set out in **Schedule 3 of the Order**.

### **Article 8 – Charges for services**

13. AHDB or any subsidiary company it has established may make reasonable charges for any services which are in addition to those provided for in relation to the levy, e.g. these could be any shared services sold by AHDB or services supplied by one sector company to another.

### **Article 9 – Reserve funds etc.**

14. A standard provision for all Non Departmental Public Bodies is the power to establish and maintain a reserve fund so that, for example, it has sufficient funds to meet its commitments such as paying staff ahead of receiving levy payments. AHDB may also borrow money and charge property.

### **Article 10 – Incidental powers.**

15. AHDB may do anything that appears to it to be conducive or incidental to the discharge of its functions and, in particular, it may enter into agreements, accept gifts, acquire or dispose of property and raise funds through voluntary contributions.

### **Article 11 and 12 – Ballots and who can vote**

16. AHDB may hold a ballot to determine whether a particular levy should continue at any time and also if directed to do so by the appropriate authority. Levy payers may seek a ballot but not more than once every 5 years for any particular levy. There is also a moratorium on levy payers seeking ballots until 1 April 2012.

17. A request for a ballot by levy payers must be supported by at least 5% of eligible voters and Article 12 of the Order provides a table showing who is entitled to vote. Request(s) for a ballot must be received within a 3 month period calculated from the first day of any month. The results of all ballots will be immediately made known to Ministers who will consider the results. However, Ministers could not be bound by the results of a ballot as removal of a statutory levy would require an amendment to the Order and so would also need to be considered by Parliament.

18. The table in the Order sets out the eligible voters by sector and category, where an industry has more than one category of levy payers e.g. growers and buyers. Paragraph 12(4) allows for separate ballots to be held for the different categories of voters within an industry. To be eligible to vote a levy payer must

have satisfied the qualifications in the table in article 12 in the preceding 12 months to a ballot and the ballot system is on a one levy payer, one vote basis.

### **Article 13 – Report and accounts**

19. The standard provisions for AHDB concerning its obligations to produce an annual report and accounts each year are set out in Article 13 of the Order.

20. The Comptroller and Auditor General is the auditor for AHDB and its companies.

### **Article 14 – Provision of information by the Board**

21. AHDB must provide information relating to its property, or how it carries out or intends to carry out its functions, as required by the appropriate authority. This provision is to ensure there is proper oversight. Likewise, AHDB must permit anyone authorised by the appropriate authority to inspect and copy documents and accounts, and AHDB must provide any explanation that may be required.

### **Article 15 – Provision of information to the Board**

22. This article introduces two offences. The deliberate provision of false or misleading information, in relation to the information required under this Order, and failure to keep and produce sufficient records to enable the calculation of levy. Details of the records that need to be kept in each sector are given in Schedule 3 of the Order and paragraphs 33-62 below. An officer of the Board, or a subsidiary company, has the right to demand such records.

### **Article 16 - Penalties and proceedings**

23. The penalties that apply for offences under this Order, and the criteria and timescales for prosecution are set out in Article 16 of the Order. NERC Schedule 10(9)(2) provides that offences may be summary offences only and no custodial penalties may be applied. (summary offences in England and Wales can only be heard in a Magistrates court and not in a Crown court in Scotland they will be dealt with in either the District of Sheriff's Court). The maximum level of fine applicable on summary conviction of an offence will be a level 5 fine on the standard scale, currently £5,000. A prosecution may be brought provided that no more than 2 years have passed from the date the offence was committed and proceedings are started within 6 months of a prosecutor being furnished with evidence sufficient in their opinion to warrant such proceedings. With regard to offences by bodies corporate, the Order also provides for certain persons, such

as directors, manager, etc to also be found guilty (see Article 16(3) for details).

### **Article 17 – Dissolution of existing bodies**

24. The five levy boards listed in this Article are all dissolved and replaced by AHDB on 1 April 2008 and all property, rights and liabilities are transferred to AHDB. **Schedule 4** of the Order has more details relating to the transfer.

### **Article 18 – Repeals, etc**

25. This refers to **Schedule 5** which details the specific legislation to which AHDB as a new organisation needs to be added by way of an amendment and which AHDB and its Board members will be subject to immediately it is established. AHDB will also be subject to other legislation but it is not necessary to list it here, only those Acts which require an amendment. Schedule 5 also lists the changes to the most important existing legislation ( Acts, Orders and Regulations ) following the dissolution of the current levy bodies.

### **Schedule 1 – Function of the Agriculture and Horticulture Development Board**

26. This schedule provides details of the functions AHDB may carry out or delegate to subsidiary companies.

### **Schedule 2 – Constitution and proceedings of the Agriculture and Horticulture Development Board**

27. NERC, Schedule 8(3) provides only for the constitution of the Board so the Order is silent on other points such as the make-up of the Board. However, Ministers have decided that the Board will consist of 10 members: 4 independent members - including the Chair - and six members representing the different six sectors. The AHDB Board consists of:

John Bridge (Chair)  
Chris Bones (independent)  
Clare Dodgson (independent)  
Lorraine Clinton (independent)  
John Cross (Beef and Lamb)  
Tim Bennett (Milk)  
Neil Bragg (Horticulture)  
Stewart Houston (Pigs)



Janet Bainbridge (Potatoes)  
Jonathan Tipples (Cereals and Oilseeds)

28. AHDB can determine its own procedure including its quorum and that of any other committees it chooses to appoint. Members of committees do not have to be members of the Board. Board Members are Ministerial Appointments and a Board member may serve for 4 years but will be eligible for re-appointment. As the Board members of AHDB are appointed by Ministers any resignation must be tendered to Ministers and, if necessary, any removal from office will be made by Ministers.

29. A Board member must disclose any interest in contracts or matters which will be, or are being, considered by the Board. And any Board member with an interest in a contract must take no further part in any discussions in relation to that contract; where a member has declared an interest in a matter (but not a contract) under discussion by the Board, he may continue to take part in the Board discussion on that matter.

30. If a vote is tied, the Chair of that particular meeting will have the casting vote with each member having one vote each.

31. AHDB may pay board members expenses. The level of remuneration and allowances which they may pay is set by Ministers .

32. AHDB may pay remuneration and allowances to such staff as they may appoint including provision for pensions.

## **Schedule 3 – Levies**

### **Part 2 – Cattle, sheep and pigs**

33. The levy is formed of two parts: the producer levy and the slaughterer/exporter levy. The producer element is collected and held on trust for AHDB by slaughterers and exporters who pay the levy direct to the relevant sector company. Levy is calculated on the number of animals slaughtered or exported and these details are notified to the sector company through the completion of regular returns. For slaughterers these arrangements are set out in **Part 2 paragraph 5**, and **paragraph 7** of the Order for exporters. The sector company may allow for administrative costs, incurred by the slaughterer or exporter in collecting the levy, to be reflected in a reduction in their part of the levy to cover such costs.

34. Where a slaughterer does not purchase the animal but provides a slaughter only service, the livestock owner is liable for both the producer and slaughterer elements of the levy which must be collected by the slaughterer.

35. The table at paragraph 3(8) sets out the maximum rates of levy that apply to cattle, calves, sheep and pigs for all categories of levy payers. The actual rates of levy applying each year will be announced ahead of the beginning of each levy (financial) year.

36. There are exceptions when levy will not be payable and these relate to: cattle slaughtered within 3 months of importation from another Member state or sheep and pigs slaughtered within 2 months of importation from another Member State; or cases where an animal is subject to compulsory slaughter in accordance with the provisions of the Animal Health Act 1981 (c.22) or under European legislation or the official veterinarian (authorised by the Food Standards Agency) declares an entire carcass unfit for human consumption.

37. Slaughterhouses must inform the sector company on weekly basis of the number of animals which it has slaughtered that were subject to levy. Very small slaughterhouse businesses, which estimate that they will slaughter less than 25 animals a week, may apply for registration as a small operator and, if the sector company agrees to registration, the slaughterhouse will be permitted to submit returns on a less frequent basis than the arrangements which would ordinarily apply. In all cases the number of animals slaughtered should be broken down by category, i.e. pigs, cattle, sheep, calves. Failure of a slaughterhouse to

provide a return on the number of animals slaughtered will be an offence.

38. Slaughterers are required to pay the levy due within 15 days of the end of the month, for animals slaughtered in that month, for example, for animals slaughtered in June payment will need to be made by 15 July.

39. It is an offence under this Order for exporters not to submit a return within 30 days of the end of the month giving the number of animals exported during the previous month. For example an exporter will need to submit a return to the sector company no later than 30 July for the animals exported during June. Upon receipt of the return, the sector company will calculate the levy due and issue an invoice for payment.

40. A power of entry exists, for persons appointed by AHDB, to enter a slaughterhouse to check records to ensure that correct levy has been paid. Entry must be at a reasonable hour and, if required, documentation showing his authority must be produced. Obstruction of an authorised person exercising the power given in 8(1) to enter a slaughterhouse will be an offence as will failure to produce records on demand.

### **Part 3 - Cereals and Oilseeds**

41. Levy on cereals and oilseeds is calculated on the weight bought and anyone who buys cereal or oilseed from a grower is obliged to pay buyer levy. Agent intermediaries and financial intermediaries are considered to be ‘principals’ in any contract to purchase and are therefore buyers for the purposes of this Order. The cereal levy has two elements - a grower levy and a buyer levy and the maximum rates are set out in a table at paragraph 11. The annual rates will be announced by the Board prior to the start of each levy (financial) year, that is, before 1 April.

42. A buyer of cereals must deduct the grower levy element from the price paid and hold it on trust for the cereal sector company. 5% of the combined grower and buyer levy may then be taken as commission by the buyer and the remainder must be paid to the cereal sector company.

43. For oilseeds there is only a grower levy and so a buyer must deduct all the levy from the price paid to the grower and hold it on trust, which must then be paid to the cereal sector company.

44. It is the growers responsibility to pay the levy direct to the cereal sector company based on the weight of cereals or oilseeds sold if they are bought by either the appropriate authority, or a buyer outside the UK, or a company registered outside of the UK.

45. A levy is also payable on cereals that are processed, with differential rates applying dependent on whether the cereals are processed into feedingstuffs or non-feedingstuffs. The lower rate being applicable to cereals processed into animal feed. An exemption exists from paying the processor levy if the processing is carried out by, or for, the grower of the cereals.

46. Returns for cereals are required at the end of each quarter by any person liable to pay levy, that is buyers, processors, or, in the cases outlined in paragraph 45 above, the grower. The return must include the amount of cereal bought, processed or sold, on which levy is due. However, where the weight of cereal bought is less than 250 tonnes in any year ending in June, or less than 1000 tonnes processed annually, then an annual return may be completed.

47. For oilseeds, twice yearly returns are required providing details of oilseeds bought in the previous 6 month period ending 30 June and 31 December.

48. Any person who is liable to pay levy has 28 days from the dates specified in the legislation to submit a return for cereal and oilseed to the cereal sector company. It will be an offence to fail to comply. Payment of the levy to the cereal sector company is then required within 21 days from the end of the 28 day return period.

49. A written weekly return is required by any person who has purchased cereals in excess of the 1,000 tonne threshold in any year ending 30 June. It will be an offence not to submit this form, which must state the amount in tonnes of UK grown cereals bought, broken down by type and the prices paid. The return must be submitted by the end of Thursday and cover the previous week's trading ending on the Friday. Using this data, AHDB is obliged to publish a mean average price of each type of cereal on a weekly, monthly and annual basis. These requirements for weekly returns are those previously covered under the Corn Returns Act 1882 .

## **Part 4 – Horticulture**

50. Levy is payable on vegetables grown in the open (except potatoes where there are separate arrangements - see Part 6 of this Guidance), fruit, flowers and bulbs, hardy and nursery stock, protected crops and herbs - see the Order for further details. Different arrangements apply for mushrooms (see para 54 below).

51. A person is required to pay levy if he grows any of the products listed in paragraph 14 of the Order and sells those products or anything derived from them. Levy on apple and pears will no longer be based on hectareage, but has moved to a turnover based system, in line with other top fruit. There is a threshold above which levy becomes payable, such that if a horticultural growers' adjusted sales figure, made during the accounting year of the grower that ended in any year ending 31 March, is £60,000 or more, levy will be due. The Order provides details of the adjustments that may be applied to establish the adjusted sales figure. (Deductions include the cost of packing materials; the cost incurred by the grower in transporting the materials or derivatives from his premises to his customer; the purchase cost of products that are brought in to be grown on and re-sold; the cost of canning, freezing, drying, juicing or extracting or any similar process that substantially alters the raw products.) With the exception of mushrooms, the levy is calculated as a percentage of the adjusted sales figure and the maximum rate of levy of 0.6% of adjusted turnover. The actual levy rate will be set on an annual basis and will be announced prior to the start of each levy year. Levy due will be payable on invoice.

52. The list of exempted varieties of apples and pears used for cider and perry is no longer included in the legislation, as it is subject to frequent change, but the exemption for cider apples and perry pears is provided for in the AHDB Order. In future the Horticultural Development Company will continue to publish, and make available, an updated list of those apple and pear varieties which are exempt from levy.

53. Any person liable to pay horticultural levy must complete the appropriate form and return it to the horticulture sector company on, or by, 30 June each year. The information provided must be sufficient to enable levy to be calculated by the Horticultural Development Company for the year ending 31 March that year and must be certified by an accountant who meet the requirements specified in the Order unless the Company has agreed that an accountants certificate is not required. Failure to comply with these requirements is an offence.

54. The basis of levy on mushrooms differs from all other horticultural produce covered by Part 4. The levy is based on litres of mushroom spawn, or compost containing mushroom spawn used or sold, and differential rates apply to agaricus and non-agaricus mushrooms. The maximum rates of levy are 20 pence per litre for Agaricus and 8 pence per litre for non-Agaricus but the actual rate is likely to be less than these maxima and will be announced in March. Levy becomes due if, in any year ending 31 March, a person buys more than 700 litres of mushroom spawn or compost containing mushroom spawn. The levy is payable on invoice.

55. Should the Horticultural Development Company believe on reasonable grounds, and in the absence of a return submitted in accordance with Part 4, that a person may be liable for horticulture levy, the Order provides the power to serve a Notice on them. This Notice will require sufficient information relating to any horticultural business to be provided, by a specified date, in order to establish if any horticultural levy is payable. Failure to comply with the Notice is an offence.

## **Part 5 – Milk**

56. A person who buys milk from a producer must pay to DairyCo the levy which the buyer deducts from the price paid to the producer. Levy is also payable by those producers who sell their milk direct to the public from their holding, as defined in the Order. Milk levy is based on volume and the maximum rate of levy is 0.08 pence per litre. DairyCo will announce the milk levy due in advance of the start of the levy year, i.e. before 1 April each year.

57. Milk buyers must notify DairyCo at the end of every month the amount of milk bought in that month and failure to comply with this requirement is an offence. Direct sellers of milk are required to by the 14<sup>th</sup> May each year to notify DairyCo of the amount of milk produced on that holding for the previous year ending 1 April. Failure to comply with this requirement is an offence. The Levy due from both buyers and direct sellers is payable on invoice.



## **Part 6 – Potatoes**

58. Potato buyers as well as potato growers are required to pay levy. The levy on potato growers is based on area planted, with a minimum threshold at which levy becomes payable of 3 hectares. The maximum rate of levy is £50 per hectare. The Potato Council Ltd will announce the rate of levy in advance of each levy year, that is before 1 April.

59. Buyers of potatoes are levied on weight, with a minimum threshold at which levy becomes payable of 1,000 tonnes bought in any year ending 30 June. The maximum buyer levy is £0.25 per tonne. Again, the actual rate of levy will be announced prior to 1 April each year. Unless being purchased direct from a grower, buyer levy is not payable when potatoes are bought to sell by retail or by a caterer. An exemption from the buyer levy applies to co-operatives when a co-operative is buying potatoes from its members. The exemption to buyer levy does not apply to those potatoes that a co-operative purchases from non members.

60. Returns are required from both buyers and growers and failure to provide a return to the potato sector company in accordance with the Order is an offence.

61. Each year growers must submit a return by 1 June giving details of the area planted, or intended to be planted that calendar year, and the identity of the fields planted. No other details are required. If a grower plants, or decides to plant, potatoes after 1 June and has not provided a return he must, within 30 days of planting submit a return giving the details on area planted and the identity of the fields. Failure to comply with this requirement is an offence. The levy due must be paid to the Potato Council Ltd by the 1<sup>st</sup> December following.

62. Buyers liable to pay levy are required to submit monthly returns to the Potato Council Ltd by the 28<sup>th</sup> day of each month giving the tonnage bought in the previous month. Levy is payable on invoice.

## **Schedule 4**

### **Provisions relating to the transfer**

63. Paragraphs 1, 2 and 3 provide general provisions which transfer to AHDB the undertakings of all the dissolved levy bodies, including property, rights, contracts, agreements and liabilities such that AHDB can be considered to hold all the rights and liabilities that the dissolved bodies had, or were subject to, immediately before the transfer took place. This ensures continuity of business for the new body.

64. NERC Section 93 makes provision for the restricted use of surplus in the event that existing levy bodies are dissolved such that any surplus may only be used for the purposes for which the original levy body was established or connected purposes. (The surplus from each dissolved body is the amount by which immediately before the transfer the assets exceeded its liabilities).

65. As a result of the dissolution of the levy bodies, provision must be made in relation to the contracts, pensions, and trade union collective agreements. The provisions of the Transfer of Undertakings (Protection of Employment) Regulation 2006 also apply in relation to the transfer of staff to the AHDB.

66. Trade union collective agreements are transferred to AHDB in much the same way as business contracts and agreements. All contracts of employment are carried over to the new body such that AHDB becomes the employer following dissolution of the levy bodies. If anyone makes known their objection to being employed by AHDB then, on the transfer, the contract of employment is treated as having terminated. This is not a dismissal.

67. A dismissal situation will occur if the transfer does or will involve for the person being transferred, a substantial change in working conditions which would result in material detriment for that person. In this case the employee may treat the contract of employment as having been terminated and the employee shall be treated as dismissed.

68. AHDB will take over as employer in relation to pension schemes of the dissolved bodies that relate to staff who are transferring. This ensures no cessation event occurs and service or employment with the dissolved bodies shall be taken into account as if it were with AHDB for the purpose of calculating rights to benefits. New arrangements will apply to all new staff employed by AHDB.

69. As a result of the transfer of all rights and liabilities to AHDB, any applications or proceedings that have been brought against any of the dissolved bodies or have been brought by the dissolved levy bodies in relation to a right or liability that is transferred, will be the responsibility of AHDB, as if they had been at all times a right or liability of the Board. Similarly any legal proceedings or applications brought against or by the dissolved levy bodies, pending immediately before the transfer will be continued by or against the AHDB.

70. As this Order revokes or repeals the legislation relating to the dissolved levy boards any levy payable under that legislation immediately before the transfer will be payable to AHDB and AHDB has the power to bring proceedings to recover that levy.

71. AHDB can bring prosecutions for any offences committed before the transfer under any legislation repealed or revoked by this Order. The Cereals Marketing Act is mentioned specifically as it contained a provision at Section 22 which restricted who may prosecute. This paragraph removes that restriction to allow AHDB to prosecute any offences prior to the transfer which may fall under this Act.

## **Schedule 5**

### **Consequential amendments, transitional provisions, repeals and revocations**

72. As the exact rate of levy covering the crop year from July to June is set annually a transitional provision has been included in Schedule 5 to carry forward the levy rates agreed for cereal and oilseed to cover the period April to June 2008. This is set out in the table at paragraph 6 and are the same rates as applied in the 2007 year.

73. Paragraphs 1 – 5 of this schedule lists the legislation which AHDB will be specifically subject to either as a result of being a newly formed Non-Departmental Public Body or as a general statutory duty.

74. The legislative Acts (repeals) and Orders and Regulations (revocations) including the extent by which this Order affects them are listed in paragraph 7& 8.