

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date: 7 January 2019

Meeting time: 14.00

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Committee Clerk

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Private pre-meeting

(13.45 – 14.00)

1 Introductions, Apologies, Substitutions and Declarations of Interest

(14.00)

2 Scrutiny session with the First Minister of Wales

(14.00 – 15.30)

(Pages 1 – 15)

Mark Drakeford, First Minister of Wales

3 Paper(s) to note

(15.30)

3.1 Paper to note 1 – Report on the Legislative Consent Memorandum in relation to the UK Agriculture Bill

(Pages 16 – 85)

4 Motion under Standing Order 17.42(vi) to resolve to exclude the public from the remainder of the meeting

(15.30)

5 Scrutiny session with the First Minister of Wales – consideration of evidence

(15.30 – 15.45)



**6 Briefing from Legal Services on the UK Withdrawal from the EU
(Legal Continuity) (Scotland) Bill**

(15.45 – 16.00)

(Pages 86 – 95)

Elisabeth Jones, Chief Legal Adviser

Document is Restricted

Agenda Item 3.1

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

3 January 2019

Dear Lesley

Please find enclosed a copy of the Climate Change, Environment and Rural Affairs Committee report on the Legislative Consent Memorandum ('LCM') for the UK Agriculture Bill. **The report is under embargo until 00.01 hours on Friday 4 January 2019.**

I should be grateful if you would respond to the Committee's conclusions and recommendation at least one week in advance of the Plenary debate on the LCM.

Yours sincerely,



Mike Hedges AM
Chair of Climate Change, Environment and Rural Affairs Committee

cc Mick Antinow AM, Chair of Constitutional and Legislative Affairs Committee
David Rees AM, Chair of External Affairs and Additional Legislation Committee



Report on the Legislative Consent Memorandum in relation to the UK Agriculture Bill

January 2019



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Report on the Legislative Consent Memorandum in relation to the UK Agriculture Bill

January 2019



About the Committee

The Committee was established on 28 June 2016. Its remit can be found at:
www.assembly.wales/SeneddCCERA

Committee Chair:



Mike Hedges AM
Welsh Labour
Swansea East

Current Committee membership:



Gareth Bennett AM
UKIP Wales
South Wales Central



Jayne Bryant AM
Welsh Labour
Newport West



Andrew RT Davies AM
Welsh Conservatives
South Wales Central



John Griffiths AM
Welsh Labour
Newport East



Llyr Gruffydd AM
Plaid Cymru
North Wales



Helen Mary Jones AM
Plaid Cymru
Mid and West Wales



Joyce Watson AM
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Mid and West Wales

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Conclusions and recommendation

The need for legislation and the approach taken

Conclusion 1. We believe that the most appropriate way to legislate on a subject as significant as the long term future of agriculture in Wales is through an Assembly Bill. We believe that the Welsh Government should give a commitment that time will be made available in the legislative programme for a Wales Agriculture Bill to be brought forward and to be passed before the end of this Assembly term.....Page 26

Conclusion 2. However, we recognise that legislation is necessary in the short term, to continue to provide financial support to the agriculture sector immediately after Brexit. Given the time available, the UK Bill is an appropriate vehicle for this purpose. But, the provisions in the UK Bill go far beyond ensuring the immediate continuity of financial support. They enable the Welsh Ministers to establish a completely new approach to support for agriculture.....Page 26

Conclusion 3. We believe that the Welsh provisions in the UK Bill are unbalanced. They confer considerable powers on the Welsh Ministers and place no duties on them. The effect of the provisions will be to severely limit the Assembly’s ability to scrutinise the Welsh Government’s support for agriculture, at a time when effective scrutiny will be vital to the success of the new policies. This is not an acceptable approach and should be a matter of serious concern for the Assembly. We believe that Schedule 3 should be amended to include additional safeguards to ensure that the executive powers are exercised proportionately and appropriately. This could include a requirement on Welsh Ministers to consult before bringing forward regulations.Page 26

Conclusion 4. The Cabinet Secretary promised in *Brexit and our land* that the provisions in the UK Bill constitute transitional arrangements and will be “time limited”. There are no such limitations included in the UK Bill, as drafted. We believe the Welsh Government should seek an amendment to the UK Bill to introduce a “sunset clause” in relation to the Welsh provisions.....Page 26

Conclusion 5. In light of recent events in Westminster, the Welsh Government should consider the need for appropriate contingency measures to ensure that financial support can be given to the agricultural sector immediately after Brexit.Page 26

Leaving the Common Agricultural Policy

Conclusion 6. This is a period of considerable uncertainty for the agricultural sector in Wales. We recognise why the sector has responded with concern to the proposals to phase out direct payments. Given the time available, we support the inclusion of provisions in the UK Bill to continue direct payments immediately after Brexit. We believe this will give certainty to the sector. Page 31

Conclusion 7. The Cabinet Secretary has said that no policy decisions will be taken until the outcomes of the *Brexit and our land* consultation are known. The Cabinet Secretary has also said she intends to phase out direct payments. These two positions are not compatible..... Page 32

Conclusion 8. The Welsh Government has not undertaken an assessment of the impact of phasing out direct payments. We believe the Welsh Government should give a commitment not to start phasing out direct payments until such time as it has completed and published a detailed, sector wide impact assessment. Page 32

Conclusion 9. The Welsh Government has asked for the inclusion of other executive powers under Part 2 of Schedule 3. For example, the provisions relating to delinked payments. The Welsh Government has not provided information to the Assembly about how it intends to use these powers, should the Assembly give consent. The Welsh Government should clarify how it intends to use these powers. Page 32

Transitioning to a new system of support

Conclusion 10. The Welsh Government has not provided the Assembly with clarity about the starting point or the timescale for transition from current arrangements to future schemes. In *Brexit and our land*, the Welsh Government said its ambition was for transition to begin in 2020 and be completed by 2025. More recently, the Cabinet Secretary said that direct payments would be made, unchanged, for the 2020 CAP payment year. We believe the Welsh Government must clarify its intentions in relation to when transition will begin and what it will mean for the sector in practice..... Page 37

Conclusion 11. Whether it wishes to begin transition in 2020, 2021 or, indeed, later, the Welsh Government faces considerable challenges, given that detailed modelling, impact assessments and the establishment of pilot schemes will first need to be undertaken to inform the development and implementation of the new schemes. We believe the Welsh Government should give a commitment that

the process of transition to new schemes will not begin until this work has been completed.....Page 38

A new system of financial support

Conclusion 12. The Cabinet Secretary has said that no decision will be taken on the detail of the new system of financial support until the outcome of the *Brexit and our land* consultation is known. The Welsh Government is not in a position, therefore, to explain to the Assembly in detail the purposes for which these powers will be used..... Page 47

Conclusion 13. The Cabinet Secretary has indicated that if, as a result of piloting and modelling, the Welsh Government determines that the schemes proposed in *Brexit and Our Land* are not appropriate, other approaches will be considered and taken forward. This means that, in effect, the provisions may be used for currently unknown purposes..... Page 47

Conclusion 14. The UK Bill will enable the Welsh Ministers to bring forward a new system of financial support for agriculture, after 40 years of the CAP. The provisions, as drafted, include no oversight or monitoring role for the Assembly in the establishment or implementation of the new system of financial support. We do not believe this is appropriate in a key area of devolved responsibility. This will be the first time, since devolution, that Wales has had an opportunity to shape its own, distinct, policy in this area and it is right that the Assembly plays a full role in this.Page 48

Conclusion 15. The Welsh Government should seek amendments to the UK Bill to require: that financial assistance under Part 1 can only be given through schemes established by Regulations; that these Regulations should be subject to the affirmative procedure; and that the Welsh Government must report to the Assembly on an annual basis on the effectiveness of any schemes that are established.Page 48

Conclusion 16. There has been no assessment of the financial impact of the decision to widen access to future schemes. The Welsh Government is not, therefore, in a position to explain to the Assembly what impact this decision will have on farmers. As referred to in previous conclusions, we believe the Welsh Government should not begin transition to the new schemes until it has undertaken an assessment of the impact of widening access to financial support and published the results.Page 48

Future funding for agriculture policy

Conclusion 17. The constituent nations of the UK are yet to reach an agreement on funding arrangements for agriculture in the UK for 2020-2022. Moreover, there is no clarity for longer-term funding arrangements. A new inter-Governmental mechanism must be established to secure a sustainable, long term agreement for funding of agriculture and land management in the UK..... Page 52

Conclusion 18. The Welsh Government has provided no financial information to the Assembly in relation to the costs of introducing new schemes, other than to say that there will be “no direct financial implications”. The UK Government has said that corresponding powers for the Secretary of State are likely to give rise to “significant expenditure”. The Welsh Government should commit to publishing, before establishing any new schemes, a full regulatory impact assessment of the proposals, which should include, but should not be limited to, a detailed assessment of costs and an assessment against the wellbeing goals..... Page 52

WTO Agreement on Agriculture

Conclusion 19. We share stakeholders’ concerns about the potential implications of the provisions in clause 26 in relation to the WTO, and their potential to restrict the Welsh Government in devolved areas. We believe this must be addressed either by an amendment to the UK Bill or, at the very least, a formal, published agreement between the UK and Welsh Governments.....Page 58

Conclusion 20. There is a pressing need to introduce an inter-governmental, formal mechanism at Ministerial level, to resolve matters of dispute that may arise in relation to the future operation of agriculture policy in the UK. This should be a model of shared governance based on parity of esteem.....Page 58

Other provisions for which consent is sought

Conclusion 21. We agree with the provisions outlined in this section of the report in principle. However, we believe the Welsh Government has not provided information to explain in detail the purposes for which it will use the provisions. These are extensive executive powers and the Welsh Government should clarify their intended purpose and effect. We reiterate our comments about the need for safeguards to be included in Schedule 3 to ensure these powers are exercised appropriately and proportionately.....Page 64

Conclusion 22. We agree that there will be a need for co-operation and agreement between the constituent nations of the UK when exercising these powers. This is particularly important in relation to animal health standards and market intervention. This must be addressed by an inter-governmental, formal mechanism, as set out earlier in this report.Page 64

Recommendation

We recommend to the Assembly that it gives consent to the provisions in the UK Agriculture Bill, subject to the following conditions -

- The Welsh Government should seek amendments to the UK Bill to give effect to conclusions 3, 4, 15, 19 and 21; and
- The Welsh Government should give commitments to the Assembly, or clarification where appropriate, in relation to the issues raised in conclusions 1, 8,9, 10, 11 and 18.

If the above conditions cannot be satisfied, we recommend that the Assembly's consent should be limited to the provisions in Part 2, Schedule 3 that enable the immediate continuation of financial support after Brexit, until such time that an Agriculture (Wales) Bill can be brought forward. In such circumstances, we would expect the Welsh Government to bring forward a new Legislative Consent Memorandum.

Introduction

Our approach

1. On 4 October 2018, Lesley Griffiths AM, Cabinet Secretary for Energy, Planning and Rural Affairs (the Cabinet Secretary), laid before the Assembly a Legislative Consent Memorandum (LCM) in relation to the UK Government's Agriculture Bill (the UK Bill).
2. On 9 October 2018, the Business Committee referred the LCM to the Climate Change, Environment and Rural Affairs Committee (the Committee), the Constitutional and Legislative Affairs Committee and the External Affairs and Additional Legislation Committee and set a reporting deadline of 14 December 2018. The Business Committee subsequently agreed an extended deadline of 4 January 2019, following a request from this Committee.
3. Because of the time available for the Committee to consider the LCM, the Committee was not in a position to undertake a public consultation on the proposals.
4. We took evidence from academics and representatives from the agricultural, forestry and environmental sectors. We also drew on evidence from our concurrent inquiry into the Welsh Government's proposed Public Goods scheme, set out in *Brexit and our land*.
5. We took evidence from the Cabinet Secretary and her officials on 6 December 2018.

Legislative and policy background

The Common Agricultural Policy

6. The Common Agricultural Policy (CAP) runs for a seven-year period in line with the European Union (EU) budget cycle. The current CAP agreement and funding runs until 2020 and the EU process for agreeing the new CAP round for 2021-2027 is underway.
7. The CAP is made up of two "pillars". CAP funding to the UK is made up of the following:

Pillar I -

- **Direct payments** – Mainly based on the area farmed. This mainly comprises the Basic Payment Scheme (BPS) as well as a “greening” component which is 30% of the direct payment total, and the Young Farmers Scheme.
- **Market support measures as part of the Common Market Organisation regulation (CMO)** – This is the set of rules used to organise the single market for agricultural products.

Pillar II

- **Rural development funding** – This supports a number of rural development measures, including agri-environment schemes and the wider rural economy.

8. Agriculture and implementation of the CAP is devolved so each devolved administration has to comply with meeting the legislative framework of the CAP and manage the direct payments to farmers.

9. Leaving the EU means the UK will also cease to participate in the CAP and its system of farm support payments, rural development programmes and market measures.

10. After the UK leaves the EU, the UK will have to meet its World Trade Organisation (WTO) obligations relating to agriculture, rather than through the EU.

Brexit and our land

11. In July 2018, the Welsh Government published its consultation document, *Brexit and our land*. It sets out proposals for a new Land Management Programme for Wales, including farming and forestry, to be introduced following the UK’s exit from the EU.

12. The proposed new Land Management Programme has two elements:

- **Economic Resilience scheme:** investment for economic activities, in particular food and timber production.
- **Public Goods scheme:** direct support for public goods delivery, in particular for the environment.

13. According to the consultation document, a transition to the proposed new schemes will begin as direct payments are phased out from 2020 and new schemes are expected to be fully in place by 2025.

14. The consultation on the above proposals came to an end on 30 October 2018, more than six weeks after the introduction of the UK Bill. The Welsh Government has committed to publishing a White Paper in the spring ahead of a Wales Agriculture Bill, which is expected before the end of this Assembly.

1. The UK Agriculture Bill and the Legislative Consent Memorandum (LCM)

1.1. The UK Government's Agriculture Bill

15. The Explanatory Notes accompanying the UK Government's Agriculture Bill (the UK Bill) state:

“[The UK Bill] will provide the legal framework for the United Kingdom (UK) to leave the Common Agricultural Policy (CAP) and establish a new system based on public money for public goods for the next generation of farmers and land managers.”¹

16. The Assembly's consent is sought for the following provisions (in the UK Bill, as introduced):

- Clause 26, which provides powers for the Secretary of State to make regulations about securing compliance by the UK with its obligations under the WTO's Agreement on Agriculture (AoA).
- Clause 27, which introduces Schedule 3, and which contains specific Welsh provisions.

17. The Assembly's consent is also sought for provisions within clauses 29, 30, 31, 32, 34, 35, and for Schedule 5.

1.2. WTO provisions

18. Clause 26 provides regulation making powers for the Secretary of State to secure compliance by the UK with its obligations under the WTO's AoA.

19. On 12 September, the Cabinet Secretary issued a written statement to coincide with the publication of the UK Bill, in which she stated:

“The management of the UK's Agreement on Agriculture at the WTO is an issue which the UK Government believes to be reserved. As a matter of law, the Welsh Government does not accept all aspects of the clause are reserved and, in any case, there is a strong and self-evident

¹ Explanatory Notes, UK Agriculture Bill

relationship between the WTO powers and devolved responsibilities on agriculture support.”²

20. On this basis, the Assembly’s consent is being sought for clause 26.

1. 3. Welsh provisions in the UK Bill

21. Clause 27 and Schedule 3 have been included in the UK Bill at the request of the Welsh Government. These provisions confer powers on the Welsh Ministers that are broadly similar to those conferred on the Secretary of State in relation to England in Parts 1 to 5 of the UK Bill.

22. Schedule 3 provides powers for the Welsh Ministers:

- to provide financial support to the agricultural sector following the UK’s departure from the EU;
- to simplify the current system of direct payments;
- to phase out direct payments ahead of the termination of such payments at the end of the agricultural transition period;
- to collect and share data from within or closely connected to the agri-food supply chain;
- to declare a period of exceptional market conditions and provide additional support to farmers during that period; and
- to make provision for marketing standards and carcass classification in Wales.

23. According to the LCM:

“The powers being taken for the Welsh Ministers are intended to be transitional until primary legislation can be brought forward to design a ‘Made in Wales’ system which works for Welsh agriculture, rural industries, and our communities...It is our intention to bring forward a Wales Agricultural Bill during this term.”³

² Written statement from the Cabinet Secretary for Energy, Planning and Rural Affairs – Introduction of the UK’s Agriculture Bill, 12 September 2018

³ Welsh Government’s Legislative Consent Memorandum for the Agriculture Bill

1. 4. New provisions added during the passage of the UK Bill

24. During the committee stage in the House of Commons, a number of substantive amendments were made to the Bill, including the insertion of a new part (Part 8) in relation to the Red Meat Levy.

25. Two substantive amendments were also made to Schedule 3. They inserted new provisions to enable Welsh Ministers:

- to reduce the direct payments ceilings for Wales in 2020 by up to 15% by regulations; and
- to provide for the continuation of the basic payments scheme beyond 2020.

26. In correspondence with the Committee, the Cabinet Secretary confirmed that a supplementary LCM would be laid “if amendments are made to Welsh provisions which would require consent”.⁴

⁴ Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, dated 21 November 2018

2. The need for legislation and the approach taken

2. 1. The need for legislation

27. Under all proposed Brexit scenarios, the UK has to leave the CAP. The CAP is primarily governed and underpinned by a core legislative framework of directly applicable EU regulations with associated delegated and implementing acts (tertiary legislation) in line with the EU budget cycle. These will be incorporated into UK law upon EU Exit by the European Union (Withdrawal) Act 2018.

28. The UK Bill (and the Welsh provisions contained in Schedule 3) will enable transposed CAP legislation to be amended to make way for new payment schemes.

Evidence from stakeholders

29. Stakeholders acknowledged that legislation of some form was necessary in order to enable the continuation of financial support to the agricultural sector following the UK's departure from the EU.

30. Notwithstanding the above, there were varying levels of support for using the UK Bill to legislate in respect of Wales. While some witnesses considered the Welsh Government had taken a pragmatic approach by requesting the powers in Schedule 3, concern was raised about the lack of opportunity for Assembly scrutiny and the extensive scope of provisions.

31. Representatives of the agricultural sector questioned the appropriateness of, and raised concern about, using the UK Bill and delegated powers within Schedule 3 to end direct payments and introduce what would effectively be a new agricultural policy for Wales. These issues are explored in more detail later in this report.

32. In commenting on the need for legislation, National Farmers' Union (NFU) Cymru stated it was "essential that we've got some mechanism for ensuring that there is continuity of payments after we exit the common agricultural policy shortly".⁵ NFU Cymru welcomed the assurance that the provisions provided for farmers in Wales. However, it suggested it would have preferred a Wales Bill,

⁵ Climate Change, Environment and Rural Affairs Committee, Record of Proceedings, para 163, 14 November 2018

which would be subject to full Assembly scrutiny, “rather than piggybacking via the [UK] Agriculture Bill”.⁶

33. Farmers’ Union Wales (FUW) accepted the need for legislation to enable the continuation of payments under the current payment schemes and “[welcomed] all parts of the Agriculture Bill necessary to smoothly transpose current EU legislation and powers [into domestic law]”. However, it stated:

“...there is necessary legislation in association with Brexit, and then there is legislation that you volunteer to bring in, which adds to your already huge and overwhelming workload. That’s the case here, as it is in London. Anything that’s over and above is dangerous, and rushed legislation is often very bad legislation. It’s unscrutinised, it’s not properly considered...”

34. Representatives of the environmental sector supported the approach taken by the Welsh Government and emphasised the Welsh provisions were a temporary measure, to be used until a Wales Bill was in place.

35. Wales Environment Link (WEL) referred to the Welsh Government’s approach as “a very successful piece of diplomacy”. It added:

“...the Cabinet Secretary [has] got it written into this Bill that she can do as much as she needs to do...So, there are loads of powers for her and very limited duties, and she has very clearly said that she will be bringing forth another Bill. And that will be our very specific piece of Welsh legislation. So, what she has achieved here is giving herself the ability to do a very Welsh-focused thing, whilst accepting all those powers under the UK.”⁷

Evidence from the Cabinet Secretary

36. In correspondence with the Committee, the Cabinet Secretary stated:

“The Welsh provisions in the Bill are needed now to provide Welsh Ministers with a legal base to continue with existing schemes following our exit from the European Union (EU) and provide flexibility for transition and potential implementation of new schemes, should that be required. Without such powers the Welsh Government would not be able to continue paying agricultural support in 2020 or to simplify

⁶ RoP, para 163, 14 November 2018

⁷ RoP, para 324, 14 November 2018

existing schemes...The powers provide the flexibility to begin transition, once policy decisions have been taken on the nature of new schemes.”⁸

37. When asked to clarify whether the Welsh Government would be able to rely on retained EU law to continue to make payments to farmers under the current CAP schemes if the Welsh provisions were not included in the UK Bill, the Cabinet Secretary stated:

“If the UK leaves the EU without a Brexit agreement, new regulations correcting deficiencies in the EU regulations (including the Common Agricultural Policy (CAP) Direct Payments regulation for scheme year 2020) will come into effect on 29 March 2019 under the UK Withdrawal Act. In this scenario, the Direct Payments regulation would apply up until claim year 2020 only. The provision to allow the making of Direct Payments beyond 2020 is therefore being taken under the UK Agriculture Bill.

In the event of an agreement on an Implementation Period running up until 31 December 2020, EU regulations would continue to apply until that date, with the exception of the CAP Direct Payments regulation which is not included in the current draft Withdrawal Agreement for scheme year 2020. As currently drafted, the Agriculture Bill does not include powers to make Direct Payments in 2020 in this scenario.”⁹

38. On 28 November, in response to a Plaid Cymru Plenary Debate on Direct Farm Payments, the Cabinet Secretary stated:

“...in order to pay basic payment schemes, before we have [a Wales Agriculture Bill, I need those temporary powers from the UK Agriculture Bill...So, that was one of the reasons that we had to look at transitional powers. Otherwise, we wouldn't be able to pay farmers anything.”¹⁰

39. In commenting on the purpose and intended effect of the new power to provide for the continuation of the Basic Payment Scheme beyond 2020, (in Schedule 3, as amended at committee stage), the Cabinet Secretary stated:

⁸ Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, dated 30 October 2018

⁹ Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, dated 21 November 2018

¹⁰ Plenary, RoP, para 351, 28 November 2018

“So, the current direct payment regulations only contain ceilings, which is the method of calculating payments to farmers up to the end of the 2020 scheme year...if we didn’t have a replacement for determining the amount, we wouldn’t be able to continue, then, paying BPS. So, the purpose of that amendment is to provide a power to prescribe the method by which ceilings will then be determined after 2020 so that we can continue to pay BPS payments. I just think we need to be prepared for all eventualities. It’s such an uncertain time at the moment for everyone, so we need to make sure that we have the potential to continue making basic payment schemes after 2020 if that’s what we, obviously, choose to do.”¹¹

2. 2. Extent of executive powers

40. The UK Bill contains broad enabling powers for Ministers. Schedule 3 contains provisions solely for the Welsh Ministers. In its report on the UK Bill, the House of Lords Delegated Powers and Regulatory Reform Committee (the Lords’ Committee) was highly critical of the approach taken by the UK Government. The Lords’ Committee was “dismayed at the [UK] Government’s approach”,¹² which:

“...represents a major transfer of powers from the EU to Ministers of the Crown, bypassing Parliament and the devolved legislatures in Wales and Northern Ireland.

Parliament will not be able to debate the merits of the new agriculture regime because the Bill does not contain even an outline of the substantive law that will replace the CAP...Most debate will centre on delegated powers because most of the Bill is about delegated powers. At this stage it cannot even be said that the devil is in the detail, because the Bill contains so little detail.”¹³

Evidence from stakeholders

41. There were mixed views from stakeholders on the breadth of executive powers, and the extent and nature of the delegated powers. Some stakeholders believed that such provisions should be drawn “as wide as possible”¹⁴ to ensure

¹¹ RoP, para 25, 6 December 2018

¹² House of Lords Delegated Powers and Regulatory Reform Committee, Thirty Fourth Report, Agriculture Bill

¹³ House of Lords Delegated Powers and Regulatory Reform Committee, Thirty Fourth Report, Agriculture Bill

¹⁴ RoP, para 323, 14 November 2018

sufficient flexibility ahead of a Wales Bill. Others raised concern that the provisions would enable the Welsh Ministers to make significant changes to agricultural policy with limited oversight and scrutiny by the Assembly.

42. The Tenant Farmers' Association (TFA) Cymru called for "firmer duties on the Welsh Ministers to ensure that we do have a viable, sustainable, and resilient Welsh agricultural sector going forward".¹⁵ It also asserted that the extent of delegated powers in Schedule 3 requires "a great deal of trust in current and future Governments to deliver an appropriate policy". It suggested that regulations brought forward under Schedule 3 should be the subject of pre-legislative scrutiny by the Assembly.¹⁶

43. FUW cited the conclusions of the Lords' Committee and warned:

"...in the absence of proper scrutiny, checks and balances, Ministers may nevertheless use such powers to introduce draconian regimes which are far more burdensome and intrusive than those currently in force under EU Regulations."¹⁷

44. NFU Cymru highlighted the "much reduced degree of scrutiny" associated with the regulation making process. It expressed disappointment about the lack of duties on the Welsh Ministers to consult before exercising "at least some of the far-reaching powers". NFU Cymru stated that including such duties "may have gone some way to mitigating the lack of real oversight of the exercise of these powers by the National Assembly".¹⁸

45. Representatives of the environmental sector were fully supportive of the extensive delegated powers. However, in commenting on the corresponding powers for the Secretary of State, WEL referred to the Lord's Committee report and stated:

"At a UK level, we're very strongly pushing to put duties in there, not just powers, but, again, this is not the future Welsh legislation, this is just a step towards the future Welsh legislation."¹⁹

¹⁵ Evidence Paper - Tenant Farmers Association, CCERA Committee, 14 November 2018

¹⁶ *ibid*

¹⁷ Evidence Paper - FUW, CCERA Committee, 14 November 2018

¹⁸ Evidence Paper - NFU Cymru, CCERA Committee, 14 November 2018

¹⁹ RoP, para 330, 14 November 2018

Evidence from the Cabinet Secretary

46. In commenting on the extent of the delegated powers, the Cabinet Secretary stated:

“...I am committed to consulting stakeholders properly should these powers be used... The powers in the Agriculture Bill are generally enabling powers which require separate secondary legislation to take effect. The Assembly and the Committee will, therefore, have the opportunity for scrutiny.”²⁰

47. She subsequently reiterated:

“I would like to reassure the Committee no policy decisions will be made before further consultation and the use of these powers will require separate secondary legislation to take effect, giving the Assembly opportunity for proper scrutiny.”²¹

2.3. A Wales Agriculture Bill

48. In *Brexit and our land*, the Welsh Government outlined its intention to legislate to introduce a new Land Management Programme, which will replace the CAP in its entirety:

“The Welsh Government recognises the need to bring forward primary legislation to make provision for the [proposed new Land Management] programme. Our ambition is to put such legislation in place before the end of this Assembly term and in good time to ensure the phased transition period can take effect.

“In addition and on a time-limited, interim basis, the Welsh Government is considering including Welsh-specific provisions in the UK Government’s forthcoming Agriculture Bill. The purpose of provisions is to provide powers for Welsh Ministers to commence the phased transition plan until Welsh primary legislation takes effect.”²²

²⁰ Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, dated 30 October 2018.

²¹ Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, dated 21 November 2018.

²² Welsh Government’s consultation, *Brexit and our land: Securing the future of Welsh farming*, July 2018.

49. In a written statement, the Cabinet Secretary announced she had asked the UK Government to include powers for Welsh Ministers in the UK Bill:

“The powers being taken for Welsh Ministers are intended to be transitional until our own primary legislation can be brought forward, to design a ‘Made in Wales’ system which works for Welsh agriculture, rural industries and our communities. Provisions relating to Wales are contained in a separate Schedule so that any changes the National Assembly wishes to see for Welsh Ministers can be made easily.”²³

50. Since the UK Bill was introduced, the Cabinet Secretary has maintained that no decisions have been taken on the “use and purpose” of the powers being sought.

Evidence from stakeholders

51. There were strong indications from stakeholders that their acceptance of, or support for, the Welsh provisions was on the basis that these would be relied upon in the short term, until a Wales Bill was brought forward.

52. TFA Cymru supported the use of the UK Bill “whilst the Welsh Government prepares to bring forward its own legislation to implement new policy for agriculture in Wales in the post Brexit era.” It sought assurance that “the Welsh Government will have sufficient time to bring forward the necessary ‘made in Wales’ legislation required (both primary and secondary) once the Agriculture Bill has completed its stages in the UK Parliament”.²⁴

53. NFU Cymru stated that “although we recognise that inviting the UK Government to legislate with respect to Wales in this manner is expedient”:

“...it does unfortunately mean that the usual oversight and scrutiny of powers conferred on Welsh Ministers, via primary legislation, in what is an area of devolved competence, takes place not as might be expected at the Senedd, but at the Houses of Parliament.”²⁵

54. Similar points were raised by Country, Land and Business Association Cymru (CLA) who, although broadly supportive of the approach taken, raised concern about the lack of a formal mechanism for the Assembly to amend the Bill and

²³ [Written statement from the Cabinet Secretary for Energy, Planning and Rural Affairs – Introduction of the UK’s Agriculture Bill, 12 September 2018](#)

²⁴ Evidence Paper – TFA Cymru, 14 November 2018

²⁵ Evidence Paper – NFU Cymru, 14 November 2018

suggested it was “unlikely” that the Welsh Government would be willing to seek “any substantial changes”, given their involvement in the drafting of the provisions.²⁶

55. Despite their support for legislating via the UK Bill, representatives of the environmental sector highlighted a number of areas where improvements could be made to the Welsh provisions. For example, including strategic objectives that align with existing Welsh legislation. They suggested that such provisions should be included “when we get some proper Welsh legislation”.²⁷

Evidence from the Cabinet Secretary

56. In correspondence with the Committee, the Cabinet Secretary stated:

“I confirm it is still my intention to bring forward an Agriculture (Wales) Bill to the Assembly but this is unlikely to be in place for 2020 because of the pressure on the legislative timetable.”²⁸

57. When subsequently asked whether a Wales Agriculture Bill would have completed its passage through the Assembly by the end of the Fifth Assembly, she stated:

“I’ve committed to doing that but, obviously, it will depend on a legislative slot and, obviously, there’s a new Government coming in next week. But that’s certainly always been my intention.”²⁹

58. When questioned about why the UK Bill contained no sunset clause, to reflect the Welsh Government’s intention for the provisions to be “transitional until primary legislation is brought forward”, the Cabinet Secretary stated:

“Given the level of uncertainty surrounding Brexit, I did not consider it appropriate to include an explicit sunset provision for these powers to be on the face of the Bill. The provisions in the UK Agriculture Bill are, therefore, not time limited. I can confirm that it is my intention for the powers to be transitional and superseded by a Wales Agriculture Bill at

²⁶ Evidence Paper – CLA, 14 November 2018

²⁷ RoP, para 335, 14 November 2018

²⁸ [Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, dated 30 October 2018](#)

²⁹ RoP, para 34, 6 December 2018

the appropriate time. I intend to bring forward a Wales Agriculture Bill before the end of the current Assembly term.”³⁰

Our view

In the immediate post-Brexit period, legislation will be needed to enable financial support to continue to be provided to the sector under the existing CAP schemes. Without legislation, financial support cannot continue beyond 2020. Legislation will also be needed to underpin any new agricultural policy for Wales, including any new system of financial support. It is clear, therefore, that legislation is a necessity, not an option.

For over 40 years, farmers will have operated within various iterations of the CAP. It is unsurprising, therefore, that this is a period of grave uncertainty across the sector.

Ensuring continuity for the sector in the immediate post-Brexit period must now be the priority. As such, we agree, that there is a case for using the UK Bill to legislate for this purpose. We hope that legislating to enable financial support to continue under the existing CAP schemes in the immediate post-Brexit period will provide at least some degree of certainty.

Although the LCM explains the Welsh Government’s reasons for including the provisions in the UK Bill, there is no explanation of the policy intentions or of how and when the powers will be used. This is because, as the Cabinet Secretary has asserted many times, no policy decisions have been made. Furthermore, she has made clear that such decisions will not be made until the outcome of *Brexit and our land*, and before further consultation. Given this, it is not possible to assess the extent to which the Welsh provisions will deliver the Welsh Government’s policy intentions.

There are considerable weaknesses associated with using the UK Bill to legislate to the extent provided for in Schedule 3. First and foremost, the lack of Assembly scrutiny of the provisions. We do not believe that the Assembly scrutiny procedures, set out in Schedule 3, are sufficient given the nature of the powers, nor do they take account of the way in which the powers are being sought. In addition, Schedule 3, as currently drafted, does not reflect the

³⁰ Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, dated 30 October 2018.

consultative approach to legislating that the Welsh Government has committed to.

The Welsh provisions extend beyond merely enabling the continuation of current policy in the immediate post-Brexit period. They provide extensive executive powers which will enable the Welsh Ministers to introduce a new agricultural policy in Wales: a policy that is still in the early stages of development, and one which will shape the future of agriculture in Wales for decades to come. The Assembly's role in this decision is limited to the Legislative Consent motion associated with the Memorandum to which this report relates. We do not believe this is appropriate or acceptable.

We believe there is a strong case to include additional safeguards in Schedule 3 to ensure that the executive powers are exercised proportionately and appropriately by the incumbent Welsh Government and any future Welsh Government. This is particularly pertinent given the uncertainties around the timing of any future regulations and the Wales Agriculture Bill.

The Welsh Government's assertion is that the provisions in Schedule 3 are "intended to be transitional" until a Wales Agricultural Bill is introduced. However, there is nothing in the UK Bill that provides for the provisions to be time limited. Despite any commitments to the contrary, there will be no compulsion for this Welsh Government, or any future Welsh Government to bring forward a Wales Bill. Moreover, such a Bill will not be necessary, as all of the powers required to legislate for future agricultural policy and financial support will have been conferred on Welsh Ministers through this UK Bill.

We do not doubt the Cabinet Secretary's intention to meet the commitments that she has given to this Committee and the Constitutional and Legislative Affairs Committee. But, good law should not rely on good will, and a commitment made by one government need not be honoured by another.

The executive powers provided in Schedule 3 could be relied upon indefinitely, and could be used to introduce fundamental, long-lasting changes to agricultural policy in Wales, with limited Assembly scrutiny.

It is clear that an Assembly Bill, tailored to meet the specific needs of the agricultural sector in Wales, would be stakeholders' preferred option. We share this view.

We note the Cabinet Secretary's commitment to bring forward a Wales Agriculture Bill in due course. However, there remains a lack of clarity about whether that Bill will have completed its passage through the Assembly before

the end of the Fifth Assembly. The Cabinet Secretary has said that this will depend on finding time in the legislative programme.

Stakeholders set out strong expectations that provisions within any future Assembly Bill should be markedly different to those in Schedule 3. We expect the Welsh Government to reflect on this evidence before bringing forward its White paper in spring 2019.

Conclusion 1. We believe that the most appropriate way to legislate on a subject as significant as the long term future of agriculture in Wales is through an Assembly Bill. We believe that the Welsh Government should give a commitment that time will be made available in the legislative programme for a Wales Agriculture Bill to be brought forward and to be passed before the end of this Assembly term.

Conclusion 2. However, we recognise that legislation is necessary in the short term, to continue to provide financial support to the agriculture sector immediately after Brexit. Given the time available, the UK Bill is an appropriate vehicle for this purpose. But, the provisions in the UK Bill go far beyond ensuring the immediate continuity of financial support. They enable the Welsh Ministers to establish a completely new approach to support for agriculture.

Conclusion 3. We believe that the Welsh provisions in the UK Bill are unbalanced. They confer considerable powers on the Welsh Ministers and place no duties on them. **The effect of the provisions will be to severely limit the Assembly's ability to scrutinise the Welsh Government's support for agriculture, at a time when effective scrutiny will be vital to the success of the new policies.** This is not an acceptable approach and should be a matter of serious concern for the Assembly. We believe that Schedule 3 should be amended to include additional safeguards to ensure that the executive powers are exercised proportionately and appropriately. This could include a requirement on Welsh Ministers to consult before bringing forward regulations.

Conclusion 4. The Cabinet Secretary promised in *Brexit and our land* that the provisions in the UK Bill constitute transitional arrangements and will be "time limited". There are no such limitations included in the UK Bill, as drafted. We believe the Welsh Government should seek an amendment to the UK Bill to introduce a "sunset clause" in relation to the Welsh provisions.

Conclusion 5. In light of recent events in Westminster, the Welsh Government should consider the need for appropriate contingency measures to ensure that financial support can be given to the agricultural sector immediately after Brexit.

3. Leaving the Common Agricultural Policy

59. *Brexit and our land* sets out the Welsh Government's proposal for transitioning away from the CAP system of financial support to a new system, which is made up of two schemes: a Public Goods scheme, and an Economic Resilience scheme. This was described by the Welsh Government as "...an unprecedented change in support arrangements".³¹

60. According to the Welsh Government, "detailed analysis will need to take place" on how to phase out direct payments, however, "illustrative options include reducing payments in absolute terms, proportionately or by changing capping rates". The Welsh Government also states it will "explore opportunities to reduce areas of administrative complexity" associated with the current Basic Payment Scheme during Phase 1.³²

61. In *Brexit and our land*, the Welsh Government proposes a "multi-year transition period" which "would not begin before 2020". It states that its "high-level ambition is to have completed implementation and be operating within the new [Land Management Programme] by 2025".³³

3. 1. Phasing out and ending direct payments

62. Part 2 of Schedule 3 includes provisions which will enable the Welsh Ministers to phase out CAP direct payments to make way for new financial support schemes. This would take place during the "agricultural transition period", which is defined as a period of seven years beginning in 2021. Direct payments must be terminated at the end of this period. There is, however, a provision to extend the transition period, if necessary.

Evidence from stakeholders

63. FUW and NFU Cymru were strongly opposed to the proposal to phase out and eventually end direct payments, particularly given the uncertainties arising from Brexit and the lack of any assessment of the impact this would have on the sector in Wales.

³¹ Welsh Government's consultation, *Brexit and our land: Securing the future of Welsh farming*, July 2018

³² *ibid*

³³ *ibid*

64. NFU Cymru stated:

“At the present time we do not know how Welsh agriculture might fare as a result of Brexit...our view is that major policy decisions should not be taken until a much clearer picture of the post-Brexit economic landscape has emerged, with no policy options closed off.”³⁴

65. Similar points were made by TFA Cymru. While it acknowledged the need for the sector to respond to change, it asserted:

“...we need to be changing to something that is better not just different, and we’re not yet convinced that we are going to be able to have something that is better, because we don’t know the circumstances within which we’re going to operate.”³⁵

66. CLA emphasised that, given the continuing uncertainty about future trade agreements, the provisions seemed “pre-emptive and too prescriptive and not adaptable to the wider, more fundamental issues that will affect the sector in the short and long term”.³⁶ Dr Nerys Llewellyn Jones also had “grave concerns” about the proposal to end direct payments, particularly given the uncertainties around future trade agreements.³⁷

67. In evidence to the Committee’s inquiry on the proposed Public Goods scheme, FUW stated that the proposals for new schemes in *Brexit and our land* were, “untried, untested, unmodelled and unpiloted”³⁸ and raised concern that ending direct payments would “threaten the economic viability” of many Welsh farms and have a knock-on effect on rural communities³⁹.

68. According to NFU Cymru, direct payments were “a vital force in providing stability [for the sector]”.⁴⁰ It said it could not support the phasing out of direct payments:

“...until there is clear evidence that replacement scheme(s) can deliver at least the same level of stability for farming businesses, the food

³⁴ Evidence Paper – NFU Cymru, 14 November 2018

³⁵ RoP, para 224, 14 November 2014

³⁶ Evidence Paper – CLA, 14 November 2018

³⁷ RoP, para 61, 14 November 2018

³⁸ RoP, para 153, 24 October 2018

³⁹ RoP, para 157, 24 October 2018

⁴⁰ Evidence Paper – NFU Cymru, 14 November 2018

supply chain and the rural communities that the BPS currently delivers.”⁴¹

69. Dr Petetin and Dr Dobbs explained that “many Welsh farms are currently profitable solely because of CAP direct payments” and would have “limited ability to adapt” to the proposed changes in support. They stated:

“It is likely that at least the bottom 30% of Welsh farms that struggle or only survive because of the receipt of BPS could disappear...The loss of a huge number of farms following such radical changes could be highly consequential to the Welsh farming countryside, rural areas and Wales.”⁴²

70. CLA pointed out that the provisions in the UK Bill “reflect the decisions in England following the DEFRA ‘Health and Harmony’ consultation”,⁴³ which had included more detailed proposals for reducing direct payments. As such, CLA stated:

“...bringing this legislation out without having that consultation in Wales, about the financial impact [of phasing out direct payments], has caused more concern than they’ve seen in England...”⁴⁴

Evidence from the Cabinet Secretary

71. On 28 November, in Plenary, the Cabinet Secretary stated:

“I have been clear on many occasions before, during and since our ‘Brexit and our land’ consultation, as has the First Minister, that the basic payment scheme is not the right way to support farmers after Brexit...[direct payments] are too blunt a tool to develop a productive and competitive agriculture sector. They do not incentivise improvements in productivity, nor do they allow farmers the flexibility to respond to volatility... There is no link whatsoever between BPS and productivity, farmers’ effort or on-the-ground outcomes. We must support farmers in a better way.”⁴⁵

⁴¹ Evidence Paper – NFU Cymru, 14 November 2018

⁴² Evidence Paper – Dr Petetin and Dr Dobbs, 14 November 2018

⁴³ Evidence Paper – CLA, 14 November 2018

⁴⁴ RoP, para 223, 14 November 2018

⁴⁵ Plenary, RoP, para 346, 28 November 2018

3. 2. Delinking

72. Part 2 of Schedule 3 allows “delinking” of payments from the requirement to farm during the transition period, removing the “active farmer” stipulation. It allows for these payments to be made in a lump sum, which would allow farmers to invest in their business, diversify or retire from farming.

Evidence from stakeholders

73. Few stakeholders commented specifically on the provisions in relation to delinking payments. TFA Cymru was disappointed that options for delinking payments had not been consulted on in *Brexit and our land*, but expressed support for the approach in principle:

“...it will be of significant assistance to progress restructuring within the industry allowing individuals to use both de-linked payments as consolidated payments to retire from the industry or invest in their businesses or to invest in other economic activities either on their holdings or off their holdings.”⁴⁶

74. Similar points were made by CLA, who referred to the delinking provisions as “one of the most radical provisions in the Bill”.⁴⁷ It suggested that de-linking payments would provide farmers who wish to leave the industry with the option to do so, and “in theory, create consequent opportunities for new entrants and those who wish to expand”.⁴⁸

75. Like TFA Cymru, it highlighted the lack of detail on the proposals and stated, “yet again, this is not a conversation that has been considered in detail for Wales”.⁴⁹ While CLA suggested that delinking was “unlikely” to affect land values, it suggested that the impact of rents “could be more significant” and emphasised the need for appropriate “conditions and safeguards”.⁵⁰

⁴⁶ Evidence Paper – TFA Cymru, 14 November 2018

⁴⁷ Evidence Paper – CLA, 14 November 2018

⁴⁸ *ibid*

⁴⁹ *ibid*

⁵⁰ *ibid*

Our view

Agricultural policy has been decided primarily at an EU level for over four decades. Brexit, therefore, provides an opportunity for the Welsh Government to rethink the way that the agriculture sector in Wales is supported.

In our report, [The future of land management in Wales](#), we considered future financial support for Welsh farmers after the UK exits the EU. We concluded that the Welsh Government should explore the potential for introducing support mechanisms that underpin high quality food production and achieve sustainable outcomes.

At this point, the scale and nature of the impact of Brexit on the sector is unknown. It will depend on a number of factors, not least future trading agreements with the EU and the rest of the world. It is understandable, therefore, that many stakeholders have questioned why the Welsh Government has committed to implement an “unprecedented change in support arrangements” at this time.

There are different views among stakeholders, and indeed, across this Assembly, about how best to support the agricultural sector in Wales in future. But the purpose of this report is not to rehearse the arguments for and against direct payments. Instead, our report focuses on whether it is appropriate and proportionate for the Welsh Government to seek powers, through the UK Bill, that will enable the Government to, amongst other things, replace the current system of financial support with a new system.

As set out in Chapter 2, we agree that there is a case to use the UK Bill to legislate to ensure continuity for the sector in the immediate post-Brexit period.

Part 2 of Schedule 3 provides extensive delegated powers, most notably, regulation-making powers to phase out direct payments and to delink payments from production. We are concerned that the Welsh Government has yet to undertake work to assess the impact on the sector of these proposals. We believe that policy decisions such as this should be informed by a detailed impact assessment.

Conclusion 6. This is a period of considerable uncertainty for the agricultural sector in Wales. We recognise why the sector has responded with concern to the proposals to phase out direct payments. Given the time available, **we support the inclusion of provisions in the UK Bill to continue direct payments immediately after Brexit. We believe this will give certainty to the sector.**

Conclusion 7. The Cabinet Secretary has said that no policy decisions will be taken until the outcomes of the *Brexit and our land* consultation are known. The Cabinet Secretary has also said she intends to phase out direct payments. These two positions are not compatible.

Conclusion 8. The Welsh Government has not undertaken an assessment of the impact of phasing out direct payments. We believe the Welsh Government should give a commitment not to start phasing out direct payments until such time as it has completed and published a detailed, sector wide impact assessment.

Conclusion 9. The Welsh Government has asked for the inclusion of other executive powers under Part 2 of Schedule 3. For example, the provisions relating to delinked payments. The Welsh Government has not provided information to the Assembly about how it intends to use these powers, should the Assembly give consent. The Welsh Government should clarify how it intends to use these powers.

4. Transitioning to a new system of support

76. Regardless of their overall stance on the proposal to end direct payments, representatives of the agricultural sector cautioned against rushing to begin transition. They emphasised the practical challenges for the Welsh Government, relevant agencies and the sector itself in moving to a new system of financial support.

77. In contrast, representatives of the environmental sector were keen for transition to the proposed new schemes to begin as soon as possible. They emphasised the need for swift action to address the rapid decline in biodiversity.

4.1. The length of the transition period

78. Several representatives from the agricultural sector noted the discrepancy between the Welsh Government's proposed transition period of 2020 to 2025, set out in *Brexit and our land*, and the seven year "agricultural transition period" provided for in Part 2 of Schedule 3. CLA reported that the discrepancy "has created uncertainty and confusion".⁵¹

79. There was broad consensus from representatives of the agricultural sector that the proposed transition period of five years, beginning in 2020, was overly ambitious and potentially problematic. CLA stated:

"...we shouldn't underestimate the need for the civil service, stakeholders and administrators of the scheme also to transition and learn and adapt...It's very easy to say, 'The industry doesn't react well to change; it takes longer and we're asking for too long a transition period', but, actually, it's not a one-way process...The civil service isn't a quick ship to turn, and if we are going to build systems, build IT structures that need time, and things that govern and work well, we shouldn't just be looking in one direction for that answer."⁵²

80. Both NFU Cymru and TFA Cymru expressed a clear preference for the seven year transition period and welcomed the power for the Welsh Ministers to extend the period.

⁵¹ Evidence Paper – CLA, 14 November 2018

⁵² RoP, para 235, 14 November 2018

81. In contrast, Nature Friendly Farming Network Wales favoured a shorter transition period, as set out in *Brexit and our land*. It stated:

“A key consideration however, is that we don’t delay transition so long that it’s too late to reverse wildlife decline and address environmental issues in time to meet legal obligations.”⁵³

82. It pointed out that the power for the Welsh Ministers to extend the transition period (Part 2, paragraph 5(2)), could potentially mean “a never-ending transitional period”.⁵⁴

4. 2. Modelling and piloting

83. In evidence to this Committee’s inquiry into the proposed Public Goods scheme, FUW raised concern that detailed modelling of the proposals set out in *Brexit and our land* had yet to be undertaken. In comparison, extensive modelling had been undertaken for previous CAP scheme proposals. This had included an assessment of the impact on individual businesses and on different geographical locations.

84. Several witnesses highlighted the need for pilot schemes to be established as soon as possible to inform the development and implementation of the proposed Public Goods scheme.

85. NFU Cymru and FUW questioned whether there was sufficient administrative and advisory capacity to deliver the proposed Public Goods scheme in the time available, particularly given the volume of applications that were anticipated.

Evidence from the Cabinet Secretary

86. On 26 November, the Cabinet Secretary confirmed that the Basic Payment Scheme would remain unchanged in 2020 “to support Welsh farmers transition to a new Land Management Programme post-Brexit”. She stated:

“I realise this signals big change for the sector at an uncertain time. The transition period is vitally important and is why I am today announcing BPS will remain unchanged for a further year in 2020 to provide certainty and help farmers transition smoothly to a new Land Management Programme.

⁵³ Evidence Paper – Nature Friendly farming Network Wales, 14 November 2018

⁵⁴ *ibid*

This extension will ensure farmers have enough time to prepare and adapt to this new approach. It will ensure a multi-year, managed transition and fulfils our commitment that no existing schemes will be removed until replacing schemes are ready.”⁵⁵

87. The Cabinet Secretary subsequently stated she intended to extend “many existing Glastir contrasts for a limited period, subject to agreement by the European Commission”.⁵⁶

88. When asked whether she was confident that the Welsh Government and the sector would be ready to begin transition in 2020-21, the Cabinet Secretary stated:

“...we’ve made it very clear about the transition period, how long that will be. We consulted on 2020 to 2025. I gave the assurance about the basic payment schemes for another year to 2020, because I absolutely appreciate it’s such an uncertain time...I think we will be ready, but it is a big ask, obviously.”⁵⁷

89. Her official added:

“...there won’t be significant change in 2020. The change in 2021 would be gradual, relatively small scale. So, the things that people would need to adapt to early are likely to be relatively few, and the change increases over the following year. So, I think, thinking of 2020-21 as a sort of cliff-edge, single change moment isn’t the right way to approach it. This is the beginning of a transition period.”⁵⁸

90. The Cabinet Secretary acknowledged that differences in the rate of transition in Wales and England could have implications for cross-border farms and the UK internal market.⁵⁹ However, she suggested this was, in part, a consequence of devolution. Her official went on to explain that these matters could be managed through the UK common framework for agriculture, and stated:

“I think a lot of those things are not actually legislative issues. They’re about ways of working between the four administrations, reflecting where we are with the inter-governmental agreement. So, the issues that will need to be addressed in the framework don’t need to be

⁵⁵ [Welsh Government Press Release, 26 November 2018](#)

⁵⁶ Plenary, para 350, 28 November 2018

⁵⁷ RoP, para 50, 6 December 2018

⁵⁸ RoP, para 51, 6 December 2018

⁵⁹ RoP, para 55, 6 December 2018

tackled in legislation because they're not legislative issues; they're about how we work together.”⁶⁰

91. The Cabinet Secretary confirmed that modelling would be completed before the publication of the White Paper, which was due in spring 2019. Her official explained:

“...we will be looking both at the whole-of-Wales level, but also wanting to work with a number of individual farm businesses, looking very closely and working with them around their farm business accounts, and so on, to think what would this mean for this farm...and looking at a representative sample of different sectors, different areas of Wales, to be able to look both at the macro, whole-of-Wales level, and then what might this mean for different types of business, different scales of business, different sectors, so that we get as rich a picture as we can of those impacts...”⁶¹

Our view

The Welsh Government has yet to decide on the new financial support system, the detail of the new schemes, or how and when they will be implemented. All we know for sure is that, based on the proposals set out in *Brexit and our land*, moving to the new system will mean “unprecedented change” for the agricultural sector, and will be a significant undertaking for the Government and its agencies.

The new schemes will need to be introduced on a scale that has not been attempted in recent times. This challenge is greater still, if the Government is to meet its ambition of completing transition to the new system, and ending direct payments entirely, by 2025.

There has been no assessment of the potential number of applicants for the new schemes. However, if farmers who currently rely on direct payments as a source of income seek to access the schemes, numbers will be high. Added to this, we note that the proposed new schemes would be accessible to a broader range of recipients than current schemes. The implications of this on the number of applicants are not known. We consider the breadth of recipients in more detail in Chapter 5.

⁶⁰ RoP, para 61, 6 December 2018

⁶¹ RoP, para 83, 6 December 2018

We have already set out our view on legislating for change at a time of unprecedented uncertainty. Regardless of timing, it is vital that change of this nature and scale does not begin until the necessary preparatory work is completed, and the impact of the change is fully understood.

While the Government's proposal is for a multi-year transition period, it remains the case that extensive work will need to be undertaken ahead of transition. In our report on the Welsh Government's draft budget 2019-20, we outlined our concerns about the lack of clear preparatory plans for transitioning away from the current CAP schemes to the proposed new schemes. We concluded that detailed modelling, impact assessments and the establishment of pilot schemes, will need to be undertaken to inform the development and implementation of the proposed new schemes. Evidence to our inquiry on the proposed Public Goods scheme highlighted the sizeable task of developing a scheme suitable to operate on a national scale. This includes: setting environmental outcomes, defining outcome indicators, and determining payment rates and thresholds.

In *Brexit and our land*, the Welsh Government said its ambition was for transition to begin in 2020. However, Part 2 of Schedule 3 provides for transition to begin no earlier than 2021. Given the recent announcement that the Basic Payment Scheme will remain unchanged in 2020, we seek clarity from the Welsh Government on when transition will begin, and what form this will take.

We note that Part 2 of Schedule 3 provides for a seven year transition period from 2021 to 2028. This can be extended, subject to the Assembly's agreement, and we welcome the flexibility this provides. We acknowledge the need for change, and for accelerated action to restore the natural environment. However, we remain to be convinced that the Welsh Government's ambition for transition to be completed by 2025 is achievable.

We are concerned that the speed of change within this timeframe poses a significant risk to the agricultural sector. Further to this, we note that the UK Government's final proposals included a longer transition period in England, with full implementation of new schemes expected in 2028.

Conclusion 10. The Welsh Government has not provided the Assembly with clarity about the starting point or the timescale for transition from current arrangements to future schemes. In *Brexit and our land*, the Welsh Government said its ambition was for transition to begin in 2020 and be completed by 2025. More recently, the Cabinet Secretary said that direct payments would be made, unchanged, for the 2020 CAP payment year. **We believe the Welsh Government**

must clarify its intentions in relation to when transition will begin and what it will mean for the sector in practice.

Conclusion 11. Whether it wishes to begin transition in 2020, 2021 or, indeed, later, the Welsh Government faces considerable challenges, given that detailed modelling, impact assessments and the establishment of pilot schemes will first need to be undertaken to inform the development and implementation of the new schemes. **We believe the Welsh Government should give a commitment that the process of transition to new schemes will not begin until this work has been completed.**

5. A new system of financial support

92. Part 1 of Schedule 3 allows for the establishment and operation of new payment schemes to replace the current CAP schemes. Part 1:

- enables the Welsh Ministers to provide financial assistance for, or in connection with, a range of purposes with the aim of delivering public benefits. Financial assistance may also be given to support businesses, rural communities, and the agricultural, horticultural and forestry supply chain;
- sets out how the new financial assistance schemes may be administered; and
- enables the Welsh Ministers to make provision for monitoring, checking and enforcing conditions in relation to the new financial assistance schemes.

93. As described earlier in this report, the Welsh Government's consultation, *Brexit and our land*, sets out its proposals for a Public Goods scheme and an Economic Resilience scheme. The proposals were still being consulted on when the UK Bill was introduced. The consultation closed on 30 October and approximately 12,000 responses were submitted. At the time this report was agreed, the Welsh Government had not responded to the consultation.

5. 1. Purposes for which financial assistance can be given

94. Part 1, paragraph 1 sets out the purposes for which financial assistance can be given. They are wide ranging⁶² and include no definition or explanation.

95. The purposes extend beyond those contained in the equivalent English provision and include: supporting businesses or communities in rural areas; and supporting persons who are involved in the production, processing, marketing or distribution of products deriving from agricultural, horticultural or forestry activity.

⁶² For example, managing land or water in a way that improves the environment; supporting public access to and enjoyment of the countryside, farmland or woodland and better understanding of the environment; and starting or improving the productivity of an agricultural, horticultural or forestry activity.

Evidence from stakeholders

96. Dr Petetin and Dr Dobbs welcomed the move towards a Public Goods scheme. However, they stated:

“...it is important that the Agriculture Bill [and the policy proposals set out in *Brexit and our land*] be expanded to facilitate the support of public goods beyond those cited. It is the opportunity for both documents to embrace forward-looking, ‘outside the box’ policies that reflect current and future needs.”⁶³

97. Dr Petetin and Dr Dobbs highlighted “noticeable gaps” in the list of purposes set out in paragraph 1(1) and believed there was “much greater scope to include a far wider range of valuable objectives”. For example, enhancing habitats and wildlife, promoting rural communities, promoting food quality and public health and improving animal welfare.⁶⁴

98. TFA Cymru called for the list of purposes in paragraph 1(1) to include “protecting or improving the health, well-being and food security” and “protecting or improving the management of upland landscapes and biodiversity through grazing livestock systems”.⁶⁵

99. FUW “superficially”⁶⁶ welcomed the new financial assistance powers. However, it referred to the “significant differences”⁶⁷ between the “public goods” that the Welsh Government was proposing to support, set out in *Brexit and our land*, and the purposes included in Part 1, paragraph 1(1).

100. NFU Cymru specifically welcomed the new power to provide financial assistance to support businesses, rural communities, and the agricultural, horticultural and forestry supply chain for productivity (Part 1, paragraph 1(2)).⁶⁸ A similar view was expressed by TFA Cymru.⁶⁹

101. CLA believed that the new financial assistance powers “provide the necessary framework to take forward the [proposed new schemes]”. However, it suggested

⁶³ Evidence Paper – Dr Petetin and Dr Dobbs, 14 November 2018

⁶⁴ *ibid*

⁶⁵ Evidence Paper – TFA Cymru, 14 November 2018

⁶⁶ Evidence Paper – FUW, 14 November 2018

⁶⁷ *ibid*

⁶⁸ Evidence paper – NFU Cymru, 14 November 2018

⁶⁹ Evidence Paper – TFA Cymru. 14 November 2018

that the purposes in paragraph 1 should be considered “in the context of the Well-being and Future Generations (Wales) Act and the test set out within in”.⁷⁰

Evidence from the Cabinet Secretary

102. In commenting on the purposes for which financial assistance can be given, and how and when the Cabinet Secretary intends to use the powers, she stated:

“The purposes for which Welsh Ministers will be able to give financial assistance are designed to be non-limiting in their scope and no decisions have yet been taken on the use and purpose of the powers. This will very much be dependent on the consultation outcomes and on the UK’s future relationship with the EU and rest of the world.”⁷¹

103. When questioned on the concerns raised about potential gaps in the purposes, as drafted, the Cabinet Secretary stated:

“I’m not aware of any gaps, because what the Bill does is confer very wide powers in respect of financial support. So, from our point of view, any concerns that stakeholders have, we would work with them, as we work up the schemes...”⁷²

104. In explaining why the power to provide financial assistance was a non-legislative executive power, she stated:

“Because we’ve made no policy decisions, I thought it appropriate to take a neutral assumption and mirror England’s approach on this. But, as I’ve said, these powers are transitional, they’re temporary, and I will ensure that the Assembly has full opportunity to scrutinise the Welsh agricultural Bill when we bring that forward.”⁷³

105. In response to a question about what the Welsh Government would do if modelling and impact assessment demonstrated that the proposals were not effective, the Cabinet Secretary said:

“So, we need to do that ahead of the White Paper and then...if we think those two models don’t [work], we can look at how we can do different

⁷⁰ Evidence Paper – CLA, 14 November 2018

⁷¹ [Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, dated 30 October 2018](#)

⁷² RoP, para 116, 6 December 2018

⁷³ RoP, para 132, 6 December 2018

schemes or how, within those two schemes that we've got, we can change things. We've got to be flexible.”⁷⁴

5. 2. Access and the breadth of recipients

106. Part 1, paragraph 1 sets out the purposes for which financial assistance can be given. It does not define the persons who would be eligible for financial assistance.

107. The Explanatory Notes to the UK Bill state that financial assistance “may be given to beneficiaries including, but not limited to, farmers, foresters, or those responsible for the management of the land”.⁷⁵ This is not specified in the provisions for England or Wales.

Evidence from stakeholders

108. There were mixed views among stakeholders about persons who should be eligible for financial assistance. In the main, representatives of the agricultural sector believed that financial assistance should be limited to “active farmers”, as was currently the case for CAP direct payments.

109. FUW raised concerns around the proposed breadth of recipients:

“...a similar approach was taken in England in 2005, effectively an open-to-all in terms of their payment system, and it contributed significantly to a complete meltdown in their payments that lasted for at least two years, and is a legacy that still remains.”⁷⁶

110. NFU Cymru warned of the risks of the proposed approach:

“There is a danger, as we see it, that finance money will hemorrhage away to other areas potentially—golf courses, NRW land, forestry—and a whole host of other eligible claimants may emerge, diluting the available pool and that will cause damage to our industry.”⁷⁷

111. TFA Cymru called for “clear restrictions around who can be considered a beneficiary of the financial assistance available”, with a requirement that beneficiaries could only be “active farmers” or “active land managers”.⁷⁸ FUW also

⁷⁴ RoP, para 96, 6 December 2018

⁷⁵ [Explanatory Notes, UK Agriculture Bill](#)

⁷⁶ RoP, para 163, 24 October 2018

⁷⁷ RoP, para 207, 14 November 2018

⁷⁸ Evidence Paper – TFA Cymru, 14 November 2018

supported restricting financial assistance to “active farmers”. It pointed out that the EU was seeking to strengthen the definition of “active farmer”.⁷⁹

112. CLA took a different view. While it acknowledged the need for some form of restriction to ensure that financial assistance was targeted effectively, it stated:

“the ‘active farmer’ is a construct of the European Union and the rules of Europe and if we are leaving, this may be a chance to look at it afresh...let’s take a step back and if this is a chance to enable more people to enter the industry or to support people who are maybe not actually actively farming to do something different, now is the time to do that...”⁸⁰

113. While Dr Petetin supported the move to provide financial assistance to a broader range of recipients, she cautioned:

“...if we are opening new schemes to land managers broadly defined, it means more competition to access the funds...what that might lead to is actually unfairness in the system, where some actors will need the money and some actors won’t, and by treating everyone the same and equally, you might actually create unfairness in the system. So it needs to be carefully looked at and assessed.”⁸¹

Evidence from the Cabinet Secretary

114. In Plenary, on 28 November, the Cabinet Secretary stated she wanted funding for farm support “to go to people actively delivering the outcomes [the Welsh Government] seek[s]”. However, she asserted that the Basic Payment Scheme was not linked to outcomes, productivity or effort and, as such was not fair to active farmers. She cautioned against “putting the current active farmer test on a pedestal” and stated the Welsh Government “want[s] a system where the people who do the work and take the risk get the benefit”.⁸²

115. The Cabinet Secretary subsequently stated that “appropriate analysis” would need to be undertaken “to ensure that there is a fair distribution of that funding”.⁸³

⁷⁹ RoP, para 208, 14 November 2018

⁸⁰ RoP, para 204, 14 November 2018

⁸¹ RoP, para 57, 14 November 2018

⁸² Plenary, RoP, para 349, 28 November 2018

⁸³ RoP, para 165, 14 November 2018

5. 3. Monitoring and enforcement

116. Part 1, paragraph 3 of Schedule 3 provides powers for the Welsh Ministers to make provisions for monitoring and enforcing the conditions for which financial assistance is given. Provision can be made for a range of activities relating to enforcement, including imposing monetary penalties and creating offences.

117. The Welsh Government has proposed that financial support would only be available for the delivery of outcomes above the level required for regulatory compliance. *Brexit and our land* sets out the case for a new regulatory framework following the UK's exit from the EU (Chapter 7):

“Land managers are regulated through a tapestry of regulation, much of it emanating from EU policy. Brexit provides the opportunity to build on the Environment Act to put in place a new coherent, principles-based, outcome focussed and adaptive regulatory floor for land management. This is needed to provide a sound foundation for the new schemes outlined in this document, whose outcomes can be underpinned and reinforced if there are suitable baseline standards upon which payments can be made.”⁸⁴

Evidence from stakeholders

118. Dr Petetin and Dr Dobbs noted that “there is no regulatory floor in either the Agriculture Bill or Brexit and our land”. They emphasised the need for the new schemes “to be underpinned by suitable legislation setting a minimum standard for the environment for food quality and for the information available to consumers”.⁸⁵ WEL also noted that the UK Bill did not address the issue of a regulatory baseline, which it believed “would have been helpful”.⁸⁶

119. Wildlife Trust Wales (WTW) believed that monitoring and inspection should be undertaken by an independent third party.⁸⁷ In contrast, NFU Cymru stated that delegating functions to a third party was “unnecessary and potentially a

⁸⁴ [Welsh Government's consultation, *Brexit and our land: Securing the future of Welsh farming*, July 2018](#)

⁸⁵ Evidence Paper – Dr Petetin and Dr Dobbs, 14 November 2018

⁸⁶ RoP, para 393, 14 November 2018

⁸⁷ RoP, para 396, 14 November 2018

recipe for disaster”.⁸⁸ FUW raised concern about the potential for “excessive bureaucracy and inspections”⁸⁹ arising from such an approach:

“...we have always favoured such responsibilities staying with Government, given that Government and the civil service is effectively supposed to be neutral in terms of how it administers, especially when you get situations where the inspectorate also become the enforcing power and the prosecutor as well. And that is a very, very dangerous situation that already exists with regard to some issues.”⁹⁰

120. Dr Dobbs pointed out that the provisions would enable various approaches to monitoring. She noted that the proposals in *Brexit and our land* suggest an approach which would be “quite reliant on self-monitoring and the gathering of information by the farmers and land managers”.⁹¹ She stated:

“This is a useful mechanism from the Government’s perspective as it cuts down resource reliance. However, this is reliant on farmers, who may not have the requisite expertise, may not have the resources themselves to undertake it. This is quite burdensome. It’s problematic in just gathering the information on the farmers, but it also potentially undermines the efficiency and effectiveness of both the schemes themselves...”⁹²

121. In commenting on the appropriateness of the enforcement provision, Dr Nerys Llewellyn Jones explained that financial penalties and criminal sanctions were tools used under current arrangements. She emphasised the need for “a rigorous enforcement policy” that is also proportionate.⁹³

122. Dr Petetin⁹⁴ and Confor referred to the potential cost of effective monitoring and enforcement. This could have an impact on the amounts of financial support available for the new schemes. Confor stated it was important “not to underestimate the investment needed to [monitor and enforce the new schemes effectively]”.⁹⁵

⁸⁸ RoP, para 245, 14 November 2018

⁸⁹ RoP, para 241, 14 November 2018

⁹⁰ RoP, para 243, 14 November 2018

⁹¹ RoP, para 82, 14 November 2018

⁹² *ibid*

⁹³ RoP, para 81, 14 November 2018

⁹⁴ RoP, para 88, 14 November 2018

⁹⁵ RoP, para 389, 14 November 2018

Evidence from the Cabinet Secretary

123. When questioned about whether a new regulatory baseline would be in place before the start of transition, the Cabinet Secretary's official stated:

"[the existing regulatory framework] can be simplified in the sense of being made much clearer, not in the sense of reducing the environmental protections, and made much easier for everybody to use. But during the transition period, the existing set of regulations and requirements would still be there. So, there's not going to be a gap until we provide that much clearer, simpler system. So, we want to work on that in parallel and bring that in as soon as we can, because it will help everybody, but the existing set of regulatory requirements and baselines will remain in place."⁹⁶

Our view

The power to provide financial assistance in Part 1, paragraph 1 is a non-legislative power. The effect of this is that the Welsh Ministers will be able to establish any new financial support schemes without any Assembly oversight. Furthermore, Part 1 contains no monitoring or oversight role for the Assembly or its Committees in respect of the implementation or operation of any new schemes.

In contrast, under EU law, Member States' and Regions' rural development programme schemes must be approved by the European Commission. In addition, Member States must monitor programmes and report annually to the Commission on progress. In effect, any new Welsh schemes will potentially be subject to less oversight than before Brexit. We do not consider this appropriate.

Under provisions in Part 1, Welsh Ministers will be able to provide financial assistance for a wide-range of purposes. The Cabinet Secretary's position is that she will not decide on future schemes until after the *Brexit and our land* consultation has been considered. She has not, therefore, explained to the Assembly the purpose for which she will use these powers. Given this, it is not possible to assess the extent to which the provisions will enable the Welsh Government to deliver its policy intentions.

We note that the purposes for which financial assistance can be given could potentially extend the breadth of recipients well beyond those who are eligible

⁹⁶ RoP, para 172, 14 November 2018

for support under the current CAP schemes. Broadening access could have a serious impact on those farmers for which direct payments can make up almost 85% of their income. There has been no assessment of the impact this will have on the sector.

We note the Welsh Government's position that the proposed Public Goods scheme will need to be underpinned by an appropriate regulatory regime. The Welsh Government has referred to regulatory reform as a "sizeable challenge", but one that it has committed to. We welcome the assurance that the current regulatory framework can be relied upon until reform takes place, to ensure that standards are maintained. However, we are concerned about the potential for two overlapping regulatory systems, which may cause confusion for claimants, and we question how this will work in practice.

We believe that farmer involvement in monitoring outcomes will potentially be key to the success of schemes. This will require appropriate training for farmers, which will need to be delivered on a national scale. We have already requested details for the Cabinet Secretary about any work undertaken, or planned, to assess the training requirements of farmers, and any analysis of the associated training costs.

In addition, if monitoring and inspection is to involve an independent, third party, this will come at a cost. The Welsh Government has yet to take a decision on any new schemes, including how they will be administered, monitored and enforced, and by whom. We would be concerned if the costs for establishing and administering new schemes are intended to be met from the funding available to support farmers. We expect additional funding to be made available for those purposes.

Conclusion 12. The Cabinet Secretary has said that no decision will be taken on the detail of the new system of financial support until the outcome of the *Brexit and our land* consultation is known. **The Welsh Government is not in a position, therefore, to explain to the Assembly in detail the purposes for which these powers will be used.**

Conclusion 13. The Cabinet Secretary has indicated that if, as a result of piloting and modelling, the Welsh Government determines that the schemes proposed in *Brexit and Our Land* are not appropriate, other approaches will be considered and taken forward. **This means that, in effect, the provisions may be used for currently unknown purposes.**

Conclusion 14. The UK Bill will enable the Welsh Ministers to bring forward a new system of financial support for agriculture, after 40 years of the CAP. **The provisions, as drafted, include no oversight or monitoring role for the Assembly in the establishment or implementation of the new system of financial support.** We do not believe this is appropriate in a key area of devolved responsibility. This will be the first time, since devolution, that Wales has had an opportunity to shape its own, distinct, policy in this area and it is right that the Assembly plays a full role in this.

Conclusion 15. The Welsh Government should seek amendments to the UK Bill to require: that financial assistance under Part 1 can only be given through schemes established by Regulations; that these Regulations should be subject to the affirmative procedure; and that the Welsh Government must report to the Assembly on an annual basis on the effectiveness of any schemes that are established.

Conclusion 16. There has been no assessment of the financial impact of the decision to widen access to future schemes. The Welsh Government is not, therefore, in a position to explain to the Assembly what impact this decision will have on farmers. As referred to in previous conclusions, we believe the Welsh Government should not begin transition to the new schemes until it has undertaken an assessment of the impact of widening access to financial support and published the results.

6. Future funding for agriculture policy

124. The Welsh Government has recently announced that CAP support (the Basic Payment Scheme) will remain unchanged in 2020. Under the proposals set out in *Brexit and our land*, CAP direct payments are expected to be phased out from 2020 to make way for the proposed new schemes. Future funding for these schemes, or any other schemes that may be introduced by the provisions in Schedule 3, is yet to be determined.

125. The UK Government has confirmed that overall funding for UK farm support will be protected in cash terms to the end of the Parliament in 2022. In October 2018, it established an independent advisory panel to review the intra-UK allocation of domestic farm support funding for 2020 to 2022, with the aim of delivering “fair funding” for farmers across all parts of the UK.

126. The UK Government has confirmed that it will not apply the Barnett formula to changes in funding beyond this Parliament. However, no further information is available about future funding arrangements or funding levels.

127. In the LCM for the UK Bill, the Welsh Government states:

“There are no direct financial implications for the Welsh Government or the Assembly as a result of taking these powers in this bill.”⁹⁷

128. In contrast, the Explanatory Notes accompanying the UK Bill state:

“This Bill requires a money resolution because the Secretary of State is likely to incur significant expenditure in providing new financial payments to land managers (See Part 1, clauses 1 to 3) and in honouring existing financial support under the CAP (see Part 2, clauses 4 to 12).”⁹⁸

Evidence from stakeholders

129. Dr Petetin and Dr Dobbs pointed out that, following the UK’s exit from the EU, the UK Government will “control the purse strings”.⁹⁹ The Welsh Government will be reliant on the UK Government to provide an appropriate level of funding to support the implementation of any future schemes. They suggested that the likely outcome of the UK Government’s review of “fair funding” “would lead to further

⁹⁷ [Welsh Government’s Legislative Consent Memorandum for the Agriculture Bill](#)

⁹⁸ [Explanatory Notes, UK Agriculture Bill](#)

⁹⁹ Evidence Paper – Dr Petetin and Dr Dobbs, 14 November 2018

ring-fencing, with the payment being parallel to the block grant”.¹⁰⁰ They went on to state:

“...there are hints of an alternative approach that looks to the needs and objectives of the different devolved administrations...Funding will not be limitless though and will most certainly decrease over time, so the question is whether the devolved administrations will be able to establish and justify their relative needs effectively. This will be in part related to the efficiency of the schemes, but also the very acceptability of the schemes in the eyes of Westminster.”¹⁰¹

130. During the Committee’s inquiry on the proposed Public Goods scheme, WTW raised concern that the proposed new schemes will have to compete for funding with other political and public priorities in future.¹⁰² It emphasised the need to ensure that “Wales is not a penny worse off post Brexit” and called for future funding to be ring-fenced.¹⁰³ Notwithstanding this, it acknowledged the “political reality of achieving this”, particularly after the end of the proposed transition period.¹⁰⁴

131. Confor also called for future funding to be ring-fenced, at least for the transition period. It stated, “in the longer run the level of funding that we’ve had—globally, rural subsidy is tending to decline. I don’t think Wales is going to be any different in that long-term trend”.¹⁰⁵

132. Representatives from the agricultural sector expressed disappointment that Schedule 3 did not make provision for a future funding mechanism and called for this to be addressed. TFA Cymru stated:

“...it is a major weakness that the Schedule does not provide a mechanism for setting a budget for the financial assistance powers into the future. TFA Cymru argues that the Schedule should contain provisions to establish multiannual budgets (at least five-year budgets) to be agreed after the end of the current guaranteed period.”¹⁰⁶

¹⁰⁰ Evidence Paper – Dr Petetin and Dr Dobbs, 14 November 2018

¹⁰¹ *ibid*

¹⁰² RoP, para 176, 24 October 2018

¹⁰³ RoP, para 340, 14 November 2018

¹⁰⁴ *ibid*

¹⁰⁵ RoP, para 344, 14 November 2018

¹⁰⁶ Evidence Paper – TFA Cymru, 14 November 2018

133. NFU Cymru echoed the above and stated that including provision for a “multi-annual financial framework”, would help reduce the risk of “the politicisation of funding for agriculture”.¹⁰⁷

134. CLA emphasised the “urgent need” to establish a long term funding mechanism to sit alongside the UK Bill, and pointed out that “legislative powers without funding is no power at all”.¹⁰⁸ FUW called for “the establishment of a UK-wide framework for agriculture established jointly by Ministers of the Crown, Scottish Ministers, Welsh Ministers and Northern Ireland Ministers”.¹⁰⁹

135. In emphasising the long-term nature of the Welsh Government’s proposed schemes, Dr Petetin stated:

“...moving away from a multi-annual budget to an annual budget post Brexit is going to be incredibly difficult for farmers. Farmers need to plan ahead. We are talking about schemes that could be five, 10 or 15 years long. But if, in contrast, we have annual budgets, then we have a big problem here. How can we fund a 10, 15, 20-year scheme on an annual budget?”¹¹⁰

Our view

It is vital that funding for the agricultural sector is maintained at the same level post-Brexit, at least in the short term. We do not expect the sector to be penalised as a result of the UK’s exit from the EU. We welcome the UK Government’s commitment to protect overall funding for UK farm support in cash terms to the end of Parliament in 2022. However, the arrangements for allocating funding on an intra-UK level are yet to be determined. While we acknowledge that a review is on-going on this matter, there is an urgent need for clarity on the levels of funding in 2020 to 2022, not least to provide certainty for the sector.

Furthermore, we have serious concerns about the lack of clarity about funding arrangements in the long-term. These arrangements will depend on effective collaboration and joint working between the UK and Welsh Government. The Welsh Government should seek a commitment from the UK Government that future funding arrangements for farm support will be developed in partnership

¹⁰⁷ Evidence Paper – NFU Cymru, 14 November 2018

¹⁰⁸ Evidence paper – CLA, 14 November 2018

¹⁰⁹ Evidence Paper – FUW, 14 November 2018

¹¹⁰ RoP, para 131, 14 November 2018

with the devolved administrations and that there will be parity of esteem between partners.

Moving from the EU's Multi-year Financial Framework to an annual budget cycle is clearly creating additional uncertainty for the sector. This, combined with the move to a proposed outcome-based scheme, has led to concerns about the potential impact on business planning and longer-term investment.

According to the Welsh Government there are "no direct financial implications" for the Government or the Assembly for the powers being sought via the UK Bill. It is difficult to reconcile this with the UK Government's statement that corresponding powers for the Secretary of State are likely to give rise to "significant expenditure".

We note that the Welsh Government has yet to undertake work to assess the costs associated with the introduction of a new financial support system and any new schemes. While taking the powers in Schedule 3 will not in itself give rise to Government expenditure, it is likely that there will be considerable costs associated with establishing these schemes, particularly in the initial stages. We expect the Welsh Government to provide the Assembly with a detailed analysis of the costs associated with establishing the new schemes at the earliest opportunity.

We reiterate our conclusion in our report on the Welsh Government's draft budget 2019-20, that the costs for establishing new schemes should not be met from the funding available to support farmers. Additional, new funding must be made available for the establishment of these schemes. We will continue to pursue these matters with the Cabinet Secretary as further details of the schemes emerge.

Conclusion 17. The constituent nations of the UK are yet to reach an agreement on funding arrangements for agriculture in the UK for 2020-2022. Moreover, there is no clarity for longer-term funding arrangements. A new inter-Governmental mechanism must be established to secure a sustainable, long term agreement for funding of agriculture and land management in the UK.

Conclusion 18. The Welsh Government has provided no financial information to the Assembly in relation to the costs of introducing new schemes, other than to say that there will be "no direct financial implications". The UK Government has said that corresponding powers for the Secretary of State are likely to give rise to "significant expenditure". **The Welsh Government should commit to publishing, before establishing any new schemes, a full regulatory impact assessment of the**

proposals, which should include, but should not be limited to, a detailed assessment of costs and an assessment against the wellbeing goals.

7. WTO Agreement on Agriculture

7. 1. WTO compliance after Brexit

136. After the UK leaves the EU, the UK Government will be responsible for ensuring that all UK policies on domestic support in relation to agriculture and rural development are compliant with WTO rules.

137. Currently, the UK is represented in the WTO by the European Commission, as a Member State. After the UK exits the EU, it will no longer be represented by the EU.

138. Defra expects the UK to receive a share of the EU's current Aggregate Measurement of Support (AMS) allowance after EU Exit. AMS is the annual level of agricultural support given to agricultural producers exempting any green or blue box support. This overall UK ceiling will need to be set before setting any individual limits for each appropriate authority across the UK.

Evidence from stakeholders

139. Academics and representatives of the agricultural sector raised concerns about the provisions in relation to the WTO Agreement on Agriculture. In particular, clause 26 (4)(b), which would enable the Secretary of State to set ceilings on green box and/or blue box support.

140. TFA Cymru emphasised the need for WTO arrangements to be part of “an agreed UK framework governed in partnership with a sufficiently well drawn dispute resolution facility”. It added:

“At a practical level, this will also provide the necessary basis to maintain the economic union between the four countries of the United Kingdom in terms of its trading relationship internally and with the rest of the world.”¹¹¹

141. NFU Cymru noted that, as drafted, clause 26 could “constrain future policy choices in Wales by placing limits on spending and precluding certain types of support”, which could, in theory, “introduce constraints on categories of expenditure, which are currently permissible under the CAP”.¹¹²

¹¹¹ Evidence Paper – TFA Cymru, 14 November 2018

¹¹² Evidence Paper – NFU Cymru, 14 November 2018

142. It asserted that the power for the Secretary of State to set limits on spending should be exercised “following discussion and agreement between Defra and the devolved administrations”,¹¹³ and added:

“We would say that we are seeing a centralisation of powers here, for quite arbitrary reasons, from reading the Bill. We would say that there needs to be consent and agreement from Cardiff, Edinburgh and Belfast on that. We don’t want to see these powers pulled into the centre and exercised solely by the DEFRA Secretary of State...We don’t want to see DEFRA exercising a veto over a Welsh policy decision, but we also accept that there need to be sensible limits on spending as well, but they need to be agreed across the UK, not imposed.”¹¹⁴

143. FUW echoed the above, and stated:

“[Clause 26] grants powers to the Secretary of State which could be used to prevent the Welsh Government and Assembly from introducing reasonable policies which are in Wales’ national interest and have no impact on the Agreement on Agriculture – thereby exerting influence on Welsh policies, potentially in an unprecedented manner.

As such, the failure of Clause 26 to require consultation with and agreement from devolved authorities before such limits are set, or to ensure the creation of a neutral structure through which to set such limits, is a significant concern and potential threat to devolution.”¹¹⁵

144. Dr Petetin and Dr Dobbs were critical of clause 26, because it “unilaterally restricts the powers of the devolved administrations when formulating their agricultural policies”.¹¹⁶ Dr Petetin explained:

“[Clause 26] enables Westminster to actually decide thinking about future schemes within Wales as to under which box each scheme is going to fall. So, even if Wales would say, ‘We think that the public goods scheme falls under the green box’, but Westminster thinks it’s an amber box scheme, then, under clause 26, it has the final say; it has the final word. Therefore, here we really have a big change as to the relationship between the UK and the devolved nations, because, at the

¹¹³ Evidence Paper – NFU Cymru, 14 November 2018

¹¹⁴ RoP, para 305, 14 November 2018

¹¹⁵ Evidence Paper – FUW, 14 November 2018

¹¹⁶ Evidence Paper – Dr Petetin and Dr Dobbs, 14 November 2018

moment, the UK central Government has no say over that; it's a relationship between the devolved nations and the EU."¹¹⁷

Evidence from the Cabinet Secretary

145. On 12 September, the Cabinet Secretary published a written statement on the UK Agriculture Bill. While the statement emphasised the Welsh Government's general support for the UK Bill, it also notes that the Welsh Government disagrees with the UK Government on the extent to which the clause relating to the UK's WTO is a reserved matter. The statement emphasised the strong relationship between WTO powers and devolved responsibilities on agricultural support, and states:

“Welsh Ministers have secured an important agreement from the UK Government to commit in Parliament to consult the Devolved Administrations on WTO-related regulations. We have also agreed to find a process for how such regulations will be brought forward. However, a commitment to consult is insufficient given the importance of this matter. We will therefore continue to work towards an agreement which ensures appropriate engagement with and consideration of the views of Welsh Ministers and other administrations.”¹¹⁸

146. The Cabinet Secretary subsequently stated that the UK Government's position on WTO was a “red line”, and she could not recommend that the Assembly gives consent if the UK Government did not change its position.¹¹⁹

147. In updating the Committee in later correspondence, the Cabinet Secretary reported “recent positive discussions with the Secretary of State” and that she was “making good progress in finding a solution”. She added:

“It may not be necessary to amend the Bill to achieve this and it could be possible to reach a satisfactory outcome through an agreement between governments as to how the existing provision should operate.”¹²⁰

¹¹⁷ RoP, para 101, 14 November 2018

¹¹⁸ Written statement from the Cabinet Secretary for Energy, Planning and Rural Affairs – Introduction of the UK's Agriculture Bill, 12 September 2018

¹¹⁹ Constitutional and Legislative Affairs Committee, RoP, para 59 – 61, , 5 November 2018

¹²⁰ Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, dated 21 November 2018

148. The Cabinet Secretary subsequently stated:

“...my concern wasn’t with [clause 26] itself, but it was about how that power was exercised, because their belief was that it was a reserved matter and I was very clear that it wasn’t. So, I don’t think it would be appropriate for that kind of information to be on the face of the Bill.”¹²¹

149. She explained that she was awaiting further correspondence from the Secretary of State, and he was aware that, she would “not recommend consent of this Assembly unless we get this matter sorted out”.¹²²

150. When asked whether any agreement between the Welsh Government and UK Government would be published, the Cabinet Secretary stated:

“I don’t think it’ll be an agreement as such...I’d be very happy to publish letters if I’m able to.”¹²³

151. On the issue of how sustainable an agreement of this nature would be if there was a change in Minister or Government, the Cabinet Secretary stated:

“It just goes back to the very beginning of devolution, when we had the memorandum of understanding between the UK Government and all the devolved administrations. And if you think about it, that’s the basis of all our inter-governmental machinery.”¹²⁴

Our view

We share the concerns of stakeholders about the powers in clause 26, in particular those which would enable the Secretary of State to determine the classification of support across the UK, and set limits on levels of domestic support. We are concerned that these provisions could restrict the Welsh Government’s ability to design schemes that meet the distinct needs of Wales’ agricultural sector.

We note that the UK Government’s position on the WTO is a “red line” for the Cabinet Secretary, to the extent that she would be prepared to suggest that the Assembly should withhold consent if it is not resolved.

¹²¹ RoP, para 103, 6 December 2018

¹²² RoP, para 104, 6 December 2018

¹²³ RoP, para 108, 6 December 2018

¹²⁴ RoP, para 110, 6 December 2018

As this Committee has made clear in numerous reports, leaving the EU will necessitate new inter-governmental relationships. Arrangements for the future of agriculture policy in the UK is no exception. We believe that a shared governance model is necessary, with parity of status for each of the constituent parts of the UK. This will be necessary for the effective operation of common frameworks and to resolve disputes in future on matters such as those arising from the clause 26 provisions.

The Cabinet Secretary told us she had had positive discussions on this matter, and was awaiting further correspondence with the current Secretary of State. We are pleased that there appears to have been co-operation on this matter. However, matters of such significance, which could have significant implications for the delivery of policy in a key area of devolved competence, must be formalised, either through a binding inter-governmental agreement, or through legislative provision.

We believe the Welsh Government should pursue with the UK Government an amendment to clause 26, to provide the Welsh Ministers and other devolved administrations with a clear role in determining classification of financial support and spending limits.

Conclusion 19. We share stakeholders' concerns about the potential implications of the provisions in clause 26 in relation to the WTO, and their potential to restrict the Welsh Government in devolved areas. **We believe this must be addressed either by an amendment to the UK Bill or, at the very least, a formal, published agreement between the UK and Welsh Governments.**

Conclusion 20. There is a pressing need to introduce an inter-governmental, formal mechanism at Ministerial level, to resolve matters of dispute that may arise in relation to the future operation of agriculture policy in the UK. This should be a model of shared governance based on parity of esteem.

8. Other provisions for which consent is sought

8.1. Collection and sharing of data

152. Part 3 of Schedule 3 enables the Welsh Ministers:

- to introduce new requirements for those in the agri-food supply chain to supply information in relation to that supply chain. It sets out who may be covered and the purposes for which information may be processed; and
- to make provision for enforcement of the requirements.

Evidence from stakeholders

153. Representatives of the agricultural sector were broadly supportive of the powers as a means of improving transparency within the supply chain. For example, TFA Cymru stated:

“One of the attributes of a perfectly competitive market is perfect knowledge in that marketplace. We have suffered for many years from imperfect knowledge within the supply chain, and the powers within the Bill would address that significantly. Yes, there are concerns about the privity of contract and all of that and sensitive financial data, but I think these powers will give Welsh Ministers a good deal of leverage to ensure the supply chains are operating sufficiently and fairly within Wales, and hopefully the powers will be used sparingly because people will do the right thing in terms of sharing data with each other.”¹²⁵

154. FUW noted these powers were discretionary and, as such, there was “no obligation [on the Welsh Ministers] to continue doing what we are required to do under EU [regulations]”. It highlighted that currently a range of data was gathered under EU legislation, which could be used, for example, to identify market trends. FUW raised concern about the implications for the sector if the Welsh Ministers chose not to exercise the powers in Part 3.¹²⁶

¹²⁵ RoP, para 308, 14 November 2018

¹²⁶ RoP, para 310, 14 November 2018

155. While supporting the powers, in principle, NFU Cymru and CLA called for further clarification from the Welsh Government on how they would be used. CLA stated:

“...Welsh Ministers have as yet to indicate how these powers will be used...it comes back to this question of trust again, in terms of what we’re missing at the moment is that trust that the data will be used well and wisely and it seems the need for the data has not yet been explained or understood.”¹²⁷

156. Confor explained it was currently awaiting confirmation about whether the powers would extend to include requirements on those involved in the supply of forestry products. It said it was keen for the forestry sector to be included within the scope of Part 3.¹²⁸

157. Some stakeholders raised concern about the implications for small farms of meeting the requirements to provide information. For example, Dr Petetin and Dr Dobbs stated:

“These additional requirements on farmers will not ease their day-to-day work and create a different kind of red tape – again more crippling for small farms...Replacing one kind of red tape by another (data collection and sharing) does not improve the daily work life of farmers.”¹²⁹

158. Similar views were expressed by WEL and WTW, with WTW stating:

“...this is all time and effort and, for some people, concern and worry. So we’ve got to be very careful again about what we are trying to achieve with these measures...The large dairy farmers, the large holdings—yes, they can invest in all of this technology et cetera. We have to be realistic about what a family unit—invariably, that’s what it is—can be expected to undertake.”¹³⁰

¹²⁷ RoP, para 309, 14 November 2018

¹²⁸ RoP, para 327, 14 November 2018

¹²⁹ Evidence Paper – Dr Petetin and Dr Dobbs, 14 November 2018

¹³⁰ RoP, 429, 14 November 2018

8. 2. Intervention in agricultural markets

159. Part 4 of Schedule 3 enables the Welsh Ministers:

- to intervene in agricultural markets if they consider there are “exceptional market conditions”, which warrant financial assistance or intervention; and
- to make use of, and modify, powers under retained EU legislation which provides for the operation of public intervention and aid for private storage mechanisms, in response to “exceptional market conditions”.

160. For the purpose of Part 4, “exceptional market conditions” exist where there is a severe disturbance or a serious threat of a severe disturbance in agricultural markets, which has, or is likely to have a significant adverse effect on agricultural producers in Wales in terms of the prices available for their product.

Evidence from stakeholders

161. Both TFA Cymru and NFU Cymru welcomed the provisions, but noted that the powers for the Welsh Ministers to declare “exceptional market conditions” and to provide support to the sector, were discretionary. They expressed a preference for a *duty* on the Welsh Ministers to take action.

162. TFA Cymru sought assurance that “natural phenomena such as drought, flood and disease as well as economic phenomena” would warrant the exercise of the powers. It also sought assurance that the powers could be exercised “if ‘chronic’ or long-lasting difficulties are apparent”. For example, endemic disease or structural changes in agricultural markets which may require farmers to undergo significant adjustment.¹³¹

163. CLA noted that the UK Bill contained corresponding powers for the Secretary of State in relation to England. It questioned the appropriateness of including separate powers for England and Wales, given both nations have such an integrated supply chain, and raised concern that “any unilateral decision to invoke the provisions could distort the market”.¹³² CLA emphasised the need for “co-operation and agreement” between the UK Government and Welsh Government

¹³¹ Evidence paper – TFA Cymru, 14 November 2018

¹³² Evidence paper – CLA, 14 November 2018

when exercising these powers and suggested this would “sit firmly” within any future agreed administrative framework.¹³³

164. Confor believed that the provisions in relation to market intervention should extend to forestry.¹³⁴

Evidence from the Cabinet Secretary

165. In explaining the circumstances in which the powers to intervene in agricultural markets may be exercised, the Cabinet Secretary’s official stated:

“Past examples have been some of the very extreme price fluctuations or extreme weather events that cause major short-term disruption.”¹³⁵

166. He went on to explain that equivalent powers under current EU law had been exercised “in a relatively few cases”.¹³⁶

167. The Cabinet Secretary’s official suggested that intervention in agricultural markets was “a classic area where you need a [UK common framework]”.¹³⁷

8. 3. Marketing standards and carcass classifications

168. Part 5 of Schedule 3 enables the Welsh Ministers to make provisions:

- in relation to marketing standards regarding the quality of agricultural products and product information to customers in Wales; and
- about the classification, identification and presentation of bovine, pig and sheep carcasses at slaughterhouses in Wales.

Evidence from stakeholders

169. TFA Cymru welcomed the provisions in relation to marketing standards for agricultural products. However, it called for the UK Bill to include “a duty... to ensure that high standards operating in respect of domestic production are also

¹³³ RoP, para 288, 14 November 2018

¹³⁴ Evidence Paper – Confor, 14 November 2018

¹³⁵ RoP, para 190, 6 December 2018

¹³⁶ RoP, para 200, 6 December 2018

¹³⁷ RoP, para 190, 6 December 2018

applied equally to products entering the UK from abroad either within negotiated free trade agreements or otherwise”.¹³⁸

170. A similar view was expressed by NFU Cymru. It was disappointed that the Bill did not make provisions to prohibit the import of “food produced to lower environmental, animal welfare and food safety standards, than our own domestic standards”.¹³⁹ It stated:

“...the Bill could have been that opportunity to enshrine our desire to have and uphold our high standards in this country... I think it’s regrettable that the opportunity presented here has been missed.”¹⁴⁰

Evidence from the Cabinet Secretary

171. The Cabinet Secretary explained that forestry did not fall within the scope of Parts 3, 4 and 5 because “it’s not included in the current EU legislation. So, we wouldn’t want to amend it to cover forestry because we don’t want to change legislation that’s outside the scope of replacing CAP”.¹⁴¹

Our view

We support, in principle, the provisions in Parts 3, 4 and 5 of Schedule 3. However, at this point, it is unclear how the Welsh Government intends to use the powers being sought.

In relation to the collection and sharing of data (Part 3), we share the concerns of stakeholders about the practical implications on smaller farms of meeting any information requirements. It will be important to ensure that any future requirements are not overly burdensome for these farmers.

We expect a UK common framework for agriculture to cover the exercise of powers to intervene in agricultural markets.

We note the calls from stakeholders for the UK Bill to include safeguards to ensure that standards are not undercut by imports in any future trade arrangements. We seek clarification from the Welsh Government on any discussions that have been held with the UK Government on this matter.

¹³⁸ Evidence paper – TFA Cymru, 14 November 2018

¹³⁹ Evidence paper – NFU Cymru, 14 November 2018

¹⁴⁰ RoP, para 283, 14 November 2018

¹⁴¹ RoP, para 178, 6 December 2018

Conclusion 21. We agree with the provisions outlined in this section of the report in principle. However, we believe the **Welsh Government has not provided information to explain in detail the purposes for which it will use the provisions.** These are extensive executive powers and the Welsh Government should clarify their intended purpose and effect. We reiterate our comments about the need for safeguards to be included in Schedule 3 to ensure these powers are exercised appropriately and proportionately.

Conclusion 22. We agree that there will be a need for co-operation and agreement between the constituent nations of the UK when exercising these powers. This is particularly important in relation to animal health standards and market intervention. This must be addressed by an inter-governmental, formal mechanism, as set out earlier in this report.

Annex A: Oral evidence

The following witnesses provided oral evidence to the Committee on 14 November 2018. A transcript of the oral evidence session can be viewed in full at: [Transcripts](#)

Witness	Organisation
Dr Ludivine Petetin	Cardiff University
Dr Mary Dobbs	Queen's University Belfast
Dr Nerys Llewelyn Jones	Agri Advisor
Dr Nick Fenwick	Farmers' Union of Wales
Huw Rhys Thomas	National Farmers' Union Cymru
George Dunn	Tenant Farmers' Association
Rebecca Williams	Country Land and Business Association Cymru
Rachel Sharp	Wales Environment Link
Frances Winder	Wales Environment Link
Dr Eleanor M Harris	Confor
Tony Davies	Nature Friendly Farming Network Wales

Agenda Item 6

By virtue of paragraph(s) vi of Standing Order 17.42

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