

Agenda – Climate Change, Environment and Rural Affairs Committee

Meeting Venue:

Committee Room 3 – Senedd

Meeting date: 14 November 2018

Meeting time: 09.00

For further information contact:

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Committee Clerk

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1 Introductions, apologies, substitutions and declarations of interest

(09.00)

2 Consideration of the UK's Agriculture Bill

(09.00 – 09.50)

(Pages 1 – 41)

Dr Ludivine Petetin, Lecturer in Law, School of Law and Politics – Cardiff University

Dr Mary Dobbs, Director, School of Law – Queen's University Belfast

Dr Nerys Llewelyn Jones, Managing Partner – Agri Advisor

Attached Documents:

Research Brief – UK Agriculture Bill

Research Brief – Trade negotiations and devolution

Research Brief – French Agricultural Bill 2018

Paper – Dr Petetin and Dr Dobbs



3 Consideration of the UK's Agriculture Bill

(09.50 – 11.10)

(Pages 42 – 77)

Dr Nick Fenwick, Head of Policy – Farmers' Union of Wales

Huw Rhys Thomas, Political Adviser – National Farmers' Union Cymru

George Dunn, Chief Executive – Tenant Farmers' Association

Rebecca Williams, Director Wales – Country Land and Business Association
Cymru

Attached Documents:

Paper – Farmers' Union of Wales

Paper – National Farmers' Union Cymru

Paper – Tenant Farmers Association in Wales

Paper – Country Land and Business Association Cymru

Paper – Confor

Break (11.10 – 11.20)

4 Consideration of the UK's Agriculture Bill

(11.20 – 12:20)

(Pages 78 – 81)

Rachel Sharp, Wales Environment Link

Frances Winder, Wales Environment Link

Dr Eleanor M Harris, Policy Researcher – Confor

Tony Davies, Chair – Nature Friendly Farming Network Wales

Attached Documents:

Paper – Nature Friendly Farming Network Wales

5 Paper(s) to note

5.1 Correspondence from the Chair of the Public Accounts Committee to the Chair – Natural Resources Wales

(Pages 82 – 84)

Attached Documents:

Letter from Chair PAC – 6 November 2018

5.2 Correspondence from the Cabinet Secretary for Energy, Planning and Rural Affairs to the Chair – Meeting 6 December

(Page 85)

Attached Documents:

Letter from Cabinet Secretary – 5 November 2018

6 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from the meeting for item seven

7 Discussion of oral evidence

(12.20 – 12.30)

Document is Restricted

Document is Restricted

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

Document is Restricted

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change, Environment and Rural Affairs Committee

Ymateb gan : Dr Ludivine Petetin – Prifysgol Caerdydd a Dr Mary Dobbs – Dr Ludivine Petetin – Cardiff University and Dr Mary Dobbs – Queen’s University Belfast

Response from : Dr Ludivine Petetin – Cardiff University and Dr Mary Dobbs – Queen’s University Belfast

Ludivine Petetin and Mary Dobbs are Lecturers in Law with expertise in agri-environmental issues and are currently writing a book on Brexit and Agriculture. Both have been and are currently engaging with stakeholders across the UK on the impact of Brexit.

This evidence largely derives from Petetin, Dobbs and Gravey’s submissions to EFRA’s Agriculture Bill and the Welsh Government’s Brexit and Our Land consultations earlier this year.

Summary

- The Agriculture Bill needs to be considered in its broader context, including WTO law, the controls over the financing, the potential review of Barnett and (lack of) progress in developing common frameworks.
- The Agriculture Bill goes beyond what is required by WTO law, with extra powers being re-centralised to the Secretary of State regarding classification of and caps on domestic support. This needs to be contested by Wales and the other devolved administrations.
- Beyond the Bill, following the loss of CAP, Westminster will control the purse strings. Wales may wish to support the review of the Barnett formula for its application to agriculture. Irrespective, Wales will need to justify carefully any funding.
- The general approach in both the Agriculture Bill and WG policy document is to reduce and then remove direct payments, with a gradual transition towards public money for goods – there are substantial similarities, but also significant differences.
- Small farms will be seriously threatened by the loss of direct payments. Without alternative support, 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 new Land Management Programme is a much welcome addition to Welsh farming policy. However, careful design and delivery will be needed to avoid double funding and to ensure compliance with WTO obligations under the Agreement on Agriculture.

- The WG proposes to introduce economic resilience payments to help support farmers to become economically viable/profitable – but this is viewed as a temporary system, facilitating investments or changes, rather than a continued payment. Consequently, this will not help the most endangered farmers to survive.
- It is essential to consider whether it is worthwhile (economically, socially, culturally, morally etc) to maintain farmers on the land even where they are not economically resilient/viable without continued support beyond the Public Goods scheme, e.g. if the alternative is they are starving, homeless or depressed.
- The policy move towards ‘public money for public goods’ should be truly embraced. Other valuable public goods could be included, e.g. enhancing habitats and wildlife, promoting rural communities, promoting food quality/public health and improving animal welfare. This needs to be pushed for in the Agriculture Bill if to facilitate such objectives in Wales.
- Establishing environmental standards and compliance regimes across the UK via the creation of common frameworks would encourage a race to the top, rather than a race to the bottom.
- A lack of a fair system for financial support could create huge disparities across the UK for both farmers and their produce. A common framework for financial support should operate to enable a level playing field across the UK. Such a framework must however recognise the variations in farming, land, geography, climate, culture, etc across the UK and be sufficiently flexible to operate in each jurisdiction.

The CCEFRA Committee is considering the English Agriculture Bill in light of the need for Welsh legislative consent, whether the Bill’s provisions are appropriate and proportionate, and whether the Bill facilitates delivering the Welsh Government’s policy objectives, as laid out in the recent consultation document on *Brexit and Our Land*. However, it is essential that the Bill be considered in light of what the WG’s objectives also *ought* to be and valid considerations that are not expressed in either document. Consequently, the following points highlight some of the main issues that need to be reflected upon, critiquing components within both the WG document and the Agriculture Bill.

1) A Recentralisation of Powers: Between WTO Obligations and Budgetary Controls

Any Welsh agricultural policy needs to be developed in full awareness of the context including the following two restrictions that need to be considered: legal controls, mostly imposed by WTO law; and the control over the financing.

a. WTO Obligations

From our Brexit and Our Land submission¹: *“There are the legal controls imposed on Wales. These are through international environmental and trade law, especially the WTO and its Agreement on Agriculture, and any potential Trade Agreements with external parties, which the UK as a whole must comply with. However, there are also further obligations imposed on the devolved administrations, by decisions taken effectively by England, such as those linked to the UK Customs Act and Trade Bill. Crucially here, Wales must also look to the English Agriculture Bill, which contains highly relevant provisions.*

*The Agriculture Bill is targeted mainly at England, but with considerable impacts for Wales, Scotland and Northern Ireland. In some respects, it proposes increasing powers in Wales’ hands via Schedule 3, e.g. regarding marketing standards or through enabling Wales to create new financing schemes for a range of legitimate objectives.”*²

From our submission to EFRA on the Agriculture Bill³: *“Part 7 of the Agriculture Bill addresses the need for the UK to guarantee that all schemes established across the four jurisdictions comply with WTO Law and in particular the Agreement on Agriculture’s (AoA) Amber, Green and Blue Boxes. In doing so, the Bill proposes effectively to curtail the devolved jurisdictions’ relevant powers.*

The AoA is not as restrictive as is generally thought – there is some room in the agreement to design future schemes that will be compliant and thereby some leeway for the four jurisdictions to modify their respective support regimes post-Brexit to address regional and local needs.

The Amber Box comprises all domestic support measures considered to distort production and trade. Such measures typically must not exceed ‘de minimis’ support levels. ‘De minimis’ supports can be divided into two types of support: product-specific (5% of the total value of production of an agricultural product); and non-product specific (5% of the total agricultural production). However, some WTO Members (including the EU) can benefit from higher support than the de minimis level called the ‘Total Aggregate Measurement of Support’ (AMS). There is a strong argument for the UK to successfully negotiate the allocation of a portion of the EU Total AMS post-Brexit with EU member states and the WTO (Petetin, 2018). These ceilings limit the amount of spending for the UK and the devolved administrations under the Amber Box.

To qualify for the Green Box, the support must have no or minimal trade-distorting effects on production and programmes must comply with the basic and policy-specific criteria set out in Annex 2 of the AoA, relating to environmental and regional development for example.

¹ The full WG submission can be found here: Petetin, L., Dobbs, M., and Gravey, V., Written evidence submitted to the Welsh Government ‘Brexit and Our Land’ Consultation, [https://pure.qub.ac.uk/portal/en/publications/written-evidence-submitted-to-the-welsh-government-on-brexit-and-our-land-consultation\(cffc26d7-37bf-4023-be22-59de5e7a7635\).html](https://pure.qub.ac.uk/portal/en/publications/written-evidence-submitted-to-the-welsh-government-on-brexit-and-our-land-consultation(cffc26d7-37bf-4023-be22-59de5e7a7635).html).

² The sections in italics indicate that the text is borrowed from our two previous submissions.

³ The full EFRA submission can be found here: Dobbs, M., Petetin, L. and Gravey, V., Written evidence to the House of Commons EFRA Committee inquiry on Agriculture Bill, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environment-food-and-rural-affairs-committee/scrutiny-of-the-agriculture-bill/written/91290.html>.

Blue Box support broadly relates to payments coupled with production but must reduce trade distortion. The AoA imposes no limits on Green and Blue Boxes spending by WTO countries – or therefore by each devolved jurisdiction.

Consequently, there is considerable scope to develop compliant domestic support measures.”

Overall, the Amber Box could be utilised by the UK as a pathway to shift away from area/land-based payments towards productivity/economic resilience and environmental outcome-based payments. If this was undertaken for a transition period only (rather than indeterminately), it would be more politically acceptable to WTO members who do not benefit from the AMS. Crucially, and in the long term, the Green Box provides the best opportunity to secure WTO compatibility for UK domestic support post-Brexit.

However, the Agriculture Bill unilaterally restricts the powers of the devolved administrations when formulating their agricultural policies. As noted in both our submissions but in particular in the EFRA document: *“Clause 26 gives sweeping powers to the [Secretary of State] SoS to create regulations that **recentralise the financial support for farmers and the design of support schemes across the UK.***

*This includes the potential for the SoS to (i) **conclusively determine**, the classification of financial support across the UK; (ii) set limits of spending for the whole of the UK; (iii) set individual ceilings of support across the devolved administrations; and (iv) create different ceilings across the devolved administrations.*

*Crucially, Clause 26(4)(b) gives powers to the SoS to fix the upper limits spent **within each box** by each devolved administration – despite WTO law **not** imposing any limits on Green or Blue box spending.*

As the WTO Member, the UK is responsible for ensuring compliance. However, (i) Clause 26 exceeds what is required; (ii) it effectively gives powers to the SoS that currently belong to the devolved administrations (using reserved powers on finance, trade and compliance with international agreements to trump the powers of the devolved administrations for agriculture); and (iii) although WTO mechanisms do not provide a forum for discussions or consultations with regions of a specific State, the UK may and should proactively engage the devolved administrations itself.”

Consequently, as can be noticed in the Explanatory Notes to the Agriculture Bill, **the Government considers that it does not require a Legislative Consent Motion for Clause 26 since trade is a reserved power. However, the line between reserved and devolved powers becomes blurred when it comes to financial support to farmers. As highlighted in our EFRA submission, “This shift of powers from the devolved administrations to Westminster reflects the loss of the principle of subsidiarity present within EU law (for more on this point, please see Engel and Petetin, 2018).”**

Overall, from the WG consultation: *“Wales needs to fight for 1) ‘control over the caps for Green and Blue box support at the very least’, 2) ‘input into the Amber box caps’, and 3) a voice in the classification of any support.”*

b. Control Over the Financing

From the WG consultation: *“On a very practical note, and as recognised in the consultation document, Westminster controls the purse strings. Currently funding is provided under CAP and directed to the individual farms within the devolved administrations. The money may come from Westminster directly and indirectly, but it is ring-fenced for agriculture and for rural development. However, Brexit will lead to CAP not applying and instead there will be reliance on Westminster for funding. Funding promised to farmers has been guaranteed until 2022, but the question is what happens after that? Will there be further ring-fenced money? To the same extent? Will Westminster attach conditions? Or will it be part of the block grant and then be competing against health, education, social welfare etc for its share of the pool?”*

The default would seem to be the block grant under the Barnett formula. This would not be advantageous for Wales, as it would most likely lead to a decrease (a drop of around 50% of funds has been suggested) in the money being granted to Wales. Further that money would not be ring-fenced – it could be used for other objectives, which might be desirable and indeed necessary. However, if desired to be used for agriculture and land management this might lead to extra challenges, as any allocation of funding will now need to be justified within Wales to the population and therefore constituents (para 4.30). This might, however, be the extra incentive needed to introduce and implement the public goods approach, as this helps demonstrate the value of farming/land management to the population.

However, Secretary of State Gove announced recently that he is seeking to review how funding will be assigned regarding agriculture, with representatives of all devolved administrations to be involved in the review.⁴ If implemented, it is likely that this would lead to further ring-fencing, with the payment being parallel to the block grant. Further, there are hints of an alternative approach that looks to the needs and objectives of the different devolved administrations – reflecting the suggestions in para 4.29. This indicates that a more tailored division of money may be made, where the devolved administrations can make claims for X amount of money on the basis that it is needed to fund new schemes in light of the relevant objectives, nature of the farms, environmental conditions etc. 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.

Thus, whether under the legal restrictions or the practical restrictions, the impact is potentially much the same: Wales need to create a policy that has acceptable objectives (in the eyes of Westminster/its population) and demonstrate that it will be good value for money, in order to obtain the funding/support in applying the funding to land management and in order to obtain SoS approval for such schemes in the context of the AoA and WTO law.”

Consequently, in light of the loss of CAP, the Agriculture Bill, the AoA and whether the Barnett formula applies or not, Wales needs to plan carefully the underlying objectives and justify these in both Wales and Westminster.

⁴ <https://www.gov.uk/government/news/fair-funding-for-farmers-across-all-parts-of-the-uk>.

2) The Consequences of the Removal of Direct Payments

Under both the Agriculture Bill and *Brexit and Our Land*, the direct payments under CAP Pillar 1 are to be reduced and gradually removed. The payments are guaranteed by the UK government until 2022, but at that point other financial support systems will be need.

From the WG submission: *“The removal of direct payments in Wales (and England) constitutes a tremendous change in agricultural policy – direct payments have been a tenet of the EU Common Agricultural Policy (CAP) since the mid-1990s. The agricultural transition period (up to 2027) is crucial for farmers to adapt to the Welsh agricultural policy post Brexit after the end of CAP payments and become more productive and resilient. The top 20% of farmers will hardly feel the change in policy since they are already productive and resilient, whilst the 50% of farmers in the middle are likely to succeed in moving away from direct payments to environmental payments as they become more business minded and profitable.*

*However, struggling farms will find the change in the support system particularly difficult. Many Welsh farms are currently profitable solely because of CAP direct payments. They also have limited ability to adapt and become more profitable due their limited finances available for investment, as well as the size and nature of the farms. **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.**⁵ Consequently, proper support (financial and beyond) will be needed if farmers are to be kept on the land. Although re-wilding can be valuable, generally speaking land abandonment is not desirable, small farms and traditional farming in particular can contribute to biodiversity, and pushing farmers out of farming may have wide-sweeping negative social and economic impacts (Petetin and Dobbs 2018b).”*

Overall, the shift towards reliance on an annual budget and potentially volatile policies also undermines certainty for farmers, where they are currently used to multi-year cycles. 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.

3) The Welsh Land Management Programme – Towards a Holistic and Integrated Approach

From the WG submission: *“The programme aims to adopt a holistic and integrated approach that acknowledges the broad and multi-faceted contribution of land managers to Wales with the goal of building a more circular economy that would increase the efficient use of natural resources and reduce the amount of waste produced by improving the utilisation of by-products*

⁵ See comments made by Ludivine Petetin at the Game and Wildlife Conservation Trust All-Party Parliamentary Group in March 2018 in relation to English farms, <https://www.gwct.org.uk/policy/appg/march-2018/>; in the Farmers Guardian, <https://www.fginsight.com/news/news/defra-makes-decision-to-let-quarter-of-uk-farms-disappear-57116>; and in UK Business Insider; <http://uk.businessinsider.com/quarter-english-farms-bankrupt-after-brexit-2018-4>).

in line with the holistic/joined-up approach adopted under the Well-being of Future Generations (Wales) Act 2015 (FGA 2015) and the Environment (Wales) Act 2016.”

Generally speaking, the principles encompassed within the Welsh consultation document are very positive and to be welcomed, e.g. **“Generation renewal is central to ensuring the perennity of Welsh farming since the average age of farmers across Wales is 61.2 years old.”**⁶ However, these are not always reflected in the remainder of the consultation document, e.g. regarding food production and also *‘[d]espite principle 5, another aspect of the Welsh Agricultural Consultation document that adopts a one-size-fits-all approach is the absence of focus on small, family and hill farms.’* The principles go beyond the Agriculture Bill’s content, but are not prevented as such by the Bill – the potential conflicts arise more in the context of the specific scope of provisions or how they are implemented.

From the WG submission: *“The two components of the Land Management Programme that are the Economic Resilience scheme and the Public Goods scheme parallel the two main strands of funding present in the Agriculture Bill under Clauses 1.1. and 1.2. This is most likely undertaken with the aim of maintaining similarities with the English framework to ensure the receipt of financial support post Brexit and ensure trade compatibility across the UK. However, the Welsh programme is more ambitious and follows the line of more ambitious, holistic and integrated Welsh policies and pieces of legislation including the FGA and Environment (Wales) Act.”*

Again, from the WG submission: *“On multiple occasions in the Welsh Agricultural Consultation document, the thin line between what is covered in the Economic Resilience scheme and the Public Goods scheme becomes quite blurred. On pages 29, 30 and 33, it is mentioned that the delivery of public goods under the Economic Resilience scheme could be rewarded. In particular, on page 33 it is clearly stated that one option for diversification includes the production of public goods. If public goods are indeed going to be rewarded in the Economic Resilience scheme, it would benefit farmers that will participate in both schemes and put at a disadvantage farmers who can only contribute to one scheme. and would result in double funding. Further, para 5.16 suggests that businesses should ‘be able to demonstrate potential for improvements in their social and environmental resilience as a consequence of improved economic resilience’. How would this be achieved? What would be measured? Who would be excluded?*

Overall, as indicated in our WG submission: “It is unclear how WG intends to differentiate between the actual two schemes and how support will be split between the two schemes. Double funding should be avoided and clarity is required.” If the WG does not address this issue, this creates difficulties in classifying the support under the appropriate AoA box. It may also lead to difficulties in justifying funding from Westminster. Further, supporting small-scale farming should become a clear focus of the future Welsh policy – with appropriate caveats regarding meeting minimum health and environmental standards.

⁶ Welsh Agricultural Statistics 2016. See <https://gov.wales/statistics-and-research/welsh-agricultural-statistics/?lang=en>.

4) Economic Resilience

Promoting economic resilience for land users is an essential component of the WG proposal. In light of the focus on *economic* resilience and productivity, and as highlighted in our WG submission, there is a concern *“that the Welsh Agricultural Consultation document reflects DEFRA’s sustainable intensification policy (as with NI DAERA’s framework proposal), without considering the characteristics of the Welsh countryside [for more on our submission to the DAERA proposal, see Dobbs et al 2018a].”* Diversification might appear to reflect a sustainable, environmental theme, but it is about economic diversification and might actually lead to land abandonment or less beneficial activities. However, *“Para 7.9 highlights an important criterion for economic resilience support – it cannot be ‘at the expense of broader outcomes, particularly relating to animal health and the environment’. This therefore should provide a counterweight to for instance increased productivity, market access and diversification.”*

Crucially, Schedule 3, Part 1, clause 1, subsection 2 of the Agriculture Bill appears to provide insufficient scope to facilitate the entire breadth of the Economic Resilience scheme as outlined by the WG: either the provision should be widened or a careful delivery of the Economic Resilience scheme should be put in place to ensure its compatibility with the provision and also to avoid potential double-funding.

Further, as noted in our WG submission: *“The 5 areas of support noted in the Welsh Agricultural Consultation document are all valuable to developing economic resilience.”* However, the 5 areas also highlight the lack of clear delineation between the Economic Resilience scheme and the Public Goods Scheme, for example in Area 2 regarding productivity broadly understood or Area 5 regarding knowledge and innovation.

The impacts of trading agricultural products at three interlinked levels, i.e. within the UK, with the EU and beyond, will permanently change post Brexit. These consequences must be carefully planned in order to ensure the perennity of Welsh farming. As indicated in our WG submission, *“Area 1’s focus on markets will clearly be challenging and depend significantly on the future relationship with the EU, as well as potential trade deals internationally. Important for Wales will also be whether the UK agrees to reduce standards for imports or enable a flood of cheap, poor quality imported produce – impacting on competition within the internal UK market. Similarly, a common UK framework on standards for agricultural production and the environment would help ensure competitive fairness, whilst avoiding a race to the bottom. A further consideration for Wales would be through developing the linkages between producers and the local communities/population, which could bolster the internal market. Cooperatives noted in para 5.25 could also help ensure a fair price for farmers. Regarding supporting improved products, depending on the nature of the quality of the product, this could alternatively be achieved by the public goods scheme.”*

The WG consultation also indicates limits to the Economic Resilience scheme: *“[B]y stating that not all farms will be ‘economically resilient’ (para 5.18), WG appears to already have decided that those that cannot be effective and productive will have to either produce*

environmental outcomes or more radically will disappear. This would be a dramatic change in the Welsh countryside and such consequences should be assessed. Further, who will make the decision that farmers are no longer 'economically resilient'? Will it be WG or will it be the market conditions?"

The WG consultation states that it will provide 'support for other businesses critical to the wider supply chain', but for us "*it is unclear how wide the scheme would apply, e.g. could supermarkets or restaurants benefit from such funds? What form would such payments take?*"

The support for the extended supply chain links to an important element that appears to have been largely neglected: what of guarantees of resources? Provision of feed is extremely important for farmers, highlighted by the negative impact of the hot summer on the availability of silage⁷ and previously by snow. This is about availability in Wales, access to farms, cost, regularity of supply etc. Supporting local, independent supplies of resources for farms would be an important step to ensuring economic resilience, whilst also promoting those suppliers and thereby circulating further funds within the community.

Short supply chains should be promoted, e.g. with farmers directly selling to the public/farmers offering to the public to pick fruits and vegetables themselves/some processing on the farm itself."

Again, from the WG submission: "*[I]t is also important to consider whether it is worthwhile for Wales and society as a whole to continue to fund land managers to stay on the land even if not economically viable as a business. Even if not producing a public good (or insufficiently as to fund the continued land management), would paying land managers be worthwhile if the alternative were to pay them social welfare? If the alternative were to make the land managers homeless? It is important to bear in mind that these individuals may not have any pensions, savings or alternative sources of income, especially considering the age of many farmers in Wales. This is an economic question, but also a social and moral one."*

Overall, it is important to consider the economic resilience of Welsh farms in a changed trading environment post Brexit. It is, however, crucial to consider the resilience of Welsh farming beyond its economic aspects and explore the importance of farms for rural areas and the possibility of maintaining farmers on the land simply for the sake of keeping social links and ties within the rural communities. The WG will also need to consider whether to adapt the scope of the scheme or push Westminster to adapt the Agriculture Bill to facilitate greater flexibility.

5) Towards Public Money for Public Goods?

As outlined in our EFRA submission: "*In Part 1, Clause 1, subsection 1 of the AgBill and in Schedule 3, [Part 1, clause 1, subsection 1] for Wales we find seven headings relating to*

⁷ <https://businesswales.gov.wales/farmingconnect/posts/feeding-livestock-effectively-winter-following-recent-drought-conditions-and-forage-shortages>; and <https://businesswales.gov.wales/farmingconnect/posts/welsh-farmers-urged-plan-now-prevent-winter-feed-deficits>. For comparison, Ireland: <https://www.teagasc.ie/news--events/news/2018/drought-impact-farm-incom.php>; and <https://www.msn.com/en-ie/finance/news/why-the-quality-of-first-cut-silage-crop-could-pose-big-issues-this-winter/ar-BBOOUm8>.

environmental protection – predominately enabling payments for ecosystem services. In conjunction with the subsequent Clauses, the AgBill has developed the necessary flexibility to encompass both existing and new schemes, maintaining and improving environmental standards. However, there are noticeable gaps here, including no mention of sustainability, biodiversity (including genetic diversity), or animals or creatures other than ‘livestock’. This is despite their significance for the environment, human health and indeed the long-term sustainability of agriculture.”

In *Brexit and Our Land*, para 6.15 indicates that public goods “stretch beyond purely environmental to include also heritage and recreation, which can be an important role for the land” but there is much greater scope to include a far wider range of valuable objectives as outlined in our WG submission, including:

- *Promoting rural communities* [despite the impact of the loss of Pillar 2 of CAP, reference within *Brexit and Our Land* and being expressly provided for by the Agriculture Bill, Schedule 3, Clause 1, it was not included as a public good];
- *Ensuring generational renewal/avoiding land abandonment;*
- *Maintaining public health, food security and food quality;*
- *Improving sustainable, greener practices and resource conservation;*
- *Promoting environmental and landscape resilience;*
- *Encouraging diversification of crops/animals; and*
- *Increasing animal welfare.*

It is worth highlighting a significant difference in the Agriculture Bill. As outlined in our EFRA submission, Schedule 3, Part 1, clause 1, subsection 2 states that Wales can provide financial assistance to businesses or communities in rural areas under new schemes, whilst such provision is not included for England. This is a much welcome addition for Welsh farming/rural development but the WG fails to seize the opportunity and carry it through in *Brexit and Our Land*.

However, potential problems of competition between English and Welsh products could arise if Welsh products would be advantaged by support unavailable to English producers – see below for further.

Again, from the WG submission: “*Financially supporting farmers for outcomes above regulatory compliance (Parameter 5, Public Goods scheme) is also a welcome improvement and reflects the application of the polluter pays principle. However, to prevent a race to the bottom the current obligations set under cross-compliance should be maintained and improved to ensure the existence of a regulatory floor.*”

Implementation will be crucial to ensuring the scheme’s effectiveness, including collaboration and co-design whilst avoiding regulatory capture; ensuring that goods are valued appropriately (Petetin and Dobbs 2018a); focusing on outcomes, but also “*it may be appropriate to provide staggered financial (and other) support for procedural steps, agreed milestone and specific tasks completed.*”

Overall, and in light of the above critique of *Brexit and Our Land*, it is important that the Agriculture Bill similarly 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.

6) Reducing Red Tape?

A key objective of both the Agriculture Bill and *Brexit and Our Land* is cutting red tape for land users/farmers, i.e. simplifying matters for farmers. In the Agriculture Bill, there is a move away from greening criteria, cross-compliance and inspections. Whilst there have been some considerable flaws in their implementation, these tools nonetheless can play a very important tool in maintaining standards and should not be discarded lightly.

From our EFRA submission: *“the AgBill leaves open to the Secretary of State/Welsh Minister to introduce conditions to any financial assistance and make payments subject to compliance with these. Lessons should be learned from CAP and conditions should be imposed to require at least compliance with minimum standards for receipt of any payments.”* *Brexit and Our Land* does not expressly address this, but does indicate that base standards are important and indicates that compliance will play some role.

Further, from our EFRA submission: *“Schedule 3 Part 3 of the Agriculture Bill provides quite broad-ranging obligations for the collection and sharing of data. 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.”* Also, depending on the development and implementation of *Brexit and Our Land* and how the individual farm schemes are created, extra burdens may be imposed upon farmers – collaboration and co-design are essential to making the schemes manageable.

Overall, some form of cross-compliance and minimal standards are important to ensure environmental protection as noted below. Similarly, **having independent, effective monitoring and enforcement mechanisms – whether regarding external standards or the schemes – is essential for an effective programme. Replacing one kind of red tape by another (data collection and sharing) does not improve the daily work life of farmers.**

7) Environmental and Health Protection & Common frameworks

The value of environmental and health protection is reflected throughout the WG document and to a lesser extent the Agriculture Bill, but the public goods are limited in scope and role – beyond trying to improve the standards and outputs, it is also essential that there is no reduction in the existing standards. This is noted in the idea above that nothing promoting economic resilience should undermine other objectives. However, there is no regulatory floor in either the Agriculture Bill or *Brexit and Our Land*.

This requires consideration of the broader surrounding regimes. As noted in our WG submission, *“[c]urrently, there is extensive legislation on environmental protection, as well as*

human health and consumer protection – including swathes of standards, procedures and information requirements. Large quantities of these derive from EU law, although with significant elements developed by Wales. These must be complied with independently (or potentially lead to committing an offence) and also in order to gain some of the benefits under CAP. The concern is that standards may be dropped post Brexit, despite the declared intention to have a Green Brexit. Even if Wales maintains or increases its standards, what if England does not? What if the approach just over the border is not as environmentally friendly and environmental damage occurs in Wales? Or what if Welsh farmers feel the competitive pressure to drop their standards to challenge non-Welsh farmers or to gain a competitive advantage? The effects on cross-border issues and farms should also be considered. The schemes outlined in the Welsh Agricultural Consultation document and suitable green/healthy/local marketing campaigns may assist, but they need to be underpinned by suitable legislation setting a minimum standard for the environment, for food quality and for the information available to consumers.

The answer in part is a need for common frameworks as exemplified in relation to environmental protection (Brennan et al, 2018; Burns et al, 2018) and agriculture more specifically (NIAC, 2018; Gravey & Dobbs, 2018) – essentially matching the approach created by the EU currently, where overarching objectives and frameworks are created that apply across all of the UK, thereby ensuring a universal minimum standard across the UK and less likelihood of a slide in future or indeed a race to the bottom. This would thereby go beyond the proposal for ‘Basic Measures’ in Chapter 7, by extending beyond Wales. A further possibility would be to integrate the non-regression principle, whereby the entirety of the UK would agree to ensure that current standards are not dropped. Further, the governance gaps created by Brexit (e.g. the loss of the role of the Commission and the ECJ) need to be countered to ensure effective compliance. Adequate resources, monitoring and enforcement would be essential to this.”

In considering this, we should reflect on the aim of a Green Brexit and also that the UK White Paper on the Future Relationship Between the United Kingdom and the European Union commits to the non-regression of environmental standards.

Consequently, avoiding a race to the bottom for environmental and agricultural standards should become central tenets of future Welsh, English and UK policies. Establishing common frameworks (similarly to what the EU currently does) would ensure smooth trading with the UK internal market, fair competition for UK products and ultimately lead to a race to the top.

8) The Agriculture Bill: A Missed Opportunity to Create a Fair System of Financial Support

The provisions of the Agriculture Bill enable the four administrations to be treated differently when it comes to financial support. As noted in our EFRA submission, “*Part 1 outlines the potential bases for financial assistance for England; Schedule 3, Part 1 enables Welsh ministers to do similarly, but with further provisions regarding rural support and supporting ‘persons’*

involved in the production, processing or distribution of products deriving from an agricultural, horticultural or forestry activity’; Scotland is omitted entirely from this; and Northern Ireland has its own Schedule, but there is no legal basis for financial assistance.

The difference in treatment is clearly understandable in light of devolution and the political challenges on-going throughout the Brexit process. Agricultural support had been identified as likely to require a common UK legislative framework in March 2018.⁸ This AgBill is not it. This is an English Bill primarily, with the Welsh government having highlighted further elements that are significant to them in the form of rural support and supporting the people themselves – although, as noted the uplands is not included as a separate basis. The Scottish government has indicated its wish to develop its policies and is not amenable to English imposition. The Northern Irish Executive has been missing in action and whilst DAERA have undertaken an ‘engagement’ on their proposals developed in stakeholder meetings, they nonetheless have not the political authority to truly negotiate for NI or actively legislate (Dobbs et al., 2017). By omitting bases for financial assistance and not abolishing the existing payment schemes in NI (but enabling DAERA to modify these), the AgBill enables the eventual NI Executive to develop its own agricultural policy in accordance with devolution (within limits).”

However, there are two important risks to consider when legally enabling such differences in treatment. As indicated in our EFRA submission, “[f]irstly, the divergences enable valuable objectives to be excluded within some jurisdictions. Secondly, farmers (and other land users) in one jurisdiction may receive a competitive advantage over farmers in the other jurisdictions – even where they live and work next to each other and sell into the same market. This is only emphasised and accelerated by the future lack of common frameworks for issues relevant to agricultural production at all stages, e.g. water quality, nature protection, and air pollution.⁹ Hence, there is, thirdly, the increased risk of a race to the bottom in order to (re)gain competitive advantages.”

Overall such dangers and their consequences ought to be carefully considered. As highlighted in our EFRA submission: (i) whilst implementation and the degree of relevance of the objectives may vary in practice across the devolved jurisdictions, the objectives are relevant to all four jurisdictions and should be available as a basis for payments for all four. This would necessitate a limited common framework for financial assistance and would help address some of the devolution issues noted below. (ii) Suitable financial support will be required from Westminster for the short or long-term continuation of direct payments and the injection of capital for new financial assistance schemes.

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Petetin and Dobbs

November 2018

Agenda Item 3

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change, Environment and Rural Affairs Committee

Ymateb gan : Undeb Amaethwyr Cymru

Response from : Farmers' Union of Wales

Context

1. On the 24th June 2016, the Farmers' Union of Wales (FUW) called for “...*the UK and EU to agree on a sensible timetable for Brexit after the UK electorate voted to leave the EU – or risk dire consequences for both the UK and the remaining 27 Member States*”, highlighting that “*There is a monumental amount of work to do in terms of changing domestic arrangements and legislation, including in terms of Welsh devolved legislation, not to mention unravelling us from the EU budget to which we were previously committed, negotiating trade deals and dealing with issues such as border controls.*”
2. The scale of the task currently underway in relation to almost all aspects of Government was highlighted in the House of Commons Library publication *Legislating for Brexit: the Great Repeal Bill* (2nd May 2017), which described the review of all EU-related legislation and the transposition of laws under the Great Repeal Bill as “...*potentially one of the largest legislative projects ever undertaken in the UK.*”
3. Defra is responsible for almost a fifth of all Brexit-related areas of work across the UK Government, and increased staff numbers by 1,307 in 2017 and 2018 to cope with such work. Yet in September 2018 the National Audit Office¹ concluded that Defra:
 - a. Had by April 2018 only succeeded in ensuring 6 of 43 workstream areas complied fully with Defra planning standards
 - b. Had missed a high proportion of its project milestones
 - c. Is not expecting to be able to complete negotiations with 139 of 154 non-EU countries with which the EU has trading arrangements over acceptance of UK versions of over 1,400 export health certificates
 - d. Is unlikely to deliver key elements of work under a no-deal scenario, including those relevant to key industry sectors such as the chemical industry
 - e. Is at high risk of being unable to deliver planned legislation by March 2019, because it does not have time to pass three bills and 93 statutory instruments
4. On 5th November 2018, a leaked Environment Agency memo revealed that EA managers were given 24 hours on 22nd October 2018 to name 75 staff to be seconded

¹ Department for Environment, Food and Rural Affairs: Progress in Implementing EU Exit. National Audit Office (12th September 2018)

to Defra to work on policy, project delivery and communication. This request came in addition to existing plans for a further 75 staff to be seconded from other UK agencies, including Natural England and the Animal and Plant Health Agency

5. Given such pressures, and as already highlighted to the Committee, while the FUW welcomes all parts of the Agriculture Bill necessary to smoothly transpose current EU legislation and powers, the decision to simultaneously legislate for radical changes and new workstreams at a time when Defra is unable to cope with necessary and critical work in relation to Brexit is a grave concern.
6. Whilst the Welsh Government does not share the breadth of responsibilities of Defra, Brexit nevertheless brings with it significant additional pressures for the Economy, Skills and Natural Resources directorate at a time when staff numbers and budgets have been cut significantly. As such, the Welsh Government's decision to also add unnecessarily to existing workloads by introducing radical policy changes raises the same concerns, and the motives for not pursuing a more cautious and manageable timetable, as is the case in Scotland, might well be questioned.
7. The FUW also has major concerns regarding the timing and prescriptive contents of Schedule 3 (*Provision relating to Wales*) of the Bill, given it was published and started to proceed through Parliament at a time when the Welsh Government's *Brexit and our Land* consultation was still open – thereby pre-empting the outcome of the consultation.
8. It is notable that significant differences exist between the proposals put forward in the *Brexit and our Land* consultation and Schedule 3, including in terms of the public goods the Welsh Government proposes supporting compared with those set out in the Bill, and the transition periods proposed in the consultation and the Bill, which differ by two years.

House of Lords Delegated Powers and Regulatory Reform Committee Comments

9. On the 17th October 2018, the House of Lords' Delegated Power and Regulatory Reform Committee published a report on the Agriculture Bill², highlighting major concerns which we believe are worth drawing Climate Change, Environment and Rural Affairs Committee Members' attention to.

For example:

“The Bill contains only 36 clauses and yet confers 26 powers on Ministers to make law. The comparatively large number of delegated powers in an otherwise small-to-medium-sized bill is ominous...”

“We are dismayed at the Government's approach to delegated powers in the Agriculture Bill...”

² House of Lords Delegated Powers and Regulatory Reform Committee 34th Report of Session 2017-2019. Agriculture Bill

“The Agriculture Bill 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 after the United Kingdom leaves the EU...

“The Government encourage departments to engage in clear, concise, purposeful, informative and targeted consultations before making new law. Apart from the one consultation requirement in clause 24(5),³ consultation is merely optional so far as concerns the considerable amount of subordinate legislation to be made under the Agriculture Bill...

“Extensive powers are conferred on Ministers with correspondingly few duties. The words “The Secretary of State may” occur 36 times in the Bill. The words “The Secretary of State must” occur three times...

“17 of the 26 delegated powers allow for regulations to be made by the affirmative procedure. This is a high proportion by the standards of most bills. However, the affirmative procedure offers nothing like the scrutiny given to a bill...

“It is true that the extensive powers in this Bill largely replace directly applicable EU regulations. But the practical effect of the Bill is that very considerable repatriated powers are momentarily returning to Parliament on exit day only to be immediately granted to Ministers of the Crown...

“Clause 20 is a very significant clause, allowing the Secretary of State to make affirmative regulations concerning marketing standards in relation to a wide range of agricultural products, including milk, beef, veal, poultrymeat, eggs, fruit, vegetables, hops, wine, olive oil and live plants. We would ordinarily expect a clause of this exceptional range to be a bill in its own right.

“The regulations allow Ministers to create a powerful enforcement regime against farmers, food processors and others, including: powers of entry, inspection, search and seizure; unlimited monetary penalties; criminal offences punishable by up to two years’ imprisonment; and the conferral of enforcement functions on third parties.

“The current EU legislation relating to marketing standards will become retained EU law under the European Union (Withdrawal) Act 2018. Changes to such law made by regulations under section 8 of that Act are limited by the need to show that changes are appropriate to correct deficiencies in that law arising from the UK’s withdrawal from the EU and by the provision that no regulations may be made under section 8 more than two years after exit day. By contrast, regulations made under clause 20 of the Agriculture Bill are subject to no such restrictions...

“Clause 20 contains an inappropriately wide delegation of power to Ministers. The Bill should contain more detail on the relevant principles, policies and criteria underlying marketing standards in the various agricultural sectors.”

10. We would draw the Committee's attention to the fact that many of the concerns highlighted by the House of Lords Delegated Powers and Regulatory Reform Committee relate not only to devolved matters *per se*, but also to the powers conferred by the Bill to the Welsh Ministers.
11. For example, the "*inappropriately wide delegation of power*" referred to by the Lords in relation to Clause 20 is also relevant to Schedule 3 (*Provision relating to Wales*) Clause 19, which effectively replicates Clause 20. Similar concerns exist in relation to other Clauses which increase the powers of Ministers in both Wales and England, with less opportunity for scrutiny than should be the case.
12. In this context, it should be noted that a large proportion of those who voted to leave the European Union did so due to objections to EU bureaucracy and legislation, and that, 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.

Part 6 – Producer organisations and fairness in the supply chain

13. The FUW is generally supportive of the principles which underpin Part 6 (Producer Organisations and Fairness in the Supply Chain), which, if used appropriately, would significantly improve farmers' ability to receive a fairer share of the prices paid by consumers.
14. However, concerns do exist in relation to how such powers held by the Secretary of State might disadvantage producers in devolved regions, given that such powers are not extended to the Welsh Ministers, and the recent UK Government focus on branding produce as British.

Part 7 - World Trade Organisation (WTO) Agreement on Agriculture (AoA)

15. Whilst the FUW respects the need to ensure that the UK as a whole, or actions taken in any part of the UK, do not breach WTO rules, Part 7 of the Bill would appear to allow the UK Government to place additional restrictions on Welsh policies and payments, even if these do not risk breaching WTO rules.
16. Specifically, while Clause 26 Paragraphs (1) and (2) relate specifically to the WTO AoA, and decision making and dispute resolution in relation to that agreement, Paragraph (3) allows the Secretary of State to place a limit on the sum of all UK domestic support which is below AoA limits, and to set individual limits for what may be given in Wales (as well as in other devolved nations).
17. Clause 26 Paragraph 4 goes on to further specify how the Secretary of State may make regulations which set different limits for different appropriate authorities, different limits for different classes of domestic support, and other forms of limits on Welsh support.

18. While it is appreciated that regulations under Clause 26 are subject to affirmative resolution procedure, and that it is important that UK financial and other frameworks are put in place, the FUW is concerned that the Clause 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.
19. 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.

Schedule 3 – Provision relating to Wales

20. It is notable that Schedule 3 extends mostly identical powers to the Welsh Ministers as those conferred on the Secretary of State in Parts 1 to 5 of the Bill, albeit with additional powers allowing financial support for, or in connection with
 - a. Supporting businesses or communities in rural areas, and
 - b. Supporting people who are involved in the production, processing, marketing or distribution of agricultural and forestry products.
21. Whilst such powers are superficially welcome, it must be noted that because the Bill provides a skeleton for legislation, rather than being more prescriptive (as is the case for EU Regulations) this opens up the possibility of significant divergence between Wales and England (and Northern Ireland), including in relation to issues such as the compulsory provision of information by producers, processors etc., enforcement regimes and fines, interventions in exceptional markets, marketing standards and classifications.
22. While some such divergence already exists, for example due to differences between how authorities implement EU Regulations, the scope for this to increase under the Bill is significant. As such, without a clear agreement between authorities, there is a risk that greater divergence would cause confusion or even market distortion, with additional levels of bureaucracy, especially for cross border farmers and traders.
23. Notwithstanding such concerns, it is notable that other powers included in the English section of the bill, such as those relating to the establishment of Producer Organisations, are not conferred to the Welsh Ministers under the bill.
24. As already highlighted to the Committee, the FUW is concerned that those sections of Schedule 3 relating to agricultural support were published and progressed part way through Parliament while the Welsh Government's consultation on future land management was still open, thereby pre-empting the outcome of the Welsh Government's *Brexit and our Land* consultation.

25. This, coupled with the fact that Parts 1 and 2 of Schedule 3 effectively duplicate the English section of the Bill by facilitating a move from direct payments to public goods scheme, raises significant questions about the independence of devolved decision making processes.
26. The Committee is already well aware of the FUW's concerns regarding the dangers of introducing radical changes, such as those the Bill would legislate for, without proper impact assessments and piloting.

Public Bill Committee Amendments as at 1st November 2018

27. For the reasons referred to in paragraph 25, above, the FUW is minded to support amendments 56 to 63, which would require organisations of agricultural producers, associations of recognised producer organisations, and organisations of agricultural businesses to apply for recognition to the appropriate authority in the country of the UK where the applicant is principally based.
28. The FUW is minded to support amendment 48, 93 and 94, which would require the Secretary of State to make regulations for fair dealing obligations in Clause 25
29. The FUW is minded to support amendment 86, which would provide for the confidentiality of persons who raise complaints under the fair dealing obligations provided by Clause 25
30. The FUW is minded to support amendment 87, which would provide for investigations to be undertaken under the fair dealing obligations provided by Clause 25 where there are reasonable suspicions, but no complaint has been made
31. The FUW is minded to support amendment 66, which would ensure that before making regulations the Secretary of State be required to consult with representatives of producers and first purchasers.
32. The FUW supports amendment 96, which ensures nothing in Clause 26 shall affect the devolution of any power under the Wales Act 1998, the Wales Act 2014 or the Wales Act 2017
33. The FUW is generally supportive of amendment 90, which would appear to tighten up the eligibility criteria for those receiving financial assistance under Schedule 3, subparagraphs 1 and 2, but is concerned that this does not go far enough in protecting the interests and economic benefits of active farmers.
34. The FUW supports amendment NC1 requiring the Secretary of State to monitor and report on food security.
35. The FUW supports amendment NC6 which makes provisions for the fairer distribution of red meat levies between devolved levy bodies

36. The FUW supports amendment NC11, which provides 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.

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change,
Environment and Rural Affairs Committee

Ymateb gan : Undeb Cenedlaethol yr Amaethwyr Cymru

Response from : National Farmers' Union Cymru

Welsh Provisions within the UK Government's Agriculture Bill

Introduction

NFU Cymru very much welcomes the opportunity to provide the National Assembly's Climate Change, Environment and Rural Affairs Committee with a submission on the UK Government's Agriculture Bill.

The Union considers the Agriculture Bill to be a very significant piece of legislation, providing Welsh Ministers with substantial delegated powers, allowing them to legislate in areas which would previously have been occupied by EU law, and to make changes to retained EU law. The provisions contained in the Bill with respect to Wales will equip Welsh Ministers with the powers needed to deliver on the policy proposals which have just been consulted upon in the Brexit and Our Land Consultation, although we note that the Welsh Government have undertaken to consult further on these matters with the publication of a White Paper in Spring 2019.

It has been NFU Cymru's long-held view that because communities and landscapes vary considerably across the UK, matters such as agricultural support are best decided as close to home as possible. There is currently considerable uncertainty facing the agricultural sector, and despite our many concerns about the proposals contained within the Brexit and Our Land Consultation we continue to believe that there is now the opportunity to design, develop and implement a policy 'Made in Wales' for Welsh farming.

A policy which fits the unique needs and profile of Welsh agriculture is an attractive prospect arising from the UK's departure from the EU however such an outcome can only be delivered if Welsh Government pays the fullest possible regard to those who derive their living from Welsh agriculture. At NFU Cymru we want to work with Welsh Government and with everyone who cares for and has a passion for our food, our landscape, our environment, our communities and our culture. By working together we can realise our vision of a productive, progressive and profitable Welsh agricultural industry delivering jobs, growth and investment for Wales.

At the present time we do not know how Welsh agriculture might fare as a result of Brexit. NFU Cymru has therefore cautioned, and continues to caution against formulating and deciding upon a future agricultural policy, at a stage when there is no certainty at all about the sort of future relationship that we might have with the EU27. Whilst we are not averse to change, 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.

Welsh Provisions within the UK Government's Agriculture Bill

The Agriculture Bill is essentially a scaffold upon which the legislative basis for a future Welsh agricultural policy can be built, with its operation effectively being a matter of preparing and passing subordinate legislation by Welsh Ministers. NFU Cymru does however have some concerns at the way the bill vests significant, regulation making powers in Welsh Ministers, with very little scope for the National Assembly to shape and influence the exercise of these powers.

NFU Cymru notes that the Welsh Government sees the Agriculture Bill as a transitional measure until indigenous, primary legislation in the form of a Wales Agriculture Bill can be brought forward. 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.

Provisions relating to Wales are contained within Schedule 3 of the draft bill, and replicate more or less exactly those powers conferred on Ministers in England. The significant difference is found in Schedule 3, Part 1, Clause 1 (2) which confers upon Welsh Ministers powers to grant financial assistance in relation to supporting businesses and communities in rural areas, starting or improving productivity and supporting those involved in the production, processing, marketing or distribution of agricultural, horticultural and forestry products. NFU Cymru welcomes the fact that the Bill, as drafted, proposes these powers for Welsh Ministers, which currently extend beyond those proposed for Minister in England.

A quick examination of Schedule 3 reveals that the word 'may' occurs some 23 times in relation to the exercise of Welsh Ministers' powers, and so the exercise of these powers is discretionary as opposed to mandatory. This means for instance in Part 4 of Schedule 3, in relation to a making a declaration of exceptional market conditions, even where exceptional market conditions prevail, no obligation is conferred upon Welsh Ministers to do so.

During the course of our extensive consultation discussions with our membership, it came as no surprise that our members are deeply concerned about the loss of direct payments. We consider direct payments to be a vital force in providing stability in the face of regional and global events including market volatility, trade wars, adverse climatic events and disease outbreaks.

Welsh Ministers have, via the consultation, as well as public statements they have made expressed the view that direct payments in Wales are to end, with the Agriculture Bill also expressly providing that direct payments are to cease at the end of the agricultural transition period. This is very disappointing and NFU Cymru is firmly of the view that there needs to be an element of direct support in any future agricultural policy. We believe that by expressly providing for the termination of direct payments, (presumably at the request of Welsh Government) the Agriculture Bill in effect ties Welsh Government, in terms of its scope to act, to legislation enacted at a time when there is still no clear picture of the type of post-Brexit climate we will be facing.

Schedule 3 will confer delegated powers on Welsh Ministers to make regulations by a mixture of the affirmative and the negative procedure, and so provisions which should

arguably be given effect via primary legislation (with the associated level of scrutiny) are instead given effect via regulation making powers, with a much reduced degree of scrutiny.

Despite the fact that the Bill confers far reaching powers on Welsh Ministers, with little in the way of scrutiny as to their exercise, the obligation to consult does not arise once in relation to the exercise of Welsh Ministers' powers. Although we note that Welsh Ministers have committed to further consultation with stakeholders, it is disappointing that the Agriculture Bill, as drafted does not give rise to an obligation for them to do so. Mandating consultation in relation to the exercise of a least some of the far-reaching powers, may have gone some way to mitigating the lack of real oversight of the exercise of these powers by the National Assembly.

Whilst the Welsh Government has consulted on the basis of completing the transition away from the current system, to the new arrangement within five years, Schedule 3 of the Agriculture Bill sets out a seven year transition period, with the option to extend. NFU Cymru favours a longer transition period to whatever new arrangements are put in place after Brexit, and so we welcome the longer transition that is provided for by the Bill, as well as the prospect, set out in the bill, of extending this transition period. We are therefore somewhat surprised that the Welsh Government chose to consult on the basis of a transition period that is not provided for in draft legislation. Fundamentally, NFU Cymru does not support the phasing out of the Basic Payment Scheme (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 supply chain and the rural communities that the BPS currently delivers.

Wider issues with the bill

Outside of Schedule 3, Part 7, Clause 26 deals with the issue of ensuring that all schemes devised across the UK home nations after Brexit are compliant with the WTO's rules relating to the Agreement on Agriculture's Amber, Green and Blue boxes.

NFU Cymru accepts that, as the UK is signatory to the WTO, responsibility for ensuring that all domestic policies in relation to agriculture are WTO compliant therefore rests with the UK Government. We do however have some concerns relating to the powers in Clause 26, which in relation to compliance with the WTO Agreement on Agriculture

- i. Makes the Defra Secretary of State the final arbiter in any decision relating to the classification of domestic agriculture for the purposes of the WTO Agreement on Agriculture
- ii. Allows the Defra Secretary of State to make regulations providing for total levels of domestic support allowable in the UK under the agreement on agriculture. This includes limiting the amount of domestic support that may be given by the competence authorities combined, and placing individual limits on the amount of domestic support that may be given by each competent authority.
- iii. Permits the Defra Secretary of State to set different limits for domestic support for different competent authorities, and set different limits for different classes of domestic support
- iv. Equips the Defra Secretary of State with powers requiring the devolved administration to provide the information needed for the purposes outlined above.

NFU Cymru recognises that Clause 26 powers propose a centralisation of power, which will see an express reservation carved out for Defra Ministers with respect to something which relates to a devolved competence (agriculture), without engaging first of all with Cardiff, Edinburgh, and Belfast.

Whilst the UK Government as signatory at the WTO will bear ultimate responsibility for ensuring the UK's compliance with WTO obligations, the exercise of powers under Part 7 could well constrain future policy choices in Wales by placing limits on spending and precluding certain types of support. This could, at least in theory, introduce constraints on categories of expenditure, which are currently permissible under the CAP.

Although NFU Cymru fully accepts that it may indeed be necessary to place limits on spending and preclude certain types of support (in order to ensure compliance with international obligations and to preserve the UK's internal market) we are of the view that the powers in Part 7, Clause 26 should be exercised following discussion and agreement between Defra and the devolved administrations. We do not therefore support the way in which the bill proposes to confer the powers outlined above, on the Defra Secretary of State.

The Bill is silent on the issue of how domestic food standards and food safety will be protected in the face of new trade agreements. The UK Government has failed, and continues to fail to take a coherent position on this issue, and we would very much like an unequivocal declaration from UK Government Ministers, that food produced to lower environmental, animal welfare and food safety standards, than our own domestic standards will not be admitted to UK markets after Brexit. Given the fairly broad political support we believe such a declaration would have enjoyed, we consider it most regrettable that the opportunity to put a commitment to on a statutory footing has been missed.

The Bill is also an opportunity to provide for the establishment of a multi-annual financial framework for agriculture that matches the long term nature of farm investment. We are keen to avoid the politicisation of funding for agriculture, and setting out a multi-annual financial framework would help reduce the risk of this happening. It is regrettable that the opportunity of the bill has not been utilised for this purpose.

NFU Cymru had hoped that the Agriculture Bill would have been the vehicle to bring about a resolution to the long running issue of the repatriation of the red meat levy. For many years we have lobbied for a distribution of levy income that takes a fair account of the level of red meat production in Wales. The current system that sees levy money collected and used in the country that the animal was slaughtered has seen Wales lose out as a result of a net move of livestock, particularly cattle, out of the country to be slaughtered, this loss is currently estimated to be over £2 million per annum. NFU Cymru believes this system is flawed in that the basis of levy distribution is based solely on the location of abattoirs, a decision that is completely outside the control of primary producers. The Agriculture Bill should have been used to address this issue to ensure that we have the maximum resource available to support the development, marketing and promotion of the red meat sector in Wales.

Earlier this year, some 24 areas relating to agriculture were identified as needing 'common frameworks', based either in legislation, or less formally in intergovernmental memorandums of understanding. NFU Cymru had anticipated that the Agriculture Bill may have been the

vehicle which would have moved the issue of Common Frameworks further forward, and we might have seen within the Bill, some of the arrangements relating to Common Frameworks which are deemed to require a legislative basis. The Bill does not however address the issue of legislative common frameworks. Given the importance they will hold to preserving the functioning of the UK internal market as well as compliance with international obligations, we believe that this issue needs to be progressed fairly quickly.

Cynulliad Cenedlaethol Cymru | National Assembly for Wales
Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate
Change, Environment and Rural Affairs Committee
Ymateb gan : Cymdeithas Ffermwyr Tenant Cymru
Response from : Tenant Farmers Association in Wales

Inquiry on the Welsh Provisions within the UK Government's Agriculture Bill

1. Introduction

- 1.1 The Tenant Farmers Association in Wales (TFA Cymru) is the representative organisation for farmers who do not own the land they use for farming and is the only organisation dedicated to the tenanted sector of agriculture in Wales. TFA Cymru welcomes the opportunity of providing evidence to this Inquiry following the introduction of the Agriculture Bill to the UK Parliament and the Legislative Consent Memorandum issued by the Welsh Government in October in respect of the Bill.
- 1.2 The Agriculture Bill is a key plank of the legislative framework required as a result the UK's exit from the European Union next March. However, as much of the agricultural policy framework for agriculture is now devolved, it is necessary to ensure that appropriate provisions exist to allow for separate policies to be applied within the devolved administrations of the UK including in Wales. In this respect, TFA Cymru supports the Welsh Government's approach to secure a Schedule within the UK legislation which will be subject to the procedures for Legislative Consent in Wales whilst the Welsh Government prepares to bring forward its own legislation to implement new policy for agriculture in Wales in the post Brexit era.
- 1.3 We stand at a unique point for Wales which has never before been able to be the master of its own destiny in respect of agricultural policy until now. Previous agricultural legislation has either been at the level of the United Kingdom (including the Agriculture Act 1947 to which many are making comparisons) or has been significantly constrained by the provisions of the Common Agricultural Policy under the terms of the UK membership of the European Union.
- 1.4 Looking at the 1947 Act, it is interesting to note that its aim was to promote and maintain a stable and efficient agricultural industry, capable of delivering food security through national production. This was to be achieved whilst at the same time providing a proper level of remuneration to the farming community to ensure reasonable living standards for farmers and workers in

agriculture and an adequate return on capital invested in the industry, all in the context of good estate management.

- 1.5 TFA Cymru would argue that over 70 years later, the issues that need to be addressed for Welsh agriculture today are not dissimilar to 1947. The question that the new legislation needs to answer is how to maintain a steady supply of food products and ingredients to domestic and international markets produced to good standards of environmental management and animal welfare at prices affordable for consumers but delivering a fair return to primary producers. TFA Cymru believes that it is against these criteria that Schedule 3 of the Agriculture Bill should be judged for Wales.
- 1.6 TFA Cymru has been pleased to see the five principles articulated by the Cabinet Secretary for Environment and Rural Affairs which echoes the views of TFA Cymru set out above. These five principles she set out are as follows:
 - We need to keep farmers on the land. Welsh land must be managed by those who know it.
 - We need to ensure our agricultural sector can be prosperous and resilient in a post-Brexit future, whatever that may be.
 - Our new policy should centre on Welsh land delivering public goods for all the people of Wales.
 - Our system of support should be accessible to all. That means giving farmers the opportunity to continue to make a living from the land.
 - We must not turn our backs on food production. Where sustainable production is viable, we must help our farmers compete in a global marketplace.
- 1.7 The job at hand is to understand whether the legislation set out within the Agriculture Bill is sufficient to deliver these five principles and the wider aspirations of Welsh Government for agriculture as set out in the "Brexit and our land" consultation which closed at the end of October. However, matters are made more difficult in this regard given the uncertainty surrounding the wider context within which the new legislation will operate once in place. The UK Parliament, the Welsh Government and Welsh Assembly are having to consider the Agriculture Bill without knowing, even in outline, the nature of any Withdrawal Agreement with the EU. There is also no clarity around our future trading relationships either with the EU or the rest of the world and what World Trade Organisation status we will have in the event of being unable to reach any sort of a deal with the European Union. Another uncertainty is the impact of the UK Government's migration policy, particularly in respect of the amount of semi-permanent labour employed in agriculture and food processing which has, hitherto, come from the EU and which will no longer be available from any

non-domestic source given the UK Government's intended criteria for allowing migrant labour into the country following Brexit.

- 1.8 These unknowns will have a significant impact on the profitability, resilience and sustainability of agriculture in Wales. It would be sensible, therefore, for the new policy framework to be sufficient flexibility to take on board how those important areas emerge in the months and years which lie ahead.

2. A Scaffold Not a Building

- 2.1 Unlike the Agriculture Act 1947, which placed a number of duties on the UK Government including in respect of setting guaranteed prices and holding regular reviews, Schedule 3 of today's Bill will confer powers on the Welsh Government whilst leaving much of the detail to Regulations. To understand how the Welsh Government might intend to use the powers reserved to it, we will need to await the Welsh Government's response to the "Brexit and our land" consultation referred to previously. At this stage, there are no guaranteed directions of travel which give any confidence about the extent to which the Welsh Government will be able to adhere to the five principles set out by the Cabinet Secretary.
- 2.2 TFA Cymru has therefore described the Agriculture Bill as providing "a scaffold not a building" requiring a great deal of trust in current and future Governments to deliver an appropriate policy through the powers being reserved through the legislation. TFA Cymru believes that the legislation should contain clearer duties on Welsh Government to deliver on the principles articulated by the Cabinet Secretary.
- 2.3 TFA Cymru also needs to be assured 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. TFA Cymru believes it would be appropriate for the Committee to require the Welsh Government to provide the opportunity for pre-legislative scrutiny of all primary and secondary legislation the Welsh Government intends to bring before the Welsh Assembly.
- 2.4 The remainder of this written evidence will look at the specific areas of the Agriculture Bill which require legislative consent in Wales in the order they appear in the Legislative Consent Memorandum issued by the Welsh Government

3. Compliance with World Trade Organisation Agreement on Agriculture – Clause 26 of the Agriculture Bill

- 3.1 Whilst it is clearly the case that agricultural policy and legislation are devolved matters, it is the UK which holds the membership of the World Trade Organisation (WTO). During the time of devolved responsibility for agriculture

in Wales, the conduct of our membership of WTO has been expressed through our membership of the European Union. TFA Cymru does not see a way in which the four countries of the United Kingdom could operate independently within the WTO framework and therefore it will be essential for the conduct of the four countries to be coordinated at a UK level. This, therefore, will require WTO matters to be fully part of an agreed UK framework governed in partnership with a sufficiently well drawn dispute resolution facility. 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 their trading relationship internally and with the rest of the world.

4. New Financial Assistance Powers – Schedule 3, Part 1

4.1 TFA Cymru welcomes the new financial assistance powers contained within Part 1 of Schedule 3 and is particularly pleased to see the provisions relating to productivity which are, in the view of TFA Cymru, much stronger and more appropriate than the provisions contained within the main part of the Bill for operation within England. However, the list of purposes set out in Section 1(1) - broadly speaking those which are considered public goods – is incomplete. TFA Cymru would like to see the following added to this section:

- protecting or improving the health, well-being and food security of UK citizens in Wales; and
- protecting or improving the management of upland landscapes and biodiversity through grazing livestock systems.

4.2 Whilst the UK Government has provided an assurance of maintaining the current level of funding at a UK level until 2022 and has begun a fair funding review under the chairmanship of Lord Bew, 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. Also, given the size of the task ahead, we would seek a Welsh Government assurance that it will not look to diminish the current budget into the long term.

4.3 In the context of this legislation being part of an Agriculture Bill, TFA Cymru believes it is necessary to restrict the financial assistance powers such that they are available only in respect of individuals who are operating units which are predominantly agricultural in nature. We propose that the Bill and its Welsh schedule adopts the definition of agriculture as set out within section 96 (1) of the Agricultural Holdings Act 1986 as follows:

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery

grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly

- 4.4 Also, there should be clear restrictions around who can be considered a beneficiary of the financial assistance available. This should be achieved by including within the Bill a requirement that beneficiaries can only be "active farmers" or "active land managers" defined as individuals who are in occupation of the land they are farming, taking the entrepreneurial risk for the decisions made in relation to the management of that land and in day to day management control. In this respect we would advocate the following amendment:

Following the words "Welsh Ministers consider appropriate" at line 34 in Schedule 3 Part 1 Section 2 (2) insert the words:

"In every case such conditions shall include the following restrictions to the eligibility of a recipient of financial assistance –

- (a) financial assistance may only be made to individuals or groups of individuals natural or otherwise operating land where the predominant use is agricultural as defined by the Agricultural Holdings Act 1986 Section 96 (1); and
- (b) financial assistance may only be made available to individuals or groups of individuals natural or otherwise who are –
 - (i) in occupation of the land for which the financial assistance is being claimed; and
 - (ii) taking the entrepreneurial risk for the decisions made in relation to the management of the land for which the financial assistance is being claimed; and
 - (iii) in day-to-day management control of the land for which the financial assistance has been claimed."

5. Financial Support After Exiting the EU – Schedule 3, Part 2

- 5.1 The seven-year transition from 2022 is welcomed by TFA Cymru. However, we need greater clarity as to how this provision will be used by the Welsh Government. The indications are that Welsh Government is looking to use a five-year transition period but TFA Cymru would argue that it should take advantage of the full seven-year period.
- 5.2 TFA Cymru also supports the concept of delinking payments and the provisions for providing a lump sum payment in lieu of future direct payments (Section 7). TFA Cymru believes that this will be of significant assistance to progress in restructuring within the industry allowing individuals to use both de-linked payments and 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. It will be essential that recipients of these payments must

meet the active farmer test at the time they make the application for these payments to be made. It is, however, disappointing that no reference to these options was made in the Welsh Government's "Brexit and Our Land" consultation.

- 5.3 TFA Cymru notes that there has been some debate over whether there should be restrictions on how these delinked or consolidated payments should be used by recipients. TFA Cymru would not be opposed to such criteria however it is concerned that if it is considered too difficult to provide a viable framework to restrict use, that the principal idea should not be lost as a result. There is more to be gained in terms of restructuring than might be lost in a handful of cases where the funds may not be used for what they were initially intended. In any case, individuals would not be receiving money that they would not otherwise be entitled to over the period of the transition.
- 5.4 TFA Cymru notes that the Schedule contains necessary flexibility to enable the Welsh Government to extend the transition period if needed in respect of the economic circumstances prevailing at the time. TFA Cymru would like to see additional provisions to ensure that any funds saved through the transition away from direct payments are not lost to the farming industry if, for whatever reason, the new financial assistance schemes proposed are not available to the extent necessary to make full use of the available funding. TFA Cymru believes that any surplus funding identified on an annual basis should be reallocated through direct payments until sufficient schemes are available.

6. Collection and Sharing of Data – Schedule 3, Part 3

- 6.1 TFA Cymru welcomes the provisions enabling the Welsh Government to insist on the provision of information from supply chains which will provide an important lever to Welsh Government to allow for more transparency within supply chains. Concerns have been raised about contract confidentiality, but TFA Cymru believes that sufficient protection could be built in to any requirements for publication of data without needing a complicated framework to be imposed on the face of the Bill.

7. Intervention in agricultural Market Conditions – Schedule 3, Part 4

- 7.1 TFA Cymru welcomes the provisions to allow for financial and other assistance to be made available to the farming industry at times of exceptional market conditions. TFA Cymru would wish to be assured that this will cover natural phenomena such as drought, flood and disease as well as economic phenomena that may impact upon markets.
- 7.2 TFA Cymru would also wish to have an assurance from the Welsh Government that this part of the legislation will cover not only situations of "acute" hardship or difficulty but that it will also be able to be invoked if "chronic" or long-lasting difficulties are apparent. This might involve things like endemic disease or

structural changes in agricultural markets which may require farmers to undergo significant adjustment.

8. Marketing Standards and Carcass Classification – Schedule 3, Part 5

8.1 TFA Cymru welcomes the inclusion within the Schedule 3 to Bill of powers for Welsh Government to set marketing standards for agricultural products. TFA Cymru believes that there should be a duty placed upon all the devolved administrations through a UK framework to ensure that high standards operating in respect of domestic production are also applied equally to products entering the UK from abroad either within negotiated free trade agreements or otherwise. TFA Cymru believes that this must be made clear on the face of the Bill.

9. Agricultural Tenancies

9.1 The biggest disappointment for TFA Cymru is the absence of any reference to much needed changes to the legislative framework for agricultural tenancies in either the main part of the Bill or in Schedule 3. The Agriculture Bill is the obvious place to include the recommendations for legislative change presented last autumn by the Tenancy Reform Industry Group (TRIG). TRIG is a cross organisational group involving representatives from farming, landowning and professional organisations. The output from TRIG was specifically to address the legislative and wider changes that would be needed to ensure the resilience and sustainability of the let sector of agriculture in the post Brexit era. The members of TRIG were fully expecting to see at least some of the legislative changes they had recommended appear on the face of the Bill.

9.2 The tenanted sector of agriculture in Wales is responsible for farming just under 30% of the agricultural area of the country. One quarter of farms within Wales are either wholly or predominantly reliant upon tenanted land and two thirds of farms have some tenanted land. Tenanted holdings are also the principal way in which most individuals, who do not have the benefit of family owned land, will get into the industry.

9.3 There are two principal types of tenancy agreement. Firstly, those regulated by the Agricultural Holdings Act 1986 which confers security of tenure, a regulated rent and in some cases a right of succession. Secondly, those regulated by the Agricultural Tenancies Act 1995, known as Farm Business Tenancies (FBTs) which provide for a significant degree of freedom of contract so that there is no fixed term and no significant regulatory provisions around rent.

9.4 TFA Cymru would like to see an amendment, at least to Schedule 3, to ensure that the tenanted sector of agriculture in Wales can fully participate in the new support regime envisaged by the new legislation, both in terms of provision of public goods and productivity. A proposed, complex amendment to Schedule 3 is attached as an annex to this evidence

- 9.5 The proposed amendment is split into two sections the first relating to the 1986 legislation and the second relating to the 1995 legislation.
- 9.6 In section 1 of the amendment, part (a) concerns the ability of a farm tenant to take advantage of the new financial assistance schemes. Many tenants are restricted to use their holdings for agricultural use only and therefore would be disenfranchised if landlords did not give consent for them to access schemes to provide public goods such as listed in Part 1 of Schedule 3. There is concern that landlords will use their leverage in having to give consent to secure unreasonable demands from tenants renting under the 1986 Act. On the other hand, they may simply refuse consent making the holding less profitable and therefore more likely that the landowner will recover possession of the holding to undermine the security of tenure provisions.
- 9.7 The same is true of clauses relating to fixed equipment where tenants often must seek the consent of the landlord before they invest in new or amend existing fixed equipment on their holdings. Part (a) in this section of the amendment will provide for the ability for a tenant to seek consent which the landlord cannot reasonably deny or delay in respect of some of the new financial measures for productivity.
- 9.8 Part (b) of this section of the amendment corrects the mistake made in the Deregulation Act 2015 which means that independent expert determination cannot be used practically for farm rent review disputes, the main type of dispute that arises between landlords and tenants. The ability to use expert determination could significantly reduce the costs involved in resolving such disputes rather than having to go to arbitration hence improving efficiency.
- 9.9 Parts (c) and (d) provide a mechanism to assist older tenants with their retirement providing a route for them to be able to capitalise on the value of their occupation through the creation of a fixed term tenancy which is assignable and therefore potentially offering the opportunity to secure value from the marketplace which they can use for their retirement. This would be subject to the landlord being able to stop the assignment by buying out the tenant's life interest - so there is a balance of rights and responsibilities here. However, this would be a significant assistance to achieving Welsh Government policy to assist restructuring and new entrants.
- 9.10 Parts (e) to (j) make amendments to the tests for statutory succession to remove the requirement for the prospective successor tenant to prove that they are not in occupation of another commercial unit of agriculture. The report from TRIG indicates the benefits of repeal of this test particularly due to its capricious nature which mostly impacts upon the ill-advised or where there is an unexpected, early death within a farm family. It also penalises more suitable candidates from succession given those with other farm units will be, in the main, more progressive than the average.

- 9.11 The second section of the amendment has two parts. The first part addresses the ongoing concern about short lengths of term on FBTs . The average length of term on an FBT is now only four years and 85% are let for periods of five years or less. With approaching half the tenanted sector now covered by FBT's and with the drive to greater levels of productivity and public goods provision, these short lengths of term are wholly inadequate. One of the issues raised by landlords when considering offering a long-term tenancy is the difficulty they have in ending the tenancy where the tenant is in breach of their agreement as they have to rely only on the complicated provisions of forfeiture. This part of the amendment will provide an easier mechanism to bring a tenancy agreement to an end where the tenant is in breach of the agreement but only for those landlords prepared to let for 10 years or more.
- 9.12 Finally, part (b) extends the freedom of contract available to landlords and tenants to use the provisions of the 1986 legislation where that makes sense for good estate and farm management purposes.

TFA Cymru

Annex 1

This amendment seeks to introduce the changes confirmed by the Tenancy Reform Industry Group in its report in October 2017.

21a provides farm tenants with the opportunity to seek amendments to their tenancy agreements in cases where they are precluded from any activity which limits their ability to use their holding fully and efficiently or take part in schemes and initiatives.

21b corrects the error made within the Deregulation Act 2015 which prevents the practical use of expert Determination for rent reviews.

21c implements the recommendation from TRIG to allow tenants to convert their AHA tenancies into assignable fixed term tenancies to assist with retirement subject to landlords being able to stop the assignment by buying out the tenant's life interest.

21d provides the provision to allow the landlord to serve an incontestable notice to quit to end a tenancy created by 27c following the end of its fixed term period.

21e to 21j remove this s the commercial unit test for succession as recommended by TRIG.

22a allows a landlord who is letting a tenancy for 10 years or more the facility to end the tenancy early where the tenant is in breach of the tenancy obligations.

22b allows greater flexibility for landlords and tenants to agree to use the provisions of the Agricultural Holdings Act 1986 in new agreements as recommended by TRIG.

At Page 44 line 33:

Following Schedule 3 Part 5 part 7 after the words "negative resolution procedure." insert the following:

Part 6

Agricultural Tenancies

(21) The following amendments shall be made to the Agricultural Holdings Act 1986

(a) Following Section 6 (6) after the words "relating to the tenancy takes effect" insert the following:

"7a Where in respect of a tenancy of an agricultural holding a tenant is restricted by the terms of the tenancy agreement in respect of any activity which appears to the tenant to be desirable to assist the full and efficient farming of the holding including participation in any schemes for grants, payments, loans or financial assistance the tenant may serve notice on the landlord to request consent which the landlord cannot unreasonably withhold or delay. Any

objection by the landlord may be referred by the tenant to arbitration under this Act or, to third-party determination under this Act

7b If following the service of a notice by a tenant in accordance with section 7a there is no response from the landlord within one month, consent for the matters contained within the notice from the tenant will be deemed to have been given."

(b) Section 12 shall be deleted and replaced with:

"12 Arbitration or third-party determination of rent.

(1) Subject to the provisions of Schedule 2 to this Act, the landlord or tenant of an agricultural holding may by notice in writing served on the other demand that the rent to be payable in respect of the holding as from the next termination date shall be referred to arbitration under this Act.

(1A) The landlord and tenant may, after the service of such a notice, instead refer for third party determination under this Act the question of how much rent is to be payable in respect of the holding as from the next termination date.

(2) On a reference under this section the arbitrator or third party shall determine what rent should be properly payable in respect of the holding at the next termination date following the date of the notice under sub-section (1) and accordingly shall, with effect from that next termination date, increase or reduce the rent previously payable or direct that it shall continue unchanged.

(3) A notice under sub-section (1) under this section shall cease to be effective for the purposes of this section on the next termination date following the date of the demand unless before the said termination date—

(a) an arbitrator or third party has been appointed by agreement between the parties to determine the rent, or

(b) an application has been made to the President of the Royal Institution of Chartered Surveyors for the appointment of an arbitrator by him.

(4) References in this section (and in Schedule 2 to this Act) with respect to the rent of any holding, to the next termination date following the date of the notice served under subsection (1) are references to the next day

following the date of that notice on which the tenancy of the holding could have been determined by notice to quit given at the date of the notice under subsection (1).

(5) Schedule 2 to this Act shall have effect for supplementing this section."

(c) After section 24 insert a new section as follows:

" 24A conversion to a fixed term tenancy

- (1) This section applies to an agricultural holding governed by this Act and to which Case I does not apply.
- (2) The tenant may serve notice in writing on the landlord of the holding indicating that he wishes to convert the tenancy so that Case I applies to the holding unless
 - (a) a notice to quit has already been served and remains enforceable;
 - (b) the tenant is dead or insolvent.
- (3) If within two months of receiving the tenant's notice the landlord does not by counter-notice in writing served on the tenant indicate that he wishes to buy the tenant's interest in the holding sub-section (4) will apply to the tenancy.
- (4) A tenancy to which this subsection applies will:
 - (a) be subject to Case I
 - (b) not be subject to Part IV
 - (c) be assignable by the tenant who served the notice under subsection (2) subject to the consent of the landlord which is not to be unreasonably refused withheld or qualified

and the rent properly payable under section 12 will be determined in accordance with section 13 of the Agricultural Tenancies Act 1995 instead of paragraphs 1 to 3 of Schedule 2.

- (5) Where the landlord serves a notice under subsection (3) he then has six months in which to agree with the tenant on the value of the tenant's interest in the holding as at the date of the tenant's notice.
- (6) Either landlord or tenant may refer the question of the value of the tenant's interest for subsection (5) to determination by an arbitrator or if they agree third party determination.

(7) If that value has not been agreed or referred to arbitration or third party determination within those six months subsection (4) will apply to the tenancy.

(8) Where that value is so agreed or determined the tenancy will end at the next date at which a notice to quit served on the date when the tenant's notice would have taken effect, or such other date as may be agreed when that value shall be payable to the tenant.

(d) In Schedule 3 Part 1 insert the following:

"Case I

The holding is let under a tenancy to which this Case has been applied under section 24A and a notice to quit is served to take effect on a termination date at least 25 years after the service of the tenant's notice under that section".

(e) Delete Section 36(3)(b)

(f) Delete Section 50(2)(b)

(g) Amend Section 36 (5) to read:

"Part I of Schedule 6 to this Act, which supplements subsection (3) above, shall have effect".

(h) Amend Section 50(4) to read:

"Part I of Schedule 6 to this Act shall apply for the purposes of supplementing subsection (2) above".

(i) In schedule 6 paragraph 1 remove the words:

"The occupancy condition' means paragraph (b) of the definition"

(j) In schedule 6 delete paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 14, 15 and 16.

(22) The following amendments shall be made to the Agricultural Tenancies Act 1995

(a) After section 7 insert a new section as follows:

7a Notices to Remedy

- (1) A landlord may serve a notice to quit on a tenant at any time if the tenant fails to comply with a notice to remedy served by the landlord for any of the reasons set out in subsection (2).
- (2) A notice to remedy can be served by a landlord for the following reasons –
 - (a) non-payment of rent by the tenant;
 - (b) a breach or breaches of the tenancy agreement which requires the tenant to carry out work to remedy the breach or breaches;
 - (c) a breach or breaches of the tenancy agreement, other than for non-payment of rent, which does not require the tenant to carry out any work to remedy the breach or breaches.
- (3) Any notice to remedy served under sub section (2)(a) must provide the tenant with at least 3 months to remedy the breach.
- (4) Any notice to remedy served under sub section (2)(b) or (2)(c) must provide the tenant with a reasonable time to remedy the breach or breaches which, in every case, shall not be for period of less than 6 months.
- (5) Any tenant in receipt of a notice to remedy under sub section (2) can within one month of receipt of the notice serve a notice on the landlord demanding arbitration or third-party determination on one or more of the following grounds -
 - (d) disagreement with the reasons stated in the notice to remedy;
 - (e) disagreement in any way with the required remedy or remedies including the time required for their fulfilment.
- (6) Where a tenant has served a notice demanding arbitration or third-party determination any notice to remedy will be of no effect until it is determined by arbitration or third-party determination or is otherwise agreed between the landlord and tenant. The period over which any notice to remedy will have no effect will end if after a period of three months following the tenant's demand for arbitration or third-party determination no arbitrator or third party has been appointed.
- (7) Any tenant in receipt of a notice to quit under sub section (1) can within one month of receipt of the notice serve a notice on the landlord demanding arbitration or third-party determination disputing the validity of the notice to quit.

(8) Where a tenant has served a notice demanding arbitration or third-party determination under sub section (7) any notice to quit will be of no effect until its validity has been determined by arbitration or third-party determination or is otherwise agreed between the landlord and tenant. The period over which any notice to quit will have no effect will end if after a period of three months following the tenant's demand for arbitration or third-party determination no arbitrator or third party has been appointed.

(9) A notice to remedy under sub section (2) may only be served by a landlord in respect of tenancy agreements let from their commencement for a term of 10 years or more and where the landlord has no unilateral right to determine the tenancy in whole or any part at any time within the first 10 years of the agreement.

(b) Delete Section 4(1)(g) and replace it with the following:

"is granted by a written contract of tenancy indicating (in whatever terms) that the 1986 Act is to apply in relation to the tenancy."

CLA Cymru: The voice of the Rural Economy

1. The CLA (Country Land & Business Association) is the representative organisation for rural businesses across England and Wales. We work closely with both the UK and the Welsh Government as a consultee-of-choice on issues concerning the rural economy; the land-based businesses it supports, and the wider enabling policies that supports sustainable development.
2. With around 3,000 members in Wales and 33,000 in total, our members own and manage more than 10 million acres across the UK and engage in a wide range of business activities from agriculture and food to forestry and the gamut of businesses that support the land based industry.
3. Our membership relies on us to ensure that the voice of the rural economy is heard in the development of policy. The needs of rural community and businesses are often over-looked and under-represented in UK politics. We welcome the opportunity to provide evidence on the Agriculture Bill and how it will work in Wales

Intergovernmental Relationships

4. CLA Cymru is acutely conscious of the sensitivities that Brexit is having on inter-governmental relationships between the UK and Welsh Government and once again, policy relating to Agriculture is at the forefront of this debate. At the time of publication of the Agriculture Bill, the Welsh Government published a statement explaining that the draft Bill demonstrated '*considerable engagement and collaboration*' between the two Governments. We consider this to be a positive step in creating more effective working relationships and must be the starting point upon which consideration of the Legislative Consent Motion from Wales should begin.
5. The structure of the Bill and the process of its adoption does, however, causes us some concern in that it is unclear how the Bill, and specifically the provisions relating to Wales as set out in the Schedule 3 are to be scrutinised. Will MP's in Westminster be seeking to make changes to a Bill with provisions over a devolved matter? The Welsh Assembly has no ability to provide input of comment or changes to legislation in Westminster. With Welsh Governments involvement in drafting the Bill it is unlikely that they will seek to make any substantial changes to its content.
6. Although the Welsh Assembly has the ability to withhold a Legislative Consent Motion, it is unclear who has the power to provide the detailed scrutiny of the individual provisions within the Bill. Furthermore, would the lack of Legislative Consent Motion be a barrier to Westminster passing the Bill? – the Sewell Convention was arguably undermined when Westminster passed the EU (Withdrawal) Act and created a precedent of bypassing devolved administrations when looking at time sensitive issues in Brexit. The impact of the UK Governments approach to the EU (Withdrawal) Act remain subject to a Supreme Court hearing and ultimately could impact this LCM

Frameworks

7. As well as considering the LCM, we would encourage the Committee to raise questions about provisions that are not included in the Bill. Over the last year or so the Secretary of State for Wales, through his Expert Implementation Group has considered in detail the areas of 'repatriated law' that requires a level of co-operation and consistency across the UK. Many of the areas where co-operation was required related to the field of agriculture, including replacements for direct payments. It is disappointing and somewhat concerning that this has not materialised in this draft Bill.
8. CLA Cymru has long advocated the fact that in a post-brexite world there will need to be new formal working relationships between the four constituent parts of the UK. Devolution happened in the context of the policy and governance structure of the European Union and as we leave the EU, there is a pressing need to look at how we replace these structures and ways of working collaboratively. Agriculture is one of the policy areas most fundamentally impacted by brexit and is one of the most complex cross-border industries in the UK. The Common Agriculture Policy provided a structural framework, broad principles, budgetary agreements and guidelines of how agriculture would be supported throughout the EU. This needs to be replaced by a UK framework - formal structure of collaboration between Governments in the UK so that the interests of farmers on the ground are not
9. Just like CAP, such a structure would not exclude the ability for devolved administrations to look at different priorities – it would just provide a stable structure of high level principles and budget allocations (with tolerances) so that the internal market of the UK was not distorted and unnecessarily competitive.
10. While not directly within the remit of the Committee, the CLA considers it important to reflect on the position in Scotland and the approach taken by the Scottish Government in relation to the Bill. As it currently reads, there is no parallel to the provision for Wales to be applied in Scotland. While this is undoubtedly tied up with party politics, it does raise questions as to the balance of relationships across the UK if Scotland take a very different approach.
11. The CLA notes with interest the announcement by the Secretary of State for Defra for an independent review of funding to replace the mechanisms included in the Common Agriculture Policy. We welcome this review, but not its tight remit for interim funding arrangements only. There is an urgent need to establish long term funding mechanism to sit alongside the Agriculture Bill. Legislative Powers without funding is no power at all.

Trade

12. Agriculture is a commodities industry and fundamentally dependent on trade for its survival. CLA Cymru would suggest that the Agriculture Bill should acknowledge this fact and provide flexibility and broad provisions for the various trade scenarios. Until we know our future trading situation, we do not know if the powers within the Agriculture Bill are suitable to ensure a thriving industry in the future. In this respect, the Agriculture Bill seems 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.

Specific Bill content:

13. In terms of the content of the Bill, the CLA would like to make the following comments:

Part 1 – New financial assistance powers

14. In the recent consultation 'Brexit and our Land', Welsh Government proposed a new Land Management Programme consisting of an Economic Resilience scheme and a Public Goods scheme, an approach the CLA strongly supports. It is our belief that the powers included in Part 1 of the Schedule provide the necessary framework to take forward these proposed schemes. Importantly, we recognise that the Bill acknowledges that 'Payment for Public Good extends beyond environmental delivery to include landscape, access etc. This is seen as a positive and offers the broadest opportunity to create an alternative income stream for farmers and land managers in the post Brexit world.
15. Having said this, we would challenge the Committee to consider the definition in the context of the Well Being of Future Generations (Wales) Act and the test set out within it. Do the parameters of the definition of payment for public good in the Agriculture Bill accord with our established thinking in terms of ensuring decisions consider, social, economic, cultural and environmental considerations?
16. In addition, CLA Cymru believe that there is scope within the wording of the Bill to deliver funding improvements required to assist farming productivity which will replace the current Rural Development Programmes. These powers, although broadly worded, seem sufficient for creating a framework for implementing the Welsh Government's proposed economic resilience scheme.
17. CLA Cymru advocates an approach where the two schemes proposed in the 'Brexit and our Land' consultation dovetail together, and possibly overlap. There is no requirement for exclusivity of schemes on land. We do not consider a public goods scheme as 'taking land out of production'. Conversely, engaging in the economic resilience scheme to improve the viability of a dairy unit should not exclude businesses from seeking to deliver public goods. While this is a point of policy as opposed to legislation, there is nothing in the scheme to preclude this thinking. More needs to be done to view the schemes as a holistic support package for businesses as opposed to the 'either / or' conversations we currently see.
18. Other elements within this Part of the Schedule include measures linked into the administration of the scheme including the powers to introduce measures linked into inspections, penalties and eligibility. We consider that these are reasonable and proportionate.
19. Overall, this Part of the Schedule provides the necessary powers for Welsh Ministers to deliver its policy objectives and deliver for Wales' farmers and landmanagers.

Part 2 – Financial support after exiting the EU

20. Part 2 of the Schedule sets out the transitional arrangements for Wales, including powers to phase out Basic Payments and introduce delinked payments. As yet, as stakeholders, we have not had the detailed discussions as to how transition might work in Wales. The provisions in the Agriculture Bill reflect the discussion in England following the DEFRA 'Health and Harmony' consultation. We do not believe that we have had the detailed conversation for Wales and would be looking for the Agriculture Bill to provide the widest opportunity for Welsh Ministers to take decisions following consultation with the industry.
21. The real issue here is the need for Welsh Government to set out its plans for how it will reduce direct payments in their current form. It must be done so to provide certainty to farmers and land managers and the CLA will be pushing Welsh Government to do so. It is essential that further reductions must align with the introduction of the new public goods funding to avoid any cliff edges for businesses.
22. Having said that, there is an argument to be made the Welsh Government should look at the proposals for England as creating too many differences could create market distortion. The Bill and the explanatory notes sets out the proposals for capping in England and again, we would urge Welsh Government in its forthcoming consultations to be conscious of the need to ensure that they are aware of these proposals. This is going to be particularly important for cross boarder farms.
23. The Agriculture Bill proposes a seven year agricultural transition period starts in 2021, so it is effectively a nine year transition from now. This does not align with the timescale proposed in the recent Welsh Government 'Brexit and our Land' Consultation. This in itself has created uncertainty and confusion for land based businesses. The 9 years proposed in the Bill is longer than some would have liked, but does allow businesses time to adapt to what will be major changes.
24. One of the most radical provisions in the Bill are the proposals for delinking of Basic Payments during the transitional phase. This does include a degree of choice for those who might wish to stop farming, and in theory, create consequent opportunities for new entrants and those who wish to expand, however no details of the scheme are provided for England and yet again, this is not a conversation that has been considered in detail for Wales. The decoupling of payments from the need to farm is unlikely to have an impact on land values, but the impact on rents could be more significant. The CLA will be investigating the full range of possible impacts, both good and bad, and would be happy to feed these in at a later date. The possible option to receive a lump sum payments in lieu of annual payments has its attractions for people who wish to exit and for those wishing to invest in their business, but it will need to come with a number of conditions and safeguards.
25. This Part provides Welsh Ministers with the scope of powers to deliver its policy objectives. The key issue though, is that Welsh Government exercises those powers in a way that has the least impact on the viability of rural businesses. No business should be put in jeopardy in the long term because of the way in which short term transitional arrangements are handled.

Part 3 – Collection and sharing of data

26. This Part gives Welsh Ministers the power to collect data from a wide range of people within, or connected to, the agri-food supply chain, which includes farmers, processors and retailers, as well as those providing goods or services to farmers. The data may only be collected for a limited number of purposes as outlined in the legislation. There will be strict controls on the use and disclosure of the data provided to protect commercial interests.
27. So far as we are aware, Welsh Ministers have as yet to indicate how these powers will be exercised. Nevertheless, the timely provision of data and analysis will promote market transparency and allow for improved decision-making. Controls will need to be in place to ensure that the data requests are not a burden on farmers and landowners and that data is secure and used appropriately.

Part 4 – Intervention in agricultural markets

28. Part 4 enables Welsh Ministers to provide financial assistance or carry other interventions in the case of exceptional adverse market conditions that will potentially cause significant damage to producers. It does *not* cover exceptional events such as extreme weather or disease outbreak unless they result in markets being disrupted and damage to producers.
29. The actions could include making payments, loans and guarantees to affected farmers, or to operate the public intervention and private storage aid schemes. Any interventions should last no longer than three months, although there is provision to extend it for a further three months. Some of this is retained legislation from the EU but there are powers to temporarily change them if necessary to suit Welsh conditions. This again raises interesting and complicated questions relating to whether it is appropriate that these powers are exercised on a 'welsh basis' or should they be something subject to a UK framework insofar as any unilateral decision to invoke the provisions could distort the market?
30. As an aside, further clarity as to what funds might be available to back such an intervention is unclear?

Part 5 – Marketing standards and carcass classification.

31. Part 5 of the Schedule gives Welsh Ministers the power to amend, change or reverse the rules that govern marketing standards and introduce new standards and rules. This will cover carcass classifications in the meat sector and the composition of saleable milk in the dairy sector and others.
32. These standards are important requirements for developing domestic and export markets, protecting both farmers and consumers and for maintaining trust in Welsh production.

For further information please contact:

Rebecca Williams
Director – CLA Cymru

Briefing for Climate Change, Environment and Rural Affairs Committee on Welsh provisions in the Agriculture Bill

Confor: Promoting forestry and wood (www.confor.org.uk) is a not-for-profit membership organisation which represents 1500 sustainable forestry and wood-using businesses across the UK. Confor represents the whole forestry and wood supply chain and focuses on strategic issues vital to the success and sustainable future of the sector.

In Wales, Confor works with businesses, Assembly Members, government departments and relevant stakeholders to increase understanding of forestry and timber and to remove barriers to new woodland creation in Wales, resulting in larger, healthier, better-managed and more productive forests and woodlands for multiple benefits.

Confor recommends that the Assembly provide consent to the UK government to legislate in this area, to avoid possible disruption to woodland creation.

Confor's view: A Common Countryside Policy

Confor's position is that forestry and timber production should be part of an integrated land use scheme alongside farming and food production.¹

Landowners and land managers should be able to integrate forestry and farming activities to maximise economic, environmental and social benefits on their land, without encountering barriers created by divergent regulatory or support systems. Public support given to promote environmental, social or economic outcomes should be available to farming and forestry equally, insofar as they deliver those outcomes.

Context: *Brexit and our land*

Confor has welcomed the Welsh Government consultation paper *Brexit and our land*, which is forward-thinking in its proposals to integrate the agri-food and forestry-timber supply chains into a sustainable and productive land use strategy.²

Comments on the Agriculture Bill, Schedule 3

¹ <http://www.confor.org.uk/media/246687/common-countryside-policy.pdf>

² <http://www.confor.org.uk/media/247186/confor-response-to-brexit-and-our-land-consultation.pdf>

Part 1 supports Confor's call for an integrated approach, by enabling Welsh Ministers to provide funding for forestry and farming on equal terms.

Part 2 is of limited relevance to forestry, which does not receive Basic Payments. However:

- Confor welcomes the proposal to phase out Basic Payments, which have created a serious barrier to new woodland creation in Wales and a divergent culture between forestry and farming.
- It is important that funding for new woodland creation, delivered under Pillar 2 of CAP, continues to be provided during the transition period, if Welsh Government targets of 2,000-4,000 hectares of new woodland per year are to be delivered. It is vital that this funding is enhanced rather than interrupted during the transition, not only to meet carbon reduction targets, but to give farmers the opportunity to diversify their production into timber where appropriate.

Regarding the remainder of the Schedule, we have not yet received clarification from Defra whether forestry and timber is regarded as a part of the agri-food supply chain, or separate from it:

- Part 3: Collection and sharing of data
- Part 4: Intervention in agricultural markets
- Part 5: Marketing standards and carcass classification.

The wider question is whether, for the purposes of the bill, the forestry and timber supply chain is considered part of the agri-food supply chain, or a separate supply chain.

Part (3) (12) on p.36 defines 'agri-food supply chain' as 'food or drink for personal consumption'. However, some non-food produce is mentioned in these Parts ('fibres and leathers'), but others are not, including timber, energy crops and fodder crops.

It is not clear in these Parts whether 'plants' includes trees.

While some of the provisions in these Parts are not relevant to forestry and timber (or indeed to the whole of the agri-food supply chain), there are others which are, for example:

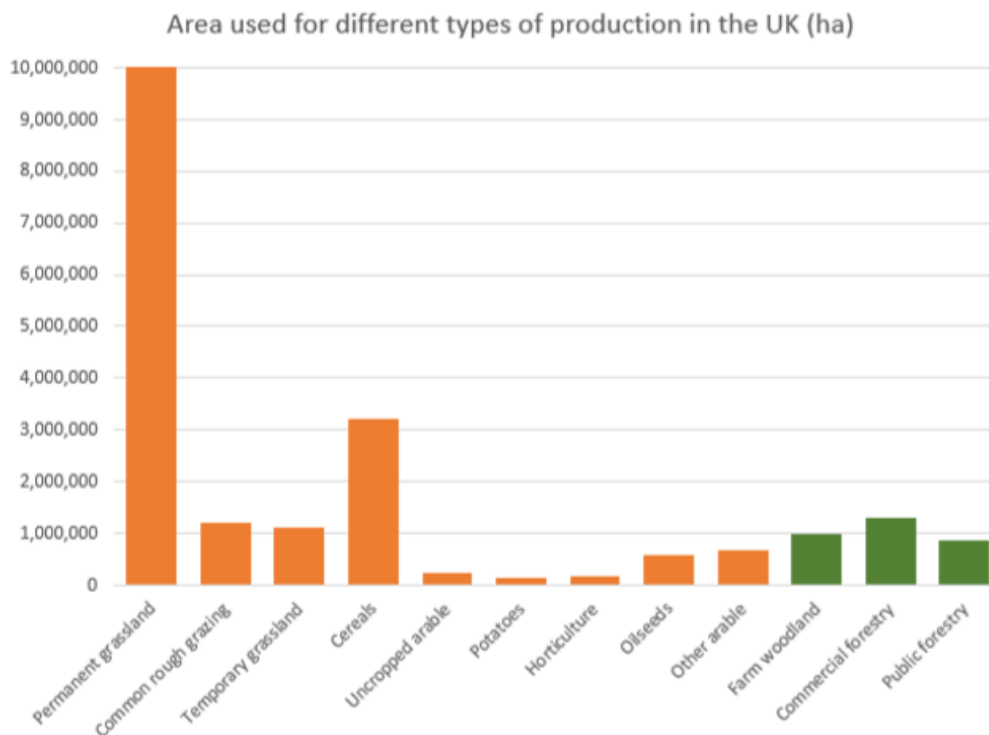
- It would be valuable to include comparable data on forestry and timber alongside farming and food to inform policymaking. Confor highlighted examples of this in our commentary on the Evidence

Compendium³ produced by Defra as part of the consultation on the Agriculture Bill. These figures are included below.

- It is not clear whether 'exceptional market conditions' includes incidents caused by circumstances such as disease or weather. It is important that forestry is considered for support on equal terms with other forms of production in the case of losses. For example, *P. Ramorum* has caused widespread and ongoing losses of larch, while the summer drought which has had a serious impact on new woodland creation this year.
- The inclusion of timber under Part 5, Marketing Standards, could be valuable for developing recognition of a high-quality Welsh timber supply chain, for example to encourage architect specification of 'home-grown homes'.

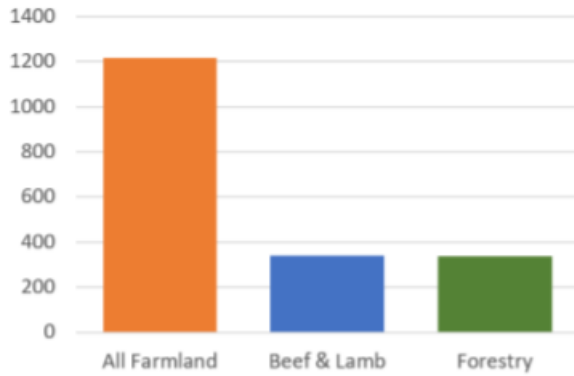
Eleanor Harris
 Confor Policy Researcher
 7 November 2018

Comparative statistics provided in response to the Defra Health and Harmony Evidence Compendium, May 2018

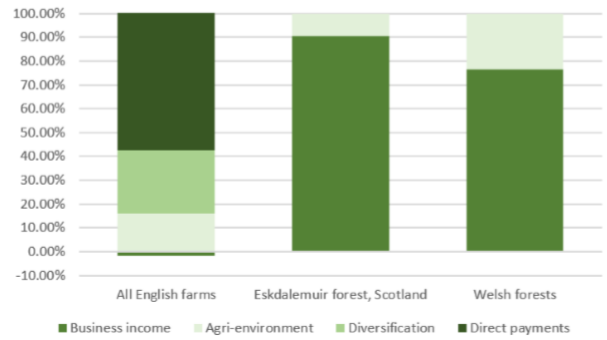


³ <http://www.confor.org.uk/media/246944/health-and-harmony-evidence-compendium-with-forestry-may-2018.pdf>

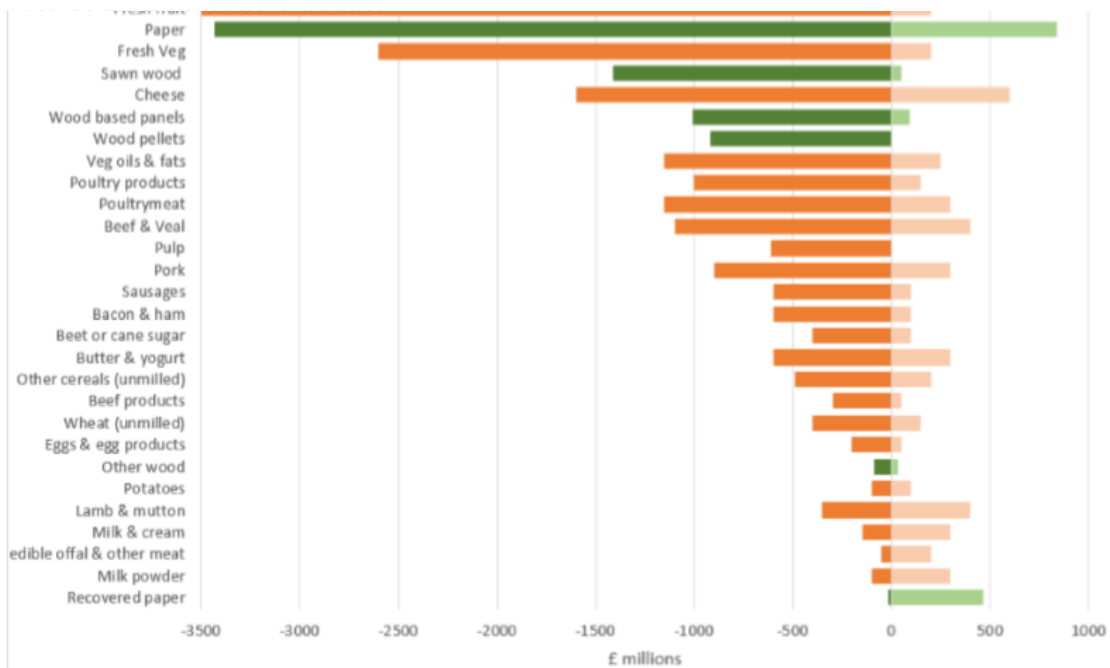
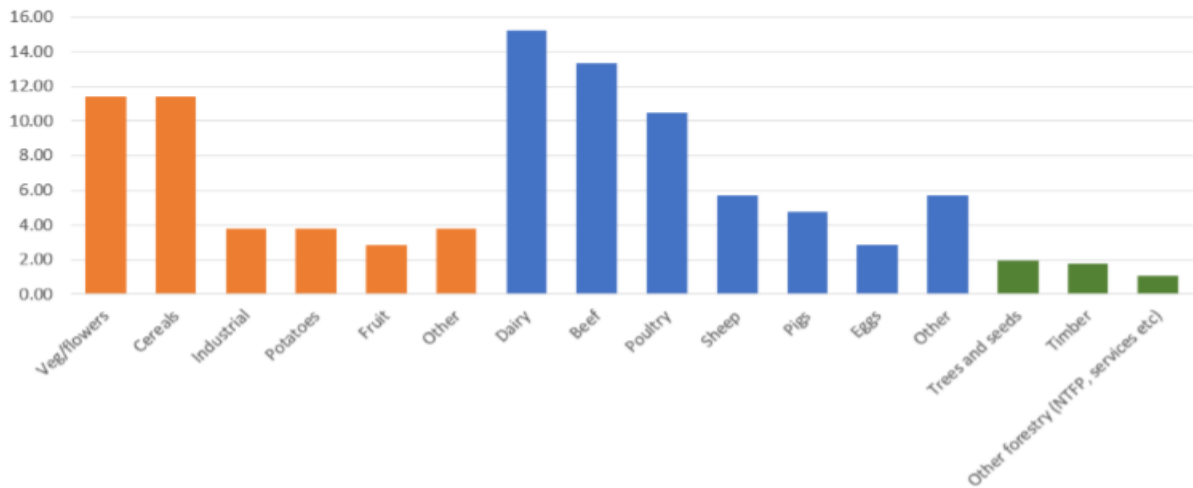
Output per hectare



Source of income for farms and forests



Outputs of products as % of total rural production



Agenda Item 4

Cynulliad Cenedlaethol Cymru | National Assembly for Wales
Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change,
Environment and Rural Affairs Committee
Ymateb gan : Rhwydwaith Ffermio er Lles Natur Cymru
Response from : Nature Friendly Farming Network Wales

*The Welsh Assembly's Climate Change, Environment and Rural Affairs Committee's
Consideration on the Welsh provisions within the UK Government's Agriculture Bill.*

Introduction

The [Nature Friendly Farming Network](#) (NFFN) is a farmer led, independent organisation established in November 2017. We are uniting farmers across the UK who are committed to managing their land for wildlife and the delivery of public goods, as well as growing and providing healthy, nutritious food.

A Wales NFFN steering group was established in June 2018. We welcome and very much support the general direction of both the Welsh Government's **Brexit and our Land consultation** and the UK Government's **Health and Harmony**: the future for food, farming and the environment in a Green Brexit consultation.

The farmers behind the Network believe that a post-Brexit land management policy in Wales should:

1. Help all Welsh farmers to produce safe, healthy food at the same time as helping our soils, landscapes, rivers and wildlife to recover and flourish.
2. Maintain and redirect farming payments towards mainstreaming nature friendly farming.
3. Recognise that the shift towards a more nature friendly approach is not just good for wildlife but is key to the long-term survival and success of Welsh farming and rural communities, delivering broader benefits to the public, including flood protection, water and air quality, and access to thriving natural landscapes.
4. Make sure future schemes are accessible to more farmers.

Rewarding farmers and land managers to deliver environmental goods that benefit all is not only what we believe is the best way forward but is also the right thing to do to ensure both sustainable farming and environment protection for the future.

Summary

Farmer members were surveyed with regard to both the Brexit and our Land and the Health and Harmony consultations. Results showed overwhelming support for a radical overhaul of agricultural policy.

- 87% of Welsh nature friendly farmers believe that now is the moment for radical change in agricultural policy that rewards the conservation of natural resources alongside sustainable food production.
- 100% of respondents want high environmental standards to be a key requirement of future trade deals - to combat the threat of cheap imports.
- Almost 75% believe that the governments in each of the UK countries should cooperate to put the environment at the centre of future farming policy, through a common framework.
- 83% of NFFN farmers say that it is crucial to maintain at least the current level of investment, refocused to deliver better value for money, to ensure a thriving sustainable agriculture sector in Wales.
- Almost all NFFN UK farmers surveyed (98%) called for a greater understanding of the critical role that farming plays in protecting the environment and delivering public goods.

Payments for Public Goods

The NFFN is committed to securing farming policies that support wildlife, sustainable agriculture and fairness for farmers. The NFFN agree that improved soil health, water quality, air quality, increased biodiversity and climate change mitigation are all incredibly important. It's positive that Schedule 3 of the Agriculture Bill enables Welsh Ministers to give financial assistance to the delivery of public goods (Clause 1[1]). We want the government to support all of these public goods going forward.

Profitable and Sustainable Businesses

The NFFN are committed to securing farming policies that support wildlife, sustainable agriculture and fairness for farmers. In a post CAP world where direct payments are being phased out, an effectively delivered economic resilience scheme and a public goods scheme can form the foundations of a future policy that works for farming, the people of Wales, nature and the environment. To do this, the two proposed schemes must be able to work together - they cannot be looked at in isolation.

We note that Schedule 3 includes significantly broader powers to provide financial assistance than the equivalent clause relating to England. So whereas Clause 1 Part 1 for England limits financial support to what we would regard as public goods (Clause 1[1]) and improving productivity (Clause 1[2]), the equivalent in Schedule 3 for Wales also includes two further sub-sections –

- (a) supporting businesses or communities in rural areas;
- (b) starting, or improving the productivity of, an agricultural, horticultural or forestry activity;
- (c) supporting persons who are involved in the production, processing, marketing or distribution of products deriving from an agricultural, horticultural or forestry activity.

These points are broad and open to interpretation and would effectively enable the Welsh Government, under a future policy, to give financial assistance which requires no or limited

environmental obligations and no clear links to the delivery of public goods, even after the transition set out in Clause 5 of the Welsh schedule. The NFFN believes that the goods identified in Clause 1(1) are the primary focus for payments, and should not be undermined by other payments (that have no clear sustainable objectives) in Clause 1. Future policy should focus on rewarding farmers to provide environmental benefits that are not normally paid for through the market. We believe that this is where the majority of taxpayer money should be focused.

Support for increasing productivity should be in line with the Environment (Wales) Act 2016 and the Well-being of Future Generations (Wales) Act 2015. Broader rural development powers should be specific and purposeful. These might include social inclusion, poverty reduction and sustainable development for example.

Funding

The NFFN are concerned that it's unclear what the budget will be for the new system. Work carried out recently has estimated that the total cost of meeting the identified environmental land management priorities in Wales are estimated at [£220 million](#). The current annual CAP budget in Wales (Pillar 1 and 2) is approximately £300million. In order to meet the ambitious objectives set out by the government and ensure a thriving sustainable agriculture industry in Wales it will be essential that as a minimum they maintain this level of investment but it should be carefully targeted to meet the desired objectives. 83% of NFFN farmers say that it is crucial to maintain at least the current level of investment, refocused to deliver better value for money, to ensure a thriving sustainable agriculture sector in Wales.

Devolution

The CAP currently provides a framework within which all four UK countries operate. This includes significant environmental aspects, including the requirement to have an agri-environment scheme, as well as a range of environmental objectives that the policy is expected to contribute towards. 79% of our NFFN farmer survey respondents believe that the governments in each of the UK countries should cooperate to put the environment at the centre of future farming policy, through a common framework.

Environmental Standards

The wrong trade policy could reduce environmental standards and the economic position of UK farmers. The NFFN is committed to ensuring that a new international trade regime does not expose us to the sort of low standards, cut price competition that will drive farmers towards more harmful ways of farming for both land and livestock. We need to ensure that agri-food products produced to lower standards are not imported into the UK, undermining the efficiency, productivity and profitability of the agricultural sector. 100% of survey respondents agreed that maintaining high environmental standards, at home and for imports, should be a key requirement of future trade.

Transitional Period

Government should provide a clear and defined transitional period to enable farm businesses to adapt to new schemes. There should be recognition of the financial implications of new policy on farm structure and the diversity of types of farm across the country. Transitional arrangements and future

payments should aim to preserve this diversity and be aware of the social and economic impact of a rapid loss of income to farm businesses.

Schedule 3, Clause 5 (1) notes that *the agricultural transition period in Wales is the period of seven years starting at 2021*. However, clause 5(2) states that *The Welsh Ministers may by regulations amend sub-paragraph (1) for the purpose of extending the period specified in that sub-paragraph*. Under these terms there is no clear end date to the transitional period, meaning that we could end up with a never-ending transitional period that could continue indefinitely.

Ideally, we would like to see the transition to new schemes by 2025, however we see a case for aligning with DEFRA's proposal to complete transition by 2027. A key consideration however, is that we don't delay transition so long that it's too late to reverse wildlife declines and address environmental issues in time to meet legal obligations.

Delinked payments

De-linking of direct payments from land is an option that could be explored. This could facilitate a rapid restructuring in the industry, effectively funding a ready-made exit fund for those that wanted to get out, or provide an investment fund for those who wanted to invest in their business to get it 'Brexit ready'. De-linking could also free up the resources associated with most Pillar 1 administration, making resources available to invest in the implementation of a new policy. With this support for new entrants, it could achieve renewal within the industry. In this instance, we believe there should be a cap on the money received by the largest landowners to avoid a large bulk of resources being received by a small minority.

De-linking direct payments from land means that all conditionality associated with land, including cross-compliance and greening, would need to be removed. This would apply to those who chose to leave the land, as well as those who didn't. Environmental standards and alternative enforcement mechanism must be put in place prior to adopting this approach.

Conclusion

We believe that nature friendly farming is not only better for nature, but is also the most productive and sustainable way of getting food from our land. Many farmers are already playing an incredible role in helping wildlife flourish on their farms we believe that they should be better supported and rewarded for their good work.

It is critical that both the UK and Welsh Governments listens to farmers who are calling for a radical change in food and farming policy. Government must work hard to win our trust by resisting the urge to "race to the bottom", but support farmers with delivering a better farming future. We cannot miss this significant opportunity to transform Welsh agriculture in order to help farms evolve and thrive, whilst restoring and protecting our natural heritage.

Mike Hedges

Committee Chair – Climate Change, Environment and
Rural Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

6 November 2018

Natural Resources Wales

Dear Mike,

As you know, the Public Accounts Committee has been scrutinising Natural Resources Wales (NRW) on its Annual Report and Accounts 2015–16 and we anticipate publishing a report on the 12 November 2018. The Committee undertook this scrutiny following the qualification of the Auditor General for Wales (AGW) regularity opinion on NRW's financial statements in respect of its award of timber sales contracts to a sawmill operator in May 2014. This was the third consecutive year in which the financial statements have had to be qualified for this reason.

The focus of the Committee's report is the awarding of the timber sales contracts, but the Committee also took the opportunity to consider wider issues arising from NRW's Annual Report and Accounts for 2017 – 18. I am aware that the Climate Change, Environment and Rural Affairs Committee undertakes an annual scrutiny of NRW during the autumn term and I wanted to share with you some of the wider issues arising from our consideration of the Accounts and Annual Report, which are listed below.

- **Securing Value for Money**

We explored how NRW measure the effectiveness of the funding of NRW and ensure overall value for money. We asked whether it was satisfactory that the opinion of the Internal Audit Manager that NRW has 'moderate assurance'



regarding the adequacy and effectiveness of its internal control environment. NRW have increased their focus on internal governance to protect their resources and ensure value for money for the Welsh taxpayer.

- Payment to the former Chief Executive

A payment was made to the former Chief Executive of NRW under a settlement agreement, the details of which remain confidential. The Committee has concerns about the lack of transparency around the nature of the payment.

- Staffing/Organisation Design/Transformation

NRW are currently consulting with their staff on a new structure that will be the point at which integration between the three legacy bodies is achieved. This will be a whole organisation restructure with the aim being to be operating the new model from 1 April 2019. NRW estimate that these changes will realise over £171 million in terms of benefits.

- Sickness Absence

The Committee noted that NRW's reported sickness absence has been higher in the last two years than in 2015 – 16. One of the major increased areas is around mental health, which NRW are taking seriously in terms of providing support to its staff. They have introduced a system of mental health first aiders and are working towards the Welsh Government's corporate health standard.

- Potential liabilities

The Annual Report and Accounts 2017 – 18 sets out information about NRW's potential liabilities. The report notes:

'Formal proceedings has been served for a civil claim by a third party of the use of stones by Natural Resources Wales and one of its predecessor bodies'.

NRW quantified its related potential liability, at 31 March 2018, to be £225,000.

Page 96 of the Annual Report also states:

'Two Judicial Reviews have been brought against NRW during the year'.

The report also sets out further information about the Judicial Reviews: in respect of a suspension notice served by NRW; and regarding a statutory notice issued by NRW in respect of the repatriation of waste.



The CCERA Committee may wish to seek an update in respect of the two Judicial Reviews and the likely costs of defending them and any potential liability that may rest with NRW as a result of the decisions.

I hope these issues will be of interest and assistance to you during your scrutiny.

Yours sincerely,

A handwritten signature in black ink that reads "Nick Ramsay". The signature is written in a cursive style with a long horizontal flourish at the end.

Nick Ramsay AM
Chair



Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Agenda Item 5.2



Llywodraeth Cymru
Welsh Government

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

5

November 2018

Dear Mike,

Thank you for your letter of 24th October 2018 inviting me to appear before Committee regarding the UK Government's Agriculture Bill.

I understand that the Committee session on 6th December will now take place in Cardiff, based on this I can now confirm my attendance.

Regards
Lesley

Lesley Griffiths AC/AM

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

Pack Page 85

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.