

Agenda – Climate Change, Environment and Rural Affairs Committee

Meeting Venue:

For further information contact:

Video Conference via Zoom

Marc Wyn Jones

Meeting date: 26 November 2020

Committee Clerk

Meeting time: 13.30

0300 200 6565

SeneddCCERA@senedd.wales

Private pre-meeting (13.30–13.45)

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.senedd.tv.

Public meeting (13.45–16.40)

1 Introductions, apologies, substitutions and declarations of interest

(13.45)

2 Covid-19 and European Union transition arrangements: Evidence Session 1 – Fisheries sector

(13.45–14.30)

(Pages 1 – 25)

Jim Evans, Chair – Welsh Fisherman's Association

Attached Documents:

Research brief

Paper – Welsh Fisherman's Association



Break (14.30–14.35)

3 Covid–19 and European Union transition arrangements: evidence session 2 – Agriculture sector

(14.35–15.35)

(Pages 26 – 46)

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

Huw Thomas, Political Adviser – National Farmers' Union (NFU) Cymru

Attached Documents:

Paper – Farmers' Union Wales

Paper – National Farmers' Union (NFU) Cymru

Break (15.35–15.40)

4 Covid–19 and European Union transition arrangements: evidence session 3 – Environmental sector

(15.40–16.40)

(Pages 47 – 54)

Jemma Bere, Policy and Research Manager – Keep Wales Tidy

Michele Hunt, Head of Funding Development – Royal Society for the Protection of Birds (RSPB) Cymru

Anne Meikle, Head – World Wide Fund for Nature (WWF) Cymru

Attached Documents:

Paper – Wales Environment Link

5 Paper(s) to note

(16.40)

5.1 Correspondence from the Minister for Environment, Energy and Rural Affairs in relation to the UK Fisheries Bill

(Pages 55 – 57)

Attached Documents:

Letter

5.2 Response from the Minister for Housing and Local Government to the letter from the Chair in relation to the Hazardous Substances Draft Framework

(Pages 58 – 64)

Attached Documents:

Letter

5.3 Correspondence from the Chair of the Culture, Welsh Language and Communications Committee to the Minister for Housing and Local Government in relation to the National Development Framework for Wales

(Pages 65 – 70)

Attached Documents:

Letter

5.4 Correspondence from the Llywydd to the Chair in relation to environmental governance

(Pages 71 – 73)

Attached Documents:

Letter

5.5 Correspondence from the Chair, Legislation, Justice and Constitution Committee in relation to The Agricultural Products, Food and Drink (Amendment Etc.) (EU Exit) Regulations 2020

(Pages 74 – 76)

Attached Documents:

Letter

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

(16.40)

Private meeting (16.40–17.00)

**7 Covid-19 and European Union transition arrangements –
consideration of evidence received under items 2,3 and 4**

**8 Consideration of the Committee's draft report into the Welsh
Government's response to the February 2020 flooding in Wales**

(Pages 77 – 87)

Attached Documents:

Draft report

Document is Restricted

Senedd Cymru
Y Pwyllgor Newid Hinsawdd, Amgylchedd a
Materion Gwledig
Effaith argyfwng Covid-19 a threfniadau pontio'r
UE
CCERA(5) CP&EU 03
Ymateb gan Cymdeithas Pysgotwyr Cymru

Welsh Parliament
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Impact of the Covid-19 pandemic and EU
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CCERA(5) CP&EU 03
Evidence from Welsh Fisherman's Association



Welsh Fisherman's Association Ltd
Cymdeithas Pysgotwyr Cymru Cyf

Covid-19 & ERU Transition

The Welsh Fisherman's Association-Cymdeithas Pysgotwyr Cymru Cyf (WFA-CPC) thank the Climate Change, Environment & Rural Affairs Committee (CCERA) for their interest and kind invitation to provide evidence with respect to the ongoing impacts of the Covid-19 pandemic on fishing and seafood businesses, together with Wales' preparedness for the end of Transition.

i) **The ongoing problems faced by the sector as a result of the pandemic and the effect of the WG's response to it:**

Further to our evidence submission last September, sadly the predicted winter hardships are likely to be accelerated due to international, national and localised Covid-19 restrictions. We have already been made aware of orders placed for half term being cancelled due to media reports of potential restrictions and the introduction of a 'firebreak' in Wales. We were informed that some buyers of seafood products were unable to settle accounts due to the inevitable financial downturn in the hospitality sector, which given the further implications to hospitality and other food services resulting from an English lock-down until the 2nd December increases concerns of potential bad debt particularly as some businesses may not be in a position to withstand or indeed continue beyond a second or possibly a third tranche of nationwide restrictions

The stark reality is, without an ongoing assessment of impacts across the seafood supply chain and interventions where necessary we fear that businesses integral to a flourishing coastal economy, tourism, food services and hospitality, aquaculture, processing, retail ancillary services and supplies will be lost and difficult if not impossible to replace in the short to medium term resulting in further social / societal challenges for already fragile coastal communities as noted in our previous evidence submission. The Fisheries Consequentials received by the Welsh Government to date may provide the critical financial resource to ensure the livelihoods of fishing, aquaculture and seafood businesses survive the exceptionally difficult and uncertain times ahead:

ii) **Preparations in Wales for Leaving the EU the implications this has on your sector and any concerns you may have:**

The WFA-CPC is a third sector, not for profit, organisation, we are not a marketing body or active within the seafood market place, however, our members and the wider Welsh fishing industry are almost entirely reliant on exports 90% of landings in Wales are shellfish of which 90% is exported to the Asian and EU markets

In terms of the preparedness of the Welsh fishing fleet to meet the exporting requirements for live, fresh chilled and frozen Seafoods at the end of transition, I can only comment from the perspective of the catching sector, that said, notwithstanding any additional pressures or concerns relating to potential Covid-19 impacts/implications, as far as I am aware, at the time of writing, the only preparation that individual fishing businesses need is to ensure that their vessel is registered as a 'food business' with their respective local authority environmental health office as the Registration Number will be required for the issuing authority to provide an Export Health Certificate.

To the best of my knowledge the majority, if not all, of the Welsh fishing fleet are not required to make any other preparations unless they land fish or shellfish directly into an EU port or they export directly to EU markets or a receiving agent.

To this end, the majority of preparation and guidance should, in our view, be actively targeted at the relatively small number of Welsh seafood exporting businesses to ensure readiness for the conditions that would be applied in the event of no Free Trade Agreement (FTA) between the UK and EU. By doing so and preparing exporters for the worst case scenario Welsh Government would ensure that all other possible outcomes are met. Unlike the no-deal preparations undertaken in 2019, the WFA-CPC have not been involved in, or sighted on, any Welsh Government work streams to prepare exporters of Welsh seafood products for the end of transition. For this reason we remain concerned there may be an assumption that information links to 'end of transition' preparedness for businesses are an adequate means by which to inform exporters/businesses as to how they should prepare. In our opinion, direct engagement is necessary to ensure that all exporters of live shellfish are fully conversant with potential no FTA requirements before consignments are dispatched at the risk and cost of compliance technicalities and/or rejection.

I hope that our concerns are unfounded and that such work is already underway however, given the critical nature of exporters within the seafood supply chain for primary producers we must continue to clearly flag this issue as a key concern until confirmed otherwise.

For all the reasons eluded to, communications at this time of the Covid emergency and the end of transition are critical to ensure clear, concise guidance and advice are provided to stakeholders, to date the majority of this type of information has been provided by; Seafish UK, Defra, MMO, HMRC, FSA and Gov.UK.

To a certain extent we understand that it would be wasteful to replicate guidance, however, information links, contact details for lead officials and the Welsh language provisions should also be available to those in need of assistance in Wales. At present there is no EU exit advice listed on the Gov.Wales Marine & Fisheries Website and no obvious clear route to direct advice or guidance for seafood exporters via the EU Transition Portal. Communications are clearly an area where the Marine & Fisheries Division has to improve if we are to ensure that the seafood supply chain and particularly exporters are fully prepared to meet the trading requirements at the end of transition

It is also true that whether the UK exits transition with or without an agreement the costs of getting seafood products to EU markets will increase. EHC's Inspections, delays and

unoptimised routes to customers in the EU due to the necessity for fish and shellfish to pass through Border Control Posts increasing the risks of exporting highly perishable consignments of live shellfish.

There is also a significant body of work required to build on the written statement by Lesley Griffiths MS, Minister for EE&RA dated 15th September 2020 *'A response to the Brexit and our Seas Consultation and the next steps towards a Future Fisheries Policy in Wales'* and the commitment to delivering increased fishing opportunities for Welsh fishermen, maximising the social and economic benefits to coastal communities.

The WFA-CPC looks forward to working with the Minister and Marine & Fisheries Officials to develop a Future Fisheries Policy that delivers social, environmental and economic sustainability for current and future generations.

Covid-19 and Post Transition:

As we remain within the grip of the Covid pandemic we must also consider and prepare for the possible implications of Covid restrictions and the added level of pressures and uncertainties that could be applied to the processes, checks and inspections at each point of dispatch and border control posts.

Whilst the UK may be able to assess and manage such risks there are significant concerns regarding the potential for Covid measures and the availability of skilled staff to ensure trade routes remain fluid and compliant whilst maintaining the appropriate public health guidance and regulation

**WFA-CPC
November 2020**

Agenda Item 3

Senedd Cymru
Y Pwyllgor Newid Hinsawdd, Amgylchedd a
Materion Gwledig
Effaith argyfwng Covid-19 a threfniadau pontio'r
UE
CCERA(5) CP&EU 04
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CCERA(5) CP&EU 04
Evidence from Farmers' Union Wales (FUW)

About the Farmers' Union of Wales

1. The Farmers' Union of Wales (FUW) was established in 1955 to exclusively represent the interests of farmers in Wales, and since 1978 has been formally recognised by the UK Government, and subsequently by the Welsh Government, as independently representing those interests.
2. The FUW's Vision is *thriving, sustainable, family farms in Wales*, while the Mission of the Union is *To advance and protect Wales' family farms, both nationally and individually, in order to fulfil the Union's vision.*
3. In addition to its Head Office, which has thirty full-time members of staff, the FUW Group has around 80 members of staff based in twelve regional offices around Wales providing a broad range of services for members.
4. The FUW is a democratic organisation, with policies being formulated following consultation with its twelve County Executive Committees and eleven Standing Committees.

The impact of the Covid-19 pandemic on the agricultural sector in Wales

5. The measures put in place in EU Member States and the UK's four nations from February 2020 onwards to prevent the transmission of coronavirus led to drastic changes and disruption to food supply chains.
6. In particular, the effective rapid closure of the food service sector, both in the UK and key export markets (primarily in the EU), caused a seismic shift in how supply chains function, with the majority of service sector outlets (pubs, restaurants etc.) being lost overnight and consumer buying patterns altering rapidly in an unprecedented manner.
7. Such changes coincided with a time when seasonal agricultural production was increasing rapidly as days lengthened and temperatures rose, meaning additional severe disruption to supply and demand dynamics and leading to large quantities of Welsh farm produce being either dumped (milk), put into storage or remaining on farm.
8. With similar impacts in play across the European Union, the European Commission announced an array of emergency measures, the majority of which were effective in

the UK under the terms of the Withdrawal Agreement.

9. These included the launch on 2nd April 2020 of the Coronavirus Response Investment Initiative Plus (CRII+) which introducing exceptional flexibility and simplification in the use of the European structural investment funds (ESIF) and European agricultural fund for rural development (EAFRD) funds and a one month extension of the deadline for CAP payment applications. Whilst Welsh Government agreed to a one month extension for CAP payment applications they have not taken advantage of the flexibility available under the ESIF and EAFRD to provide financial support to help Welsh farming businesses cope with the exceptional conditions caused as a result of COVID 19.
10. On the 22nd April 2020, in recognition of the fall in prices and oversupply of produce, the EU took further action by opening emergency Private Storage Aid for certain dairy and red meat products.
11. The effective closure of some export markets, including important markets for by-products such as skins and wool, also had a significant impact.
12. Both the UK and Welsh Government announced a range of financial support measures to support businesses cope with the impact of Coronavirus. Whilst farming businesses have been able to access the business interruption loan scheme, they have not been able to access grant funding of up to £10,000 made available through the Welsh Government Economic Resilience Fund.

Dairy

13. By June 2020, the collapse in markets caused by the coronavirus pandemic had resulted in a fall in average UK farmgate prices of 1.9 pence per litre compared with the average price for the 2019-20 financial year – equating to a 6% fall in the average farmgate price.
14. More detailed analysis by AHDB has led them to estimate that almost half of dairy businesses in Wales have been “highly” impacted as a result of the pandemic, with the average financial loss per affected Welsh dairy farm higher than in either Scotland or England, at £6,100 for the months of April and May.
15. By comparison, the average cost per English dairy farm was almost a third lower than that of Wales, at £4,100.
16. Validated applications for the Welsh Government’s Dairy Support Scheme show that around 11% of all Welsh dairy farmers suffered losses in April and May 2020 equating to reductions in income of more than 25%, with losses in some cases exceeding £100,000 as a result of the overnight closure of the service sector.

17. Whilst around 50% of dairy businesses in Wales have been “highly” impacted by the impact of the pandemic only around 10% of dairy farming businesses in Wales were eligible for Welsh Government’s Dairy Support scheme.
18. Farmgate milk prices have on average recovered and are currently close to the five year average.
19. However, the reintroduction of ‘lockdown’ restrictions in England (which represents the most significant market for Welsh producers) again raises major concerns for those who are reliant on the service sector, with commentators already highlighting cancelled or reduced orders, potential delays in receiving payments for deliveries already made, and increased demand from retail and wholesale businesses.

Beef

20. It is estimated that, overall, around 20% of beef (by volume) sold in the UK is sold in the service sector (restaurants, pubs etc.)¹, while further analysis by Hybu Cig Cymru estimates the Welsh Lamb/Beef split between retail and food service at 47% to 53%².
21. While the lockdown necessitated a switch by consumers to buying beef products in shops - primarily supermarkets – a combination of consumer and supermarket perceptions led to a large increase in mince sales, to the extent that large volumes of higher value cuts of beef were significantly devalued by being turned into mince.
22. Such impacts led to a rapid fall in cattle deadweight prices, such that by 25th April they were around 25p/kg below what they had been at the same time in 2019, and around 40p/kg below what they had been at the same time in 2018.
23. Concerted efforts by the GB levy boards, farming unions, supermarkets and others, and significant investments to promote beef and in particular higher quality cuts have since had a positive impact on prices, with deadweight prices around 20p/kg above the five year average in October.

Lamb

24. As already highlighted, HCC estimates the Welsh Lamb/Beef split between retail and food service at 47% to 53%, meaning that, as was the case with beef, the closure of service sector outlets has had a major impact on the lamb sector.
25. Notwithstanding this, it must be noted that monthly slaughterhouse throughputs of lamb would generally be at a minimum in the late winter/early spring and at a peak in the late summer and autumn (see below graphs) – with slaughterhouse throughputs normally rising from the spring onwards to peaks in the autumn of between 50% and 80% of minimum (winter/spring) levels.

¹ AHDB Consumer Insights (November 2019)

² HCC Briefing paper - Impact of COVID-19. Red meat in the foodservice sector: when can we expect normality? (July 2020)

26. As such, the beginning of the pandemic and lockdown occurred at a time when sheep slaughterhouses throughputs were at minimum levels.
27. However, the Easter (12th April 2020) and Ramadan (23rd April 2020) religious festivals are normally particularly important for the lamb sector, and the inability of families to gather together at these times saw sales of roasting legs down by up to 81% in weeks running up to the festivals.
28. During the two weeks up until 21st April, lamb sales were down by 27% in volume and 20% in value, while sales of leg roasting joints were down by 37% in volume while sales of shoulders were down 15%.
29. Similar trends continued, with prime lamb slaughterings down by 23.6% in May 2020 compared with May 2019.
30. Given such reduced throughputs and the ongoing absences of important markets, not least the service sector, significant work has been undertaken by Hybu Cig Cymru and others in order to shore up the lamb market including investments and promotions similar to those described above in relation to beef.
31. These have had a significant positive impact on a market which had seen a major fall in prices early in the lockdown, with average prime lamb prices around 40p/kg above the five year average at the end of October.

Wool

32. Whilst wool is now, for the vast majority of Welsh sheep farmers at least, effectively a by-product of the industry, it nevertheless provides an important source of revenue for farms, not least given that sheep must be shorn annually, irrespective of what market exists for their wool, in order to ensure their welfare and minimise the risk of acute health problems such as fly strike.
33. The busiest selling period for Welsh wool is between February and May each year, and the effective closure of the international market from February onwards – including China, where a large proportion of Welsh wool is exported to - has had a particularly acute impact on wool prices.
34. The closure of normal wool markets as a result of the pandemic left British Wool (formerly the British Wool Marketing Board) with around one third of their wool stock unsold, leading to a severe cut in advance and balance payments for farmers.
35. As such, average payments for the 2019/20 season stand at 17p/kg - some 70% less than the payment received last year when the loss of the advance is taken into account.
36. This is in addition to the fact that the full payment for 2020 wool will be delayed until the 2021 season.

Non market issues

37. Aside from the physical, psychological and social impacts which are affecting the farming community just as they are most sections of society (which the Committee is well aware of) the agricultural industry continues to face a number of specific non-market related challenges as a result of the current pandemic.
38. These include specific challenges relating to accessing veterinary services, including in relation to meeting statutory obligations such as bovine TB testing while observing social distancing etc.; meeting statutory requirements as regards, for example, accommodating farm and livestock inspections; providing information and documents to Welsh Government and responding to Welsh Government queries and marketing produce.
39. In order to help mitigate such challenges FUW staff continue to followed a number of protocols to ensure members are assisted whilst ensuring their health and welfare is protected and human contact avoided, whilst veterinary practices³, livestock markets and the Welsh Government⁴ continue to implement a number of welcome protocols and changes to ensure businesses can continue to operate while risks are minimised.
40. Examples include changes to TB testing rules⁵, the strict implementation of rules in livestock markets preventing vendors from attending ringside sales⁶, the extension of the submission deadlines for a range of documents and the acceptance of electronic copies of documents by Rural Payments Wales which would normally have to be provided as hard copies.
41. Notwithstanding this, the restrictions placed on civil servants and resultant reduced capacity continues to cause a number of problems for farm businesses for which receiving responses to urgent queries, licences that have been applied for or site visits are time critical.
42. The FUW has arranged frequent online meetings for members in order to ensure such concerns can be raised and followed up on, and to keep the industry abreast of important developments as regards the pandemic and other issues.
43. A major obstacle for many farmers wishing to take advantage of concessions, keep up to date with developments and information of direct relevance to their businesses and communicate with others under the circumstances has been the poor provision of broadband in large areas of Wales.
44. We would also take this opportunity to highlight to the Committee the problems caused by significant increases in the numbers accessing the countryside during periods of the lockdown, especially in certain areas.

³ <https://www.bva.co.uk/coronavirus>

⁴ <https://gov.wales/rural-payments-wales-rpw-coronavirus-covid-19>

⁵ <https://tbhub.co.uk/statutory-tb-testing-of-cattle-in-gb-during-the-covid-19-pandemic/>

⁶ <https://www.laa.co.uk/news/3989/coronavirus-covid-19-guidance-to-members-and-farmers/>

45. As has been well publicised at the time, during the weekend of the 21st and 22nd March, tens of thousands of visitors from within and outside Wales descended on popular destinations such as Pen-y-Fan and Snowdon with little regard for social distancing and the risk of passing the coronavirus on to other visitors or local populations.
46. For example, the Snowdonia National Park Authority stated that the area had been overwhelmed with visitors and that the significant crowding on mountain summits and trails made it impossible for effective social distancing to be maintained - scenes which were over the summer repeated and again well publicised.
47. The Welsh Government made the welcome move of introducing the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, which placed a duty on Local Authorities, National Park Authorities, National Resources Wales and the National Trust to close certain rights of way or access land considered likely to attract large numbers of people and hence prevent effective social distancing.
48. Since March 2020, the combination of the coronavirus lockdown, sunny weather and restrictions on travelling to foreign destinations resulted in unprecedented numbers using public rights of way and accessing CRoW land, bringing to light a number of issues that are of direct relevance to Welsh Government plans which would increase rights of access and use.
49. Amongst these was the fact that increased use of access on footpaths and bridleways with gates on them led to an increase in gates being left open and livestock escaping onto neighbouring land, including onto highways and into urban areas
50. It is also notable that certain rights of way saw a many-fold increase in use leading to a range of problems, while others saw little change, thereby highlighting the degree to which existing rights of way are often underused even when close to urban areas, and the need to focus on encouraging use of existing access rather than increasing rights of access.
51. Also of relevance was the increase in litter on rights of way, antisocial or confrontational behaviour, livestock attacks by dogs and orphaned/dead lambs caused by general disturbance by walkers or cyclists - all issues which highlight the need to better educate people and ensure considerate and appropriate behaviour, and carefully consider the impacts and true costs of even minor changes to rights of use and access, as proposed by Welsh Government.
52. We would also take this opportunity to reiterate the points raised in the FUW's recent submission to the Committee on Biodiversity and Rewilding in relation to the impact of lockdown measures on biodiversity.

53. The *Wildlife in Lockdown*⁷ report, which considered the impact of an absence of visitors, due to the closure of certain rights of way under the aforementioned Order, on wildlife on Snowdon, Cader Idris and the Carneddau, and in Cwm Idwal, Coed y Brenin, Ceunant Llennyrch and Niwbwrch/Llanddwyn, found that that wildlife flourished in those areas due to fewer disturbances and less litter, with birds such as meadow pipit and wheatear in far greater abundance around paths and common sandpiper and ring ouzel nesting close to what are usually busy areas they choose to avoid.
54. The study also suggests that less litter and picnic leftovers led to fewer predator species such as herring gulls and foxes being attracted to potential nesting areas, giving breeding birds an additional helping hand during their most important time of year.

Preparedness in Wales for the end of the EU transition period

55. The Farmers' Union of Wales has been engaged in Welsh Government planning for post-Brexit scenarios since shortly after the EU Referendum held on 23rd June 2016, and in particular ahead of what were possible Brexit dates of 29 March 2019, 22 May 2019, 31 October 2019 and 31st January 2020.
56. Given that these marked potential dates for the UK's departure from the EU without a trade deal with the EU, the focus of various Welsh Government stakeholder groups and meetings was:
 - a. The assessment of immediate and longer term impacts of such a worst case scenario for different agricultural sectors, based on expert knowledge and analyses produced by bodies such as the Agricultural and Horticultural Levy Board (AHDB) and Hybu Cig Cymru (HCC)⁸, and the Agri-Food and Biosciences Institute (AFBI)⁹ and
 - b. Planning for how the acute immediate impacts of such a worst case scenario might be reduced
57. It must be noted that the UK Government's preparations for such a no-deal scenario fell well short of what was needed to minimise adverse impacts, as highlighted, for example, by the National Audit Office, who concluded in September 2018 that Defra not yet understood the scale of work it would have to complete ahead of Brexit and had failed to complete a large number of tasks necessary to prepare for Brexit¹⁰.

⁷ <https://www.benporterwildlife.co.uk/Wildlife-in-lockdown>

⁸

<https://ahdb.org.uk/knowledge-library/exploring-the-implications-of-brexit-for-agriculture-and-horticulture-in-wales-28-june-2018>

⁹ <https://www.afbini.gov.uk/news/afbi-releases-report-post-brexit-trade-agreements-uk-agriculture>

¹⁰

<https://www.nao.org.uk/report/department-for-environment-food-and-rural-affairs-progress-in-implementing-eu-exit/>

58. As such, the scope for thorough preparation by either Welsh Government or businesses was severely limited.
59. Such analyses and planning through Welsh Government stakeholder groups has effectively continued in relation to the far more certain 'full' departure date of 31st December 2020, while emerging information regarding trade negotiations has further allowed different scenarios to be analysed. However, UK Government preparations in particular continue to leave much to be desired.
60. From an agricultural perspective, amongst the most important work undertaken in this area is that of the Welsh Government's Environment and Agriculture Roundtable Evidence and Scenarios sub group, which has continued to collate data and evidence in order to assess the possible impacts of different combinations of trade deals on issues such as agricultural prices and land use.
61. Notwithstanding this, the FUW has consistently expressed concern at the minimal amount of investment and work commissioned by the Welsh Government to look at economic impacts of different scenarios, such as on rural employment, compared with the substantial investment in modelling work focussing on possible environmental and land use changes.
62. While the FUW fully supports the latter, it maintains that economic and social impacts for Welsh families should have attracted equal attention and investment in terms of modelling different scenarios, and that such work should be carried out posthaste and attract significant investment.
63. Whilst the work carried out by the Evidence and Scenarios sub group has been essential in identifying potential impacts that, once published, should help inform businesses and others of likely effects, other Welsh Government stakeholder groups have focussed on other aspects of the post-withdrawal period, most notably the practical preparations needed to minimise adverse impacts of different UK-EU Trading Scenarios. Such groups include the Welsh Government's EU Transition Agri-food Supply Chain Stakeholder Group, the Farmed Animal Health and Welfare Agricultural Resilience Group and the Sheep stakeholder focus group.
64. The work of such groups continues to be severely hampered by uncertainty regarding post-withdrawal trading arrangements with the EU, and a lack of progress in terms of preparation, primarily by the UK Government, for different scenarios.
65. For example:
 - a. The Veterinary Public Health Association (VPHA) and British Veterinary Association (BVA)'s document *Export Certification and the challenges facing the meat and livestock sector post-transition* concludes that
 - i. If the EU discontinues recognition of the UK's health status, sub clauses may apply for meat exports requiring a 40 day standstill on the last holding before slaughter, a negative TB test within 3 months of

slaughter, systematic trichinella testing of pigs and the segregation of EU and non-EU destined products.

- ii. Existing Harmonised European Health Certificate (EHC) conditions will impose a severe limitation on and in some cases prohibit the export of certain categories of products such as fresh mince and meat preparations, 5th quarter products and certain categories of offal and by-products.
- iii. Shortages of Veterinarians may be a major problem, since meeting export requirements does not only require vets to sign EHCs at the point of departure, but also to verify and certify information and processes throughout the supply chain, including on farm, in slaughterhouses, co-located and standalone cutting plants and retail packing sites, cold stores and at borders. While the UK's Animal and Plant Health Agency (APHA) has estimated the number of additional vets needed for EHC certification work to be around 200, businesses involved in export certification work have put the number at at least 350.
- iv. While a great deal of progress has been made to automate the system to apply for EHCs, the expected 500% increase in the requirement for these will be coupled with a different and in essence new form of export trade; the bulk of current Products of Animal Origin exports to non-EU countries is of frozen product with long lead times, whereas current trade with the EU is largely of fresh product often with very short lead times and tight delivery windows. As such, any delays will adversely affect shelf life and be commercially damaging, and concern therefore exists regarding the speed at which EHCs will be processable.
- v. Operators dealing with movements of agricultural goods between Northern Ireland and Britain do not yet know how this trade will be managed, what Sanitary and Phytosanitary (SPS) rules will apply and what the legal requirements will be for the placing of British products on the Northern Irish market, and the placing of Northern Irish product on the British and EU markets after the withdrawal period.
- vi. There is no clarity regarding imported Products of Animal Origin materials which are further processed in the UK for re-export to the EU market.
- vii. The uncertainty and lack of information on these key issues is undermining confidence among operators and making it difficult for these businesses to organise and plan their post withdrawal period trade with the EU, and unless they are resolved exports to EU markets will either be impractical or impossible.

- b. Academics in the Republic of Ireland and Wales working under the *Ireland Wales Cooperation Programme* have noted the failure of the UK to prepare Welsh ports for post-withdrawal arrangements¹¹, highlighting:
- i. The Internal Market Bill could significantly affect UK ports like Liverpool, Holyhead, Fishguard, Pembroke Dock and Milford Haven, and the Irish ports of Dublin and Rosslare.
 - ii. Welsh and Irish ports are facing profound and unprecedented challenges as the transition period draws to an end, and efforts to address these have been more far-reaching and sustained in the Republic of Ireland than in Wales.
 - iii. The Republic of Ireland has made considerable investments in new customs infrastructure - for instance, an investment €30 million and re-purposing of 10 hectares of land, including building new customs posts and associated facilities at Dublin Port - while there are to date no comparable developments in Welsh ports - despite Holyhead being the second busiest port in the UK (Border Inspection Posts are not expected to be in place in Welsh ports until July 2021).
 - iv. With around 40% of total Irish trade facilitated through Holyhead, equating to some 150,000 lorries crossing to the European mainland via UK ports, the lack of infrastructure in Welsh ports threatens to increase the current 20 hour duration of such journeys in such a way as to make such crossings far less practical, leading ports at Dublin and Rosslare to develop new direct ferry routes to continental Europe.
 - v. The UK must address practical challenges in its Irish-facing ports if Brexit is to work economically and politically
- c. The British Meat Processors Association (BMPA) maintains a log of issues and progress¹² in relation to key matters that need to be resolved in order to facilitate exports and minimise friction and costs.

As at 30th October 2020, of the ten key issues identified in their log, five were 'in progress' while five were 'unresolved'. Issues unresolved include:

- i. The fact that the UK has yet to be given Third Country approval, which must take place before meat processing plants that currently export can be officially listed by the EU as eligible to continue doing this. Third Country approval must be voted on by the EU Standing Committee on Plant, Food and Feed and it is understood that this may not take place before December 2020, introducing a high degree of

¹¹ <https://theconversation.com/uk-is-not-doing-enough-to-get-irish-facing-ports-ready-for-brexit-148063>

¹²

https://bmpa-my.sharepoint.com/:x/g/person/anna_proffitt_britishmeatindustry_org/EbY59FPP-Z9Ni-FHilbL2T8BqtEqdTkLxQuhDR4pceZYQ?rttime=np0fANJ82Eg

uncertainty for UK exporters and EU importers in terms of the ability of the UK to continue trade with the EU.

- ii. With guidance on what health marks need to be applied to Products of Animal Origin after December 2020 having finally been issued on 15th October 2020, the Chief Veterinary Officer of the UK must now write to non-EU countries to advise them of the changes such that buyers in importing markets understand the new health marks and that they guarantee the same standards as the previous EU health marks.
 - iii. That the system developed by Defra for the export certification of grouped consignments (the Groupage Export Facilitation Scheme) specifically excludes fresh and frozen meat, and only covers products packaged for sale to the final consumer, meaning there is no provision for grouped consignments of fresh meat in any format. If the system is not developed to accommodate such consignments, this type of trade with the EU will have to cease.
 - iv. The Draft Harmonised Export Health Certificates (already referred to under 15a, above) have been circulated which suggest significant differences between current and future requirements, including Trichinella testing (which the UK is currently exempt from), TB testing requirements, and a 40 day residency requirement on the last holding before slaughter. Such requirements would mark a significant change compared to current practices and place major restrictions on farmers and exporters which would start to take effect in the coming weeks.
 - v. Defra has to date only provided a broad outline of the processes involved in relation to certification requirements for movements of products between Britain and Northern Ireland, and while there is some detail on health and identification marks there is still significant ambiguity in terms of the practical implementations for companies.
66. Committee will note that while farming businesses are not generally involved directly in exporting, most, if not all of the above examples relate to issues which are of direct relevance to farm businesses, including some which seem likely to start to have an impact in the coming weeks.
67. Concerns such as those listed have been discussed in regular meetings of the Welsh Government's EU Transition Agri-food Supply Chain Stakeholder Group and other groups, which provide invaluable forums for the dissemination of information in relation to all aspects of Wales' agri-food supply chain, including in relation to work undertaken to change or implement new Welsh legislation necessary for the post-withdrawal period.
68. Whilst many of the issues of concern for farmers and food producers are beyond the control of the Welsh Government, and some are beyond the control of the UK Government (and rely on EU decisions which are tied to the current political

negotiations), there is concern that Welsh Government may have been slow to prepare with regard to certain areas which *do* fall within its powers, or exert influence in other ways, for example in relation to decisions relevant to infrastructure near ports.

69. For example, the Border Operating Model document¹³ published by the UK Government on 8th October 2020 states that “*HMG are working with Welsh and Scottish government to confirm the infrastructure requirements for Wales and Scotland*”, while it is notable that Border Inspection Posts at Welsh Ports are not expected to be operational until July 2021.
70. The 8th October 2020 Border Operating Model document lists the roles of the UK and Devolved Administrations, Government agencies and others in relation to UK ports, stating that the Welsh Government is responsible in Welsh ports, partly or fully, for:
- a. Imports and exports of live animals and animal products
 - b. Imports and exports of fruit and vegetables, plants and wood
 - c. Protecting the environment
 - d. Control of imports and exports of chemicals and nuclear materials (in association with the HSE)
71. However, given that exports to mainland Europe via English ports and the Channel Tunnel is the prime concern for Welsh agriculture, the FUW had had little involvement in discussions with Welsh Government relating to Welsh ports until recent months.

Preparedness of Welsh farm businesses

72. Welsh farm businesses are reliant to varying degrees on exports to the EU (as well as imports in some contexts), with reliance in the sheep and hill sheep sector particularly acute, given that around a third of Welsh lamb is exported to mainland Europe. Moreover, agriculture is amongst those industries most at risk from the impacts of tariff and non-tariff barriers under most of the likely post-withdrawal scenarios, given the UK Government’s position on membership of the Single Market.
73. Whilst some farmers are involved directly in the importation and exportation of live animals for breeding, the majority are not - although it should be noted such trade is important for the industry as a whole in terms of indirect benefits, such as improved genetics, and that the trade in semen, ova and embryos is also important for many individual businesses and the industry as a whole.

¹³ <https://www.gov.uk/government/publications/the-border-operating-model>

74. As such, there has been relatively little that the vast majority of farmers have been able to do directly to prepare for the post-withdrawal period, other than taking limited actions such as stockpiling medicines and other items in anticipation of shortages - not least given that there is still no certainty as to what the future trading relationship with the EU, or Third Countries and other trading blocs, will look like.
75. Moreover, farmers are well aware that a specific change in their business model made in anticipation of one post-withdrawal agreement would be wholly inappropriate in other post-withdrawal scenarios.
76. As such, since 2016 the FUW has advised farmers to better understand where their main financial strengths and weaknesses are such that changes to a business can be made rapidly to suit different Brexit scenarios once they are agreed and understood.
77. As the 31st December 2020 approaches it seems likely that more specific advice as to how farm businesses should prepare may become appropriate, and be given by Governments, trade bodies or buyers with specific needs in terms of meeting export requirements (for example, the 40 day residency rule, if made a requirement for Export Health Certification - something that would have an immediate and likely retrospective impact on farm businesses).

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Covid-19 and EU Transition

NFU Cymru is the voice of Welsh farming, championing, and representing farmers throughout Wales and across all agricultural sectors. Our vision is for a productive, profitable, and progressive Welsh agricultural industry, capitalising on global opportunities, contributing to the national economy, and supporting thriving rural communities.

Brexit represents one of the most significant challenges our sector and country has ever faced, and as we deal with and prepare for the implications which flow from it, we have also been called upon to respond and adapt to the very significant shock caused by the coronavirus pandemic

Committee has asked NFU Cymru for its views on the on-going problems faced by the sector as a result of the pandemic, and the effectiveness of the Welsh Government's response to it, as well as our views on preparedness in Wales for leaving the EU, the implications this has for our sector and any associated concerns. We are pleased to provide the following commentary

The on-going impacts of the coronavirus pandemic and the effectiveness of the Welsh Government's response to it

1. Like everyone else, NFU Cymru is incredibly grateful to those working so hard as part of the national effort to deal with the coronavirus situation, and the Union would like to record its gratitude to those working on the front line of the coronavirus pandemic.
2. Wales' farmers are proud of their role as food producers and stand ready to do whatever is needed to keep our food processing sector supplied with the primary produce that it needs to keep the nation fed. However, the long production cycles involved in agriculture mean that farmers are to a greater or

lesser extent locked into their commitments to keep producing at certain level, and will always find it challenging to respond to market signals.

3. Food supply chains are also highly complex and vulnerable to disruption, and primary producers experienced some significant upheaval and volatility in the spring as lockdown led to completely altered consumer demand, with the near complete loss of foodservice outlets and increased demand in the retail sector.
4. The empty shelves driven as we saw in the Spring arose as UK consumers transferred £1.5bn of food into the home in less than one month. Things got back to normal once supply chains had replenished stocks and consumer buying began to return to more usual buying patterns.
5. As well as being concerned with food production, many farms have diversified into enterprises such as hospitality and retail. The coronavirus pandemic meant that for many farm businesses these alternative income streams were chocked off during the lockdown period, something which has had a significant impact on many farm incomes
6. Although things have now normalised with supply chains back in equilibrium and prices having stabilised, the situation which unfolded back in the spring has reminded us of how farmers are exposed to a disproportionate share of risks in the supply chain and are not especially well placed to be able to respond rapidly to changing demand. We believe that greater account of these facts needs to be taken by Governments in the mitigation measures they chose to introduce, and the policy choices they make.
7. The UK and Welsh Governments have put in place a range of measures to mitigate the effects of the pandemic including the UK Government's Coronavirus Job Retention Scheme, Coronavirus Business Interruption Loan Scheme (CBILS), the Bounce Back loan scheme and the Welsh Government's Economic Resilience Fund.
8. These schemes were not always readily applicable to agricultural systems and businesses: production on farms cannot be furloughed when animals need to be looked after and crops need to be tended, and we feel that to an extent the agricultural sector has fallen between the cracks when it comes to the support made available to aid the economy.
9. NFU Cymru was grateful to Welsh Government's deployment of a dairy hardship support scheme to assist those milk producers who had been hardest hit by the effects of the Covid-19 outbreak. Around 160 farmers have been benefitted from the scheme which has offered assistance of up to £10,000 to cover around 70% of lost income, which has partially made up for the significant losses suffered by them.
10. The deployment of assistance to dairy farmers in Wales did however see a significant number of individuals miss out on the threshold for eligibility by the narrowest of margins, as a result of the decision to base the eligibility criteria

on milk price alone rather than income loss on the farm. Many of these farms have faced income loss that runs into the tens of thousands of pounds. We continue to press the Minister to reconsider the eligibility criteria for this hardship scheme.

11. There can be no doubt that some of these farms were amongst the hardest hit, financially, by the loss of markets caused as a direct result of COVID and is suggestive of the need for the Welsh Government to consider a more flexible approach if confronted with a similar situation in future
12. In relation to the Welsh Government's Economic Resilience Fund, at the outset it became apparent that primary production would be excluded from the scope of the scheme, and we made immediate and multiple representations to the First Minister, Welsh Government Ministers, Members of the Senedd and Members of Parliament as to the need to modify scheme eligibility so that farm businesses concerned with primary production would be able to access support. Unfortunately, we were unable to persuade Welsh Government of the need to modify the scheme, and Welsh agriculture has not been recognised in the Welsh Government's Economic Resilience Fund.¹
13. Welsh agriculture and the food processing sector in particular are reliant on migrant labour, this is very often for specialised tasks, such as animal husbandry and butchery, which cannot be automated. The pool of available labour was already under pressure before the Covid-19 pandemic, but the lockdown measures and transport disruption have put further pressure on labour recruitment from abroad.
14. In NFU Cymru's view the coronavirus pandemic has underscored the value of having an indigenous primary production base, particularly when supply chains are so complex, operate on a 'just in time' basis and are as easily disrupted as they are now. Insulating them from shocks, particularly when we do not know what form that shock might take, and where it might impact, presents a real challenge
15. Coronavirus has prompted a number of countries around the world (e.g. Russia, Ukraine and India) to take steps to limit the export of strategically important foodstuffs such as wheat and soy meal. If export controls are to become increasingly common and frequent, then this will have a knock-on impact on global food supplies and will bring into question the wisdom of many countries in relying on others to assure their food security.
16. Getting Wales' economy back on its feet after recent events represents a very significant challenge, and whatever the 'new normal' will be, it will be vastly different to the pre-Covid situation. It will be many months, if not years before we see the food service sector operating as it did prior to the pandemic.

¹ <https://www.nfu-cymru.org.uk/news/latest-news/nfu-cymru-calls-for-urgent-review-of-economic-resilience-fund-to-support-welsh-farm-businesse/>

17. Although lockdown measures were eased during the summer, and we saw more people eating out of the home, the fact is that we are seeing lockdown measures re-introduced on a nation-wide or localised basis and this is going to impact on demand in the food-service sector.

Preparedness in Wales for the end of the EU transition period, the implications for agriculture and our concerns

18. January 31st 2020 saw the UK's departure from the EU in legal and political terms, whilst December 31st 2020 will essentially see our departure from the EU in economic terms, as we leave the single market and customs union.

19. The EU27 remains our nearest and most valuable export market. Preserving as much as we can of this market, on the best possible terms is vital for Welsh agriculture. If we fail to agree a trade deal with the EU, then this will mean the loss of an export market which is home to around £200m worth of red meat exports annually. Losing this market could result in the failure of many businesses operating across the Welsh red meat supply chain.

20. NFU Cymru very much wants to see a deal between the UK and EU which is based on zero tariffs and zero quotas. It is of course very well known that tariffs on agri-food products are incredibly high (48% on lamb, 84% on beef, cheddar 57%) and if these tariffs are not eliminated through a comprehensive free-trade agreement, they will effectively price us out of key export markets.

21. Whilst the impact of tariff barriers on our competitive position are readily understood, we must not overlook the corrosive effects that non-tariff barriers such as Export Health Certification, customs checks, and sanitary and phytosanitary controls can have. The fact is that any such trade facilitation cost is almost certain to make our product less competitive in our export markets and can also constrain our ability to respond rapidly to market signals.

22. Even if our access to this market is lost briefly, it will mean that our customers in the EU27 will look for alternative suppliers which will in turn make it very difficult for us to reclaim these markets at a later date

23. At such a late stage in the Brexit process, we still have no idea what sort of future trading relationship we will have with the EU27, and this is deeply frustrating and highly regrettable. This also severely limits the practical steps and actions which can be taken in Wales to prepare for the end of the transition period.

24. Without knowing what sort of future trading relationship we will have with the EU, any steps taken by business and Welsh Government at this stage could mean the unnecessary and wasteful diversion of resources in preparation for an outcome which may not be realised.

25. Although we now have the certainty that we will completely exit the EU's structures at the end of year, and trade with the EU27 on an entirely different basis, it has to be remembered that our departure from the EU, with or without a deal has been in prospect on two previous occasions. The possibility of Brexit in March 2019 and then again in October 2019 undoubtedly led to the nugatory deployment of money and resources. These false starts, coupled with Brexit negotiations which have so far proved unsuccessful in terms of reaching a deal, means that a strong feeling of Brexit fatigue appears to have set in amongst both business and the public
26. Overlaid with Brexit fatigue is the fact that since March, so much business and government resource has been re-directed into dealing with the fallout of the coronavirus pandemic. The co-incidence of the unprecedented upheaval of Brexit and a once in a generation pandemic has created 'the perfect storm' where business are at the third time of asking reluctant and/or unable to divert significant resource into preparing for the unknown, when so many are already battling for survival in light of the coronavirus situation.
27. The long and complex production cycles involved in livestock and crop agriculture mean that our sector will always face a challenge in terms of responding quickly to market signals. This is no less true of Brexit and trying to anticipate the changing demand for our product which may arise under different scenarios. Most of the lambs which are to be born in 2021 have already been conceived and cropping plans for next year are well advanced. For dairy and beef cattle, production cycles can span a number of years, and as living organisms, their output and productivity cannot be stopped or slowed down easily.
28. The practical steps that farmers can take to prepare for Brexit are limited. In 2019, farmers were urged to take steps such as ensuring that they had adequate amounts of commonly used veterinary medicines and vaccines as these products overwhelmingly originate in the EU. The shelf-life of these products is often quite short, and in addition they are often expensive and so would mean tying up working capital.
29. With the ending for free movement from the EU now imminent, there are some real questions about the likely availability of the labour force which is needed in the agricultural and allied industries after Brexit. This includes not only labour on farm, but also labour the food processing and horticulture sectors. In particular, we are incredibly reliant on EU nationals working as official veterinarians in abattoirs.
30. We wish to draw committee's attention to Wales' organic sector, and the considerable uncertainty it faces. At present the UK is seeking "equivalence" for UK organic certification bodies so they are able to continue to market organic product in EU markets, and to continue using the EU organic logo on packaging. The situation around organic produce is still unresolved, and if a way forward is not found then our organic producers will face the prospect of having to sell their product into the conventional market and will receive a much lower return for it.

31. Ultimately, how Welsh agriculture fares when we leave the EU's single market and customs union will depend on others in the agri-food supply chain. Whilst we have emphasised the importance of being able to access export markets, there are few if any farmers who are themselves involved with supplying directly into export markets. Typically what farmers produce is aggregated by a processor or intermediary and sent for export, if these other actors in the supply chain are unprepared for the new way in which we will have to deal with the EU27 after 1st January, then this will be felt very keenly by primary producers.
32. NFU Cymru broadly welcomed the publication of the UK Global Tariff schedule published back in May 2020, with the UK Government looking to largely maintain tariffs on imports of agri-food products, not covered by an existing trade agreement. We believe that it attains a reasonable accommodation between helping safeguard primary production and consumer interests.
33. The kind of tariff regime operated by the UK after 1st January will have a significant bearing on the prospects for Welsh agriculture, and we have pressed UK Government ministers on a number of occasions as to whether the tariff regime published in May will still pertain in the event of a no-deal Brexit. On each occasion, we have been assured by the UK Government that the May 2020 tariff schedule would be adhered to, however we cannot be certain that in the event of a no-deal with the EU, the UK Government would not simply deploy an alternative tariff schedule which would see tariff barriers relating to agri-food products fully or partially dismantled.
34. We continue to press the UK Government on the publication of the statutory instrument relating to tariffs, which would provide some assurance as to the government's intention in this area.
35. The worst of all worlds scenario as far as tariffs is concerned is that the UK Government fully or partly dismantles tariffs on inbound agri-food products, whilst the EU maintains its common external tariff on UK exports (as it is bound to do under WTO rules). This would mean products from all over the world would enter the UK at low or zero tariffs, whilst we would be priced out of EU export markets.
36. In relation to Welsh Agriculture, NFU Cymru is concerned at the way in which Welsh Government appears to be intent on pressing ahead with the development of future agricultural support policy for Wales. Since the Brexit referendum we have had two consultations on future policy, and a third is expected before the end of 2020.
37. Outside of the Common Agricultural Policy, Welsh Government has the ability to devise and operate its own arrangements for agricultural support, however this does not mean that we have to rush towards devising a Welsh policy, particularly when there are so many unknowns which could have a very profound impact on Welsh agriculture.

38. At the present time, we do not know whether we will be trading with the EU, or nearest and most valuable export market on a WTO basis, or whether a trade deal will be agreed. Similarly, we do not know what trade deals the UK Government may reach with economies with significant offensive agri-food interests, and what impact this could have on Wales' farmers.
39. With so much of the agricultural sector's prosperity bound up in the sort of future trading relationships we have with the EU and third countries, we are urging Welsh Government not to press ahead with policy development until a much clearer picture has emerged of the trading environment which will pertain in future.
40. In light of Covid and Brexit we need to properly reflect on the resilience of the nation's food supply systems and our food security, and place domestic food production at the heart of government policy for agricultural support.
41. In the event of a no-deal Brexit, we would ask that the Welsh Government be prepared to lobby and work with the UK Treasury to secure the deployment of support packages which are tailored to the sectors of the Welsh farming industry adversely impacted by market disruption.
42. NFU Cymru fully accepts that upon our departure from the European Union's single market, and the regulatory convergence it imposes, there is genuine potential for new barriers to intra-UK trade to arise as a result of diverging regulation in each of the UK's home nations, as areas previously occupied by Community law revert to the competence of London, Cardiff, Edinburgh and Belfast. One of the natural corollaries of being outside the EU's single market therefore is the need to take steps to preserve the integrity of the UK's internal market
43. We would for example point to the fact that around 60 per cent of Welsh red meat is sold on the UK market, with only 5% of Welsh red meat sold within Wales. When it comes to dairy, in 2018-19 Wales was estimated to have produced 1,971 million litres of milk but has a current processing capacity estimated at 956m litres per year. As a small country which produces far more milk than it consumes, we are very dependent on being able to send this to other parts of the UK for processing and consumption.
44. We must ensure that from 1st January 2021 we do not see new barriers to intra-UK trade being erected, but we have always argued that this should be achieved by mutual agreement between the UK and the Devolved Governments and not by imposition from the centre, this remains our position, and we do have some concerns about a number of proposals contained in the UK Government's Internal Market Bill.
45. NFU Cymru considers the prospect of mutual recognition and non-discrimination principles, not properly anchored to a UK wide baseline of product standards (provided for via common frameworks) to be deeply concerning, and something which could risk triggering an intra-UK race to the

bottom in terms of standards. Outside of the discipline imposed by a trade agreement with the EU we would consider this risk to be significantly amplified. We are keen to see common frameworks progressed and operationalised from 1st January 2021.

46. NFU Cymru thanks the committee for the opportunity to comment on the impacts of the Covid-19 pandemic and preparedness in Wales for the end of the Brexit transition period.

Agenda Item 4

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Evidence from Wales Environment Link



Introduction

In this paper, we've summarised members' views on Covid-19's impact and the potential and need for a truly green recovery. We have highlighted our concerns on the ending of the EU Transition period, when we no longer have any statutory environmental governance or principles in Welsh law.

These are significant and very time-sensitive issues which we're pleased to see the CCERA Committee exploring. We'd be happy to return and for members to give further and updated views as time goes on regarding either of these topic areas.

Covid-19 and a green recovery

Effect of Covid-19 on the eNGO sector

Environmental NGOs are still struggling with the impacts of Covid-19 and have been participating in the review conducted by Natural Resources Wales into the stabilisation of the sector. WEL members have found it difficult to access emergency funding throughout the crisis and we are concerned about the impact of furlough ending, and the current uncertainty around the furlough scheme, with possible repeated lockdowns becoming necessary to control the virus.

Members are clear that they need longer-term funding to enable them to plan the projects that are necessary to deliver a green recovery and tackle the climate and nature emergency. In particular, the Welsh Government has a role in providing core funding that enables eNGOs to lever in other sources of funding whilst supporting future planning and project development, which also enables NGOs to deliver on Welsh Government priorities. Grant delivery mechanisms should be reviewed and amended in order to make them fit for purpose. WEL has submitted a review of the SMS scheme, as this is currently being evaluated.

Whilst this crisis has upturned the way we do things in just about every sector, WEL has been working on the potential for a post-Covid-19 'green recovery' and warmly welcomes the Welsh Government's direction of travel as well.

A green and blue recovery with the jobs to drive it

WEL set out several months ago the 'Principles & Tests for a Green & Just Recovery'¹. It should:

1. *address the nature and climate emergency, prioritising nature restoration as well as decarbonisation measures within the fiscal stimulus package;*
2. *be based on sound evidence, with collaboration to design solutions and support prioritisation;*
3. *move Wales towards a Well-being Economy² – an economic model that includes the value of, and invests in, nature and also includes circular economy principles;*

¹ Wales Environment Link, 2020. Briefing: [Principles & Tests for a Green and Just Recovery](#).

² Wellbeing Economy Alliance, 2020. Press release: [Ten principles for building back better to create wellbeing economies post-Covid](#).

4. *ensure that social justice and equality is embedded in recovery to ensure discrimination is not built into the structural changes made, there is equality of opportunities for those currently disadvantaged, and the most vulnerable are protected; and*
5. *address intergenerational justice by putting young people's employment at the forefront of plans, as they are likely to suffer significant impacts throughout their life from early unemployment and also carry the cost of the Covid-19 recovery.*

To set out the practical examples of 'green and blue jobs' that will be needed to fully tackle the dual nature and climate crises, we've also put together a briefing³ on this and highlighted it online⁴, generating discussion across sectors which we think is equally important, so we all understand the importance of these kinds of jobs, and not just add 'greenwash' to existing jobs.

Ramblers Cymru added a very helpful annex⁵ setting out case studies on jobs which increase access to the outdoors. The expertise exists already in our network and the wider eNGO sector and we've been fulsomely inputting as much as we can to Welsh Government and Natural Resources' Wales working groups in these areas, even whilst we've been under capacity as our members' have been hit hard both in terms of income and staffing, with many furloughed for large amounts of time.

Nature targets

All of this was the background to the UN's announcement on 15th September that the international community has failed to in its 10 year mission – through the Convention on Biological Diversity – to halt the decline and loss of nature. We already knew this was the case in Wales, with the State of Nature reports and NRW's own State of Natural Resources Report, but this emphasised the global failure to take action on this escalating issue. In short – decades of international targets under the CBD have not had sufficient impact to halt nature's collapse.

We have called for new statutory biodiversity targets for Wales (in the same way that we have climate targets) and wrote to the First Minister & Environment Minister⁶ asking for them to do this in domestic Welsh law. Whilst Wales has the frameworks – via the Environment Act and Wellbeing of Future Generations Act – to prioritise biodiversity, this hasn't translated to results in actually halting its loss yet; partly because they are not clear on ambition and accountability. Statutory long term targets, back up by statutory interim targets (5 yearly milestones) would enable the evidence, policy, action framework established in the Environment (Wales) Act to be more effectively scrutinised. Failure to deliver on interim targets would lead to a requirement on Government to review policy, legislation and funding for delivery.

We were disappointed by the response⁷, sent the following month, pointing to the Nature Recovery Action Plan (NRAP)⁸ as sufficient in this regard. Although we do warmly welcome the Welsh Government signing up to the Edinburgh Declaration of sub national governments calling for a post-2020 global diversity framework, it seemed to be a rejection of domestic targets (in the way we have climate targets) and the NRAP highlighted

³ Wales Environment Link, 2020. Briefing: [Jobs for a Green and Just Recovery](#).

⁴ Twitter, 2020. @WalesLink: [Tweet highlighting different kinds of green & blue jobs](#).

⁵ Ramblers Cymru, 2020. Case Study: [Green jobs for access provision](#).

⁶ Wales Environment Link, 2020. Letter: [Global Biodiversity Outlook and calling for nature targets](#).

⁷ Wales Environment Link, 2020. Letter: [Response from Environment Minister on nature targets](#).

⁸ Welsh Government, 2020. [Nature Recovery Action Plan](#).

as all we need in Welsh law. Despite many years of input to the contrary, the NRAP is less of an Action Plan and more a list of structures and initiatives that the Welsh Government **hopes** to revive biodiversity but ultimately are not given the priority, funding or impetus behind it to achieve much. Furthermore, the NRAP is not an all-encompassing list of nature conservation requirements in Wales, as it does not fully address marine conservation requirements, which are covered in separate Plans, created by separate Welsh Government Divisions. The NRAP does not contain any targets, and moreover it does not in itself have statutory weight. The actions listed within the NRAP does also not lead to the kind of work that reverses and halts the damaging activities already harming biodiversity in Wales, such as Intensive Poultry Units or deteriorating water quality in our rivers. No actions will be as effective as they should be without proper monitoring and enforcement.

This is about halting the collapse of our natural systems that sustain all life on our planet; and it's still far too often seen as a footnote to Welsh Government policy. **We maintain that we desperately need legally binding nature targets in Wales** and we hope this can be part of the future Environmental Governance & Principles legislation (more on this below) which we will need to urgently pass in 2020, as the gap will open up from 1st January onwards.

Increasing air quality and reducing congestion

The pandemic has been devastating for many, both personally and professionally, but a silver lining has been an increase in air quality and, what was only recently an unthinkable downward trend in traffic congestion. This will be difficult to sustain as only key workers are encouraged to use public transport but something which we warmly welcome the Welsh Government's direction towards a holistic modal shift and focus on this in creating sustainable transport policy.

Welsh Ministers have encouraged the continuation of working from home⁹, where possible, and recognised the need for adapting in all settings: *"If we make these new work patterns a part of our future, it will give us the ability to re-think the design and the layout of many of our town centres and high streets. We can move from a retail-dominated model to a more diverse range of activity and opportunities, providing us with the platform to revitalise our town centres¹⁰."* Deputy Minister for Economy & Transport, Lee Waters, has outlined that they're exploring a network of community-based remote working hubs within walking or cycling distance of people's homes, foreseeing around 30% of the workforce working remotely on a regular basis.

This aligns well with work that was already underway in 2019 in the South East Wales Transport Commission, which was tasked with tackling congestion in a holistic fashion in this region, after the First Minister rightly ruled out the M4 relief road which would have demolished the biodiverse Gwent Levels. Their Emerging Conclusions Report was published in July 2020¹¹, with a key focus being the need for a 'Network of Alternatives' in terms of other kinds of transport, rather than falling back on the car as the easiest mode. This will be more difficult with the move away from public transport, but if the Welsh Government is successful in promoting working from home and common hubs, genuinely restructuring and reprioritising how Wales works, there will be parts that are easier than envisioned too.

Importance of access to green space

⁹ Welsh Government, 2020. Press release: [Aim for 30% of the Welsh workforce to work remotely.](#)

¹⁰ Welsh Government, 2020. Written statement: [Embedding remote working.](#)

¹¹ Welsh Government, 2020. Press release: [South East Wales Transport Commission publishes emerging conclusions report.](#)

The pandemic has also highlighted the importance of accessible green space for all aspects of our well-being, including the mitigation of air pollution and heat stress. We welcome the Welsh Government's aspirations for the expansion of green infrastructure, for example in Planning Policy Wales and the National Development Framework 'Future Wales 2040', to ensure that habitat and green space is available.

It's important to note that not all greenspace is created equal, as greenspace with high biodiversity is substantially better for human health than greenspace with little or no wildlife¹². Therefore, it is essential to promote biodiversity in the design and management of greenspaces that enhance multiple ecosystem services.

A green recovery is an opportunity to accelerate this expansion of biodiverse greenspace, employing people to deliver high quality accessible green space in every town village and city in Wales, including providing traffic calming measures and attractive green travel routes. We suggest mandatory green space and tree cover targets for new development and infrastructure projects.

A renewed approach to agriculture and food in the green recovery

The Covid-19 pandemic is a stark reminder of our dysfunctional relationship with nature, with studies linking the disease outbreak to the collapse of ecosystems and destruction of wildlife. Nature, the ecosystems it creates and the resources and services these provide, are the foundation of our social and economic wellbeing. Given that over 80% of Wales is farmed, our food and farming is key to addressing nature loss and climate change, as well as tackling wider social and economic issues. However, it's evident from the Welsh Government's 'Coronavirus reconstruction: challenges and priorities' plan¹³ that the role of food and farming has been overlooked.

It's vital that we develop progressive agricultural and sustainable land management policies in Wales that help tackle climate change and drive nature's recovery. A future *public money for public goods* policy should facilitate nature-friendly, agro-ecological and regenerative farming approaches which rewards farmers for the public goods these systems provide e.g. carbon sequestration, wildlife habitats and species, pollinators, air and water quality. This will not only help to address both the climate and ecological crises, but can also help build social and economic resilience in our rural communities. It creates a new, stable income stream that isn't affected by external shocks such as market prices, consumer demand or disruption to supply chains. Furthermore, there is much evidence that shows that nature friendly farming improves the financial performance of farm businesses¹⁴. Agro-ecological farming practices can create more job opportunities¹⁵.

Covid-19 and the associated restrictions on public movement has also highlighted both the importance of the food system to our everyday lives, and the fragility in which it is currently constructed. For example, at one end of the supply chain farmers were throwing milk down the drain, whilst at the other end there was a shortage of milk in the supermarkets. We need an approach that better integrates production and consumption in

¹² Sandifer, Sutton-Greir and Ward, 2015. Ecosystem Services Journal: [Exploring connections among nature, biodiversity, ecosystem services, and human health and well-being: opportunities to enhance health and biodiversity conservation.](#)

¹³ Welsh Government, 2020. Policy: [Coronavirus reconstruction: challenges and priorities.](#)

¹⁴ RSPB, Wildlife Trust Wales & the National Trust, 2019. Report: [Less is more: improving profitability and the natural environment in hill and other marginal farming systems.](#)

¹⁵ All Party Parliamentary Group for Agroecology, 2011. [Briefing: Key Policies for Agroecology in the UK.](#)

Wales, putting more focus on the foundational and circular economies, reconnecting people with locally produced food and enabling community-developed responses that can ultimately shape a sustainable food system. This is an approach which agroecology advocates. Many 'green' jobs can form part of the Foundational Economy, particularly in food. Rebuilding food infrastructures i.e. food markets, community retailers, food processors, food cooperatives and a network of food hubs that aggregate and distribute local food, will help in providing more jobs to diversify and strengthen local economies. Wales can show the world how to secure rural livelihoods, enhance biodiversity and cut emissions rapidly.

EU Transition

The governance gap from 1st January 2021 onwards

With around 80% of our environmental laws and policies emanating from the EU – and the architecture of EU environmental governance that provides oversight and accountability mechanisms to be lost – the implications of Brexit are significant for environmental protection. From the outset, Welsh Government has recognised the need to close the environmental governance gap that will emerge as a result of Brexit, stating support for non-regression of environmental standards¹⁶ with a commitment to bring legislation forward as soon as practically possible. As Leader of the House in 2018, Julie James said¹⁷: “[We] will take the first proper legislative opportunity to enshrine the environmental principles into law and close the governance gap”. The Welsh Government’s Task Group Report on environmental governance and principles published in Spring this year was clear that measures would need to be in place by the end of the transition period.

It now transpires that the legislation required to establish statutory environmental principles and governance arrangements in Wales, has been deferred until after the 2021 Senedd election. This is **deeply regrettable** as it leaves Wales facing the prospect next year of having the weakest environmental governance arrangements of any western European country.

The Scottish Government’s UK Withdrawal from the European Union (Continuity) (Scotland) Bill¹⁸ will enable Scottish Ministers to make provision to allow Scottish law to ‘keep pace’ with EU law in devolved areas; to enshrine guiding environmental principles in statute, and to establish an environmental governance body, Environmental Standards Scotland to continue the role and functions of the European institutions in ensuring the complete and effective implementation of environmental law. The UK Government’s Environment Bill¹⁹ includes environmental principles and provisions establish the Office for Environmental Protection. The Bill also provides a legal base for new governance arrangements in Northern Ireland which the Assembly can then commence and take forward.²⁰

As things stand, from 1st January, it’s likely that citizens in Wales will have more limited access to environmental justice than citizens elsewhere in the UK. Without independent scrutiny, advice and enforcement of environmental law, the system of accountability will lack independence, durability, resources and teeth. The interim measures in Wales, due to the delay in decision-making and implementation, are expected to last longer than the other UK countries before a fully functional system is up and running. The

¹⁶ Welsh Government, 2029. Written statement: [Environmental Principles and Governance Post-EU Exit Consultation](#).

¹⁷ National Assembly for Wales, 2018. Plenary transcript for 21st March 2018: [Debate: Stage 3 of the Law Derived from the European Union \(Wales\) Bill](#).

¹⁸ Scottish Government, 2020. Overview: [UK Withdrawal from the EU \(Continuity\) \(Scotland\) Bill](#).

¹⁹ UK Parliament, 2020. Bill documents: [Environment Bill 2019-2021](#).

²⁰ DEFRA, 2020. Policy Paper: [30 January 2020 – Environment Bill 2020 Policy Statement](#).

Welsh Government's commitment to ensure that Wales' environmental standards are maintained and enhanced, rather than weakened, as a result of our leaving the EU will not be met.

Lack of clarity on Welsh plans to fill the gap

In lieu of the necessary legislative action, the Welsh Government intends to apply environmental principles and establish interim governance arrangements on a non-statutory basis only, with the recruitment of an Environmental Protection Assessor for Wales in progress²¹. The detail of the interim arrangements and guidance on the application of principles are yet to be finalised. **There also remains lack of clarity on the future role of the Senedd in relation to both interim and longer term governance arrangements, which requires consideration.**

The delay in bringing forward primary legislation means that the interim arrangements, which were initially intended to last for only a few months in a worst case scenario, now risk being in place for several years, and could even become permanent should inaction continue and especially if a Bill isn't passed quickly by any new Welsh Government from May 2021 onwards. This Interim Assessor (as currently proposed) will have no powers to investigate complaints and, except from the most serious and urgent complaints, will hold the complaints for future investigation by the statutory environmental governance body when established. This could mean that serious environmental damage – be that a persistent pollution incident from a power station, to a systemic failure to protect key species or habitats – is permitted to continue without an effective investigation or potential remedy, shy of the prohibitively expensive route of judicial review by civil society organisations, which itself lacks the corrective remedies currently available through the CJEU.

In addition, citizens' complaints will be effectively stockpiled and remain un-investigated so that any public failures to uphold and enforce laws may remain unchallenged, leaving Wales' environment especially vulnerable and citizens unable to effectively discharge their rights under our existing international commitments. It is also possible this is a breach of the Aarhus Convention which establishes a number of rights of the public (individuals and their associations) with regard to the environment such as access to justice.

While coronavirus has impacted the legislative schedules in Westminster, Stormont and Holyrood, legislation has nevertheless been published and will be passed either before or shortly after the end of the transition period. Difficulties in managing so much Brexit-related legislation should not be an excuse for not prioritising urgent environmental governance protections in this Senedd term's legislative schedule.

The role of the Senedd in interim and longer term environmental governance arrangements

The future role and functions of the Senedd within any new interim and longer term environmental governance arrangements remain unclear. This includes, for example, the Senedd's role in dealing with complaints of breaches of environmental law by Welsh Ministers. The proposals developed by the Welsh Government Task Group are yet to be decided upon by Ministers and have not been the subject of discussion in the Senedd. Our concerns have been communicated in writing to the Counsel General and Minister for European Transition Jeremy Miles MS²² and Presiding Officer Elin Jones MS²³.

²¹ Welsh Government, Public Appointments, 2020. Vacancy: [Interim Environmental Protection Assessor for Wales](#).

²² Wales Environment Link, 2020. Letter: [To the Counsel General on the environmental governance gap](#).

²³ Wales Environment Link, 2020. Letter: [To the Presiding Officer on impacts to the Senedd on governance gap](#).

In relation to the Senedd's role in particular we are seeking clarity as to:

- Any dialogue between Welsh Government Ministers and or officials and the Presiding Officer on this matter.
- Any work undertaken to identify and develop the Senedd's role within the proposed arrangements, including the scoping of powers to support the Assessor in their duties, and to censure Welsh Government Ministers who have been found to have breached environmental law.
- Given the potential quasi-judicial functions this approach may create, how will it be ensured that the political balance of the Senedd does not give the appearance of influencing proceedings

The Senedd and the Climate Change, Environment and Rural Affairs Committee also have a crucial role in scrutinising the Welsh Government's proposals and progress in implementation in the run up to the end of the transition period and beyond. Discussion of the detailed proposals and timescale for implementation has been limited to date.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector in Wales. Our vision is a thriving Welsh environment for future generations.





Llywodraeth Cymru
Welsh Government

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Our ref: LG/3711/20

Mike Hedges AS/MS
Chair of Climate Change, Environment and Rural Affairs Committee
Senedd Cymru

SeneddCCERA@senedd.wales

17 November 2020

Dear Mike

Following the completion of Report Stage and Third Reading, both held on 13 October in the House of Commons, I wish to provide an update on the outcome and to confirm the amendments made to the UK Fisheries Bill.

On 6 October, the Senedd agreed provisions in the Fisheries Bill, in so far as they fall within the legislative competence of the Senedd, should be considered by the UK Parliament.

In advance of the debate I wrote to you setting out the amendments Welsh Government initiated which were to be dealt with at Report stage. I also covered some of these in my opening remarks during the debate. The following Government amendments were made at Commons Report stage and make provision in relation to Wales for a purpose within the legislative competence of the Senedd. The clause numbers and amendment numbers used below correlate to the numbering used in the "Consideration of Bill (Report stage)" document – the House of Commons daily report, dated 13 October. Link attached here: https://publications.parliament.uk/pa/bills/cbill/5801/0181/amend/fisheries_daily_rep_1012.pdf

New Clause 8 - this new clause confers powers on the sea fish licensing authorities to arrange for another such authority to exercise any of their fisheries functions or product movement functions. Consequential amendments were also made to clause 37 (amendment 6), clause 47 (amendment 8), clause 49 (amendments 9, 10 and 11), clause 51 (amendment 12), schedule 3 (amendment 25 and 26), schedule 8 (amendment 32).

Under section 83 of the Government of Wales Act 2006, the Welsh Ministers may enter into an arrangement with a relevant authority for the functions for one of them to be exercised by the other. A relevant authority includes a Minister of the Crown and any public authority in England or Wales.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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.

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.

Section 83 does not, therefore, allow the Welsh Ministers to enter into an arrangement with the Scottish Ministers or the Northern Ireland department. It is hoped this sort of arrangement could be efficient and cost saving. The amendments made at Report Stage enable the Welsh Ministers to enter into administrative arrangements with the Scottish Ministers, Northern Ireland department and the Marine Management Organisation (MMO) for the exercise of fisheries functions and fishery product movement functions.

We can envisage situations in future where we could want other Devolved Administrations to carry out functions on our behalf, for example, for control and enforcement purposes, for science trips or where geography makes such an arrangement more sensible.

New clause 10 - This new clause amends legislation which deals with the interpretation of Welsh legislation, in consequence of the enlargement of legislative competence in clause 43. Consequential amendments are also made to clause 51 (amendment 13).

The Legislation (Wales) Act 2019 is (broadly speaking) intended to apply to all legislation made by the devolved institutions in Wales. Without amendment, the Act would not apply to Welsh Ministers' SIs made under the Bill. These amendments amend the Legislation (Wales) Act 2019 to provide that it will apply to Welsh Ministers' SIs made under the Fisheries Bill. The extension of the Senedd's legislative competence to cover fisheries matters in the whole of the Welsh zone will automatically extend the application of Parts 1 and 2 of the 2019 Act to cover Acts of the Senedd made under that wider competence (because they apply to all Welsh primary legislation).

Schedule 8 - The purpose of paragraph 9(5) of this Schedule is to prevent the regulation-making powers in paragraphs 6 and 8 from being used to modify the licensing functions conferred by the Bill. This amendment ensures paragraph 9(5) protects the functions of all the sea fish licensing authorities (amendment 33).

Schedule 10 – An amendment (amendment 46) has been made which makes contravention of an order under new section 134B of the Marine and Coastal Access Act 2009 (MCAA) (exploitation of sea fisheries resources: Welsh offshore region) an offence. As I noted in my letter of 1 October, the amendment was necessary to remedy an earlier unintentional drafting omission.

Schedule 10 – An amendment has been made to section 189 of the MCAA to remove an unnecessary restriction upon the Welsh Ministers use of that Order making power (amendment 49). As I noted in my letter of 1 October, under section 189 the Welsh Ministers may by order make provision in relation to Wales, to manage exploitation of sea fisheries. Subsection (2) currently limits the availability of that power, such that it may only be used by the Welsh Ministers if no other alternative legal power can be identified. This restriction is unnecessary and as such I sought its removal.

Schedule 11 - This amendment (amendment 54) clarifies that Schedule 11 includes consequential provisions.

Schedule 11 – An amendment has been made which repeals provisions of retained EU law concerned with the catching of cod in the North Sea. This will allow the United Kingdom to adopt its own measures in relation to cod in the North Sea (amendment 55).

Welsh Government supports all of these amendments because we take the view they improve the Bill. As such, our recommendation to the Senedd to consent to the Bill remains.

The amendments made relating to Agency Arrangements (new clause 8), section 189 (2) of the MCAA (Schedule 10) and to Schedule 11 (amendment 55) would ordinarily require a further Supplementary Legislative Consent Memorandum because they make relevant provision under Standing Order 29 for the first time.

The other amendments made at Report stage relate to provisions previously set out in the existing memoranda and do not make relevant provision for the first time. I wrote to Committees and Members to explain we were seeking these amendments prior to the Legislative Consent Memorandum debate, and outlined them verbally to the Chambers in the debate, to ensure Members were all as well informed as possible.

The amendments made to the Bill by House of Commons (across all stages) were considered by the House of Lords on 12 November, and no further amendments were made. The Bill will now progress to Royal Assent.

For reference, UK Parliament has published a document containing all amendments made to the Bill during all stages in the House of Commons and I have provided a link to the document here: <https://publications.parliament.uk/pa/bills/lbill/58-01/143/5801143.pdf>

Given the stage of the Bill there is not sufficient time to prepare and lay a Memorandum and enable scrutiny, and I advised Committees and Members I would write to confirm the outcome of this stage. Therefore, I am copying this letter to all Members of the Senedd.

Regards

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in a light grey or blue ink.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Cc All Members of Senedd

Agenda Item 5.2

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Mike Hedges AS/MS
Chair
Climate Change, Environment and Rural Affairs Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

17 November 2020

Dear Mike

Thank you for your letter of 26 October requesting further information on a number of points in relation to the Hazardous Substances Draft Framework. The following information responds to the questions put forward in your letter:

Development of the common framework

1. Can you explain why you believe a framework is necessary in this policy area?

The primary focus of this specific Framework Agreement is to ensure appropriate evidence and expert advice is applied to consideration of what substances and quantities form part of the hazardous substances consent and related land use planning regimes across the UK. The proposed framework sets out ways of co-operating when developing policy, respecting the ability of administrations to pursue diverging policy agendas.

There is a theoretical possibility of a damaging 'race to the bottom' for standards of hazardous substances controls. As explained in the outline framework, the risk of this is low, but the existence of a policy co-operation framework will help avoid such a scenario or at least mitigate the effects of change. The industry has many businesses operating across the UK so the real benefit of a framework in this policy area is it will help policy development learn from and accommodate the different pressures business have across the administrations. While the environmental aspects of the policy area have separate advisory bodies, the health and safety advice and expertise relies on a common source for England, Scotland and Wales; the Health and Safety Executive (HSE). Co-operation on policy development allows the cost for the assembly and use of common evidence to be reduced for each administration and promotes co-ordinated use of HSE resources, benefiting their operational efficiency.

The framework arrangements seek to maintain the existing co-operation of officials over the past two decades taking forward transposition of the various Seveso Directives. The common goals set out in the Directives have been implemented using the different planning

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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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.

and hazardous substances controls in each administration, with co-operation, information sharing and general support provided by the officials involved.

2. Can you expand on why the UK administrations chose to pursue a non-legislative framework?

Different approaches by the administrations can and are accommodated within this topic area. Adopting a legislative approach would be unnecessary and inflexible. A non-legislative framework maintains flexibility to accommodate different approaches but provides the basis for managing and maintaining co-operation in policy development which may be otherwise lost as the attention given to the topic area varies as administrations change their policy priorities.

3. Can you outline how you have engaged Welsh stakeholders, including industry, Local Planning Authorities and Natural Resources Wales in the development of the framework?

Given the limited consequences of the framework proposals, engagement with stakeholders has been similarly limited. Key stakeholders were engaged at a roundtable event on 19 March 2019, held jointly with other administrations. This was used to confirm whether a non-legislative approach was appropriate. Stakeholders relevant to Wales included the Health and Safety Executive, Chemical Industries Association, Tank Storage Association, UK Petroleum Industry Association and the Chemical Business Association.

We sent the outline framework document to stakeholders in Wales at the start of October, including to all hazardous substances authorities and fire and rescue authorities. Stakeholders were encouraged to contact my officials if they had concerns about the framework. No comments have been received to date.

4. Can you outline the key issues raised by Welsh stakeholders and how these been reflected in the framework?

Industry generally wanted consistency in the regulatory regime (which in itself was valued) and would therefore not like a divergence in policy between administrations. Maintaining the opportunity for policy divergence, however, gives the public of Wales a greater say in how policy on land use planning for major accident hazards is developed going forward and allows flexibility for hazardous substances planning to adapt to wider changes within the Welsh planning and environment protection regimes.

Interaction with domestic and international law, and international agreements

5. Can you clarify whether and how the framework interacts with existing domestic legislation, other than that already listed in Section 1 of the draft FOA?

The legislation set out in the FOA provides the framework for the system of hazardous substances consent required to store chemicals which are major accident hazards, which is administered by hazardous substances authorities, subject to advice primarily provided by the Health and Safety Executive and Natural Resources Wales. The legislation listed is also the basis for mandatory consultation of the Health and Safety Executive in relation to development proposals around establishments storing hazardous substances.

Hazardous substances planning is concerned with mitigating the effects of a major accident by keeping sensitive development away from establishments storing dangerous substances. The legislation which seeks to prevent the accidents in the first place are the Control of Major Accident Hazards Regulations 2015 ("the COMAH Regulations"). The competent

authority for the purpose of these regulations in Wales is the Health and Safety Executive and Natural Resources Wales acting jointly. It is not subject to a framework agreement.

Legislation not listed includes the Town and Country Planning (Local Development Plan) Regulations 2005 which require the preparation of local development plans to have regard to the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment

6. The UK is signatory to two international agreements relevant to the hazardous substances regime: the Aarhus Convention and the Convention of the Transboundary Effects of Industrial Accidents. Can you expand on how the framework will ensure compliance with these Conventions?

Hazardous Substances planning is a very specialised topic with limited numbers of professional staff involved. The framework will therefore facilitate the sharing of best practice and provide peer review opportunities in respect of how the international conventions are implemented across administrations.

7. Can you clarify whether and how the outcome of the on-going EU-UK negotiations on the Future Relationship will impact on the framework?

Through discussions we have not identified any differences between administrations on hazardous substances that would have an impact on the UK's ability to negotiate (etc.) trade agreements and treaties. Negotiation of any new trade agreements or treaties would in any event need to take account of where devolved competence means there are, or could be, divergence across the UK in matters pertinent to that particular treaty or agreement. The terms on which the UK leaves the European Union, and any future UK arrangements with the EU, may incorporate certain commitments which could have implications for the hazardous substances regime (e.g. on environmental standards). In this scenario the ability of administrations to diverge may be reduced, although it is considered that the best practice ways of working as set out in this framework will still prove a positive basis for sharing of information etc. and as such the framework will remain unchanged.

8. Can you clarify whether and how the UK Government's Internal Market Bill will impact on the framework?

See answer to 7 above.

Scrutiny process and timelines

9. Can you confirm that the framework will comprise the provisional FOA, the Concordat and the updated MOU referred to in the draft FOA?

The MoU referred to in the provisional FOA relates to the COMAH Regulations which is not part of this framework. We are in the process of discussing with the other administrations what exact documents the full framework will comprise of. We are happy to update the committee on this as soon as it is confirmed.

10. Can you clarify whether the Concordat and the updated MOU will be available for Senedd scrutiny?

We are discussing this with the other administrations to ensure that we have a consistent approach to further parliamentary scrutiny. We are happy to update the committee on this as soon as it is confirmed.

11. Can you clarify the timeline for Senedd scrutiny of the provisional FOA and associated documents?

We are discussing this with the other administrations to ensure that we have a consistent approach to further parliamentary scrutiny. We are happy to update the committee on this as soon as it is confirmed.

Monitoring and review arrangements for the framework

12. Can you explain why the UK administrations have chosen not to establish a more formal mechanism for monitoring the implementation of the framework?

After an initial review a more permanent arrangement for recurring meetings on this framework will be decided based around a timeframe that is considered appropriate. The decision not to impose a more formal monitoring programme at this point has been reached by agreement between the four administrations and is based on the relative importance of subject area and a desire to not over-burden the simple working arrangements that have been successful so far. The position is that any monitoring and review process needs to be proportionate to the policy area.

13. Can you clarify whether a report of the review meeting between the UK administrations will be made publicly available?

We are in the process of finalising the details of the review meetings process with the other administrations and will be happy to update the committee further once agreement has been reached.

14. Can you explain in what circumstances would it not be appropriate to involve stakeholders in the review process for the framework?

We are in the process of finalising the details of the review meetings process with the other administrations and will be happy to update the committee further once agreement has been reached.

15. Can you confirm whether and how the Senedd will be able to contribute to the review process for the framework?

We are in the process of finalising the details of the review meetings process with the other administrations and will be happy to update the committee further once agreement has been reached.

Background to the common framework

16. Can you outline the 'minimum requirements' of the Seveso III Directive in relation to hazardous substances planning, which are common across the UK?

Very broadly the land use planning related minimum requirements of the Seveso III Directive are;

- a) for consent to be issued by a competent authority before substances, over the quantity specified in Directive can be stored in an establishment;
- b) for the preparation of planning policies to take into account the aims and objectives of the Directive to preventing major accidents and limiting the consequences of such

accidents for human health and the environment by maintaining appropriate safety distances; and

- c) to consider any major accident hazard issues before they grant planning permission for developments in the vicinity of establishments, to certain types of development near such establishments, and hazardous substances consent
- d) for hazardous substances authorities and local planning authorities to provide information and consult the public in relation the above activities.

17. Can you provide further details on the scope for divergence under the current hazardous substances planning regime?

There is scope for divergence in terms of the substances and their quantities which fall under the control of the regime. There is also scope for further divergence in how procedures and timescales differ in respect of granting hazardous substances consent and for differences in respect of how the different planning systems interact with the objective of maintaining safe distances from establishments.

The post-EU Exit hazardous substances planning regime

18. Can you clarify whether any of the current ‘key restrictions’ will be maintained at a UK-wide level post-EU Exit? How will this be reflected in the framework?

There is no formal political agreement to retain the same definitions across the UK but there is a recognition that because hazardous substances planning existed in the UK before the Seveso Directive was introduced for strong safety and environmental reasons, there is little appetite for change. The current system is based on significant and reliable HSE evidence resulting in current UK controls for some substances being more rigorous than those in the directive and there is very little pressure from stakeholders for amendments to the system. The Framework deals with the lack of formal agreement by requiring administrations to bring to the attention of other jurisdictions any changes they plan to make so that any implications across administrations can be planned for in advance

19. What consideration has been given to maintaining common minimum requirements, including, for example, minimum standards on what constitutes a hazardous substance?

Discussions so far have respected that these issues are devolved and there is an ability to set different substances and quantities. Discussions have also recognised however divergence is unlikely because the minimum standards are there for safety reasons based on a common evidence base led by HSE and other safety regulators.

20. What are the potential risks and opportunities associated with not maintaining common minimum requirements and with widening the scope for divergence?

The main risks would be general confusion across the industry about when consent is required and possibly the UK population being exposed to higher risk of major accidents. It must be remembered however that the current system is set up to allow different areas to decide for themselves, through their hazardous substances authority, what level of risk they are prepared to live with when planning for new establishments and for development around them.

- 21. To what extent are you satisfied that the chosen approach in this policy area, i.e. a non-legislative framework, will not result in a lowering of standards and a reduction in the levels of protection for human health and the environment?**

The UK has always had a strong health and safety culture even before controls were standardised by the EU through the Seveso Directive. I believe there is a genuine political and professional desire to maintain high standards.

- 22. To what extent does the framework align with the Welsh Government's commitment to non-regression of environmental standards?**

The Framework does align with the commitment to non-regression of environmental standards. There is no appetite for change, and certainly not regression, in the area due to the safety culture within the sector. The Framework architecture has been developed to be proportionate to the policy area and certainly does not undermine any non-regression commitment.

Proposals for future changes to the hazardous substances planning regime

- 23. Can you clarify whether the Welsh Government has undertaken any work on proposals for the reform of the hazardous substances planning regime since the above consultation?**

There are few hazardous substances made in Wales so officers at hazardous substances authorities have limited experience of dealing with applications. This did prompt a question from a respondent to our last consultation on regulation changes on whether authorities were best placed to discharge the function. While we acknowledge a lack of staff with skills and experience, a comprehensive review of how the system operates is not something industry or regulators are widely asking for at this time. We have therefore not progressed work on a review since the regulations were replaced in 2015.

- 24. Can you clarify whether the Welsh Government has any immediate or future plans to review the hazardous substances planning regime?**

There are no immediate plans to review the hazardous substances planning regime but for the reasons set out in the answer to question 23, it is something which will be considered in the future.

- 25. In what circumstances would the Welsh Government consider proposals to reduce controls below the current minimum requirements, for example, on the level of substances that can be held, or in relation to the consent process?**

The only circumstances that the Welsh Government would reduce control below the minimum requirements would be if we were advised by either the Health and Safety Executive or Natural Resources Wales that the current controls were excessive and if this could be supported by scientific evidence.

- 26. Can you clarify whether changes to the current minimum requirements would be subject to public consultation and Senedd approval?**

Yes any proposed changes to the minimum requirements would require a change to legislation and therefore the commitment to public consultation and Senedd scrutiny of the legislation would be required.

27. To what extent are you satisfied that there is sufficient technical expertise at a Wales or UK level to replace that currently available at an EU level in this policy area?

Expertise used to inform policy development at both national and European levels has always been held within member states, so the continuing advice of Health and Safety Executive and Natural Resources Wales is sufficient and welcomed going forward.

28. In the absence of new or revised EU requirements in relation to hazardous substances planning applying to the UK, what arrangements will be put in place to review domestic requirements, taking account of developments elsewhere?

No formal review mechanism is proposed beyond that contained in the Framework. The existence of the Framework will facilitate reviews of best practice and lessons learned from developments in other administrations countries, which can be used to highlight when a formal review of the hazardous substances processes in Wales should be undertaken.

I hope the above responses provide you with additional information to assist in the scrutiny of the Draft Framework. Please be assured that when we have reached a decision collaboratively with the other administrations regarding the framework review process and the final format of the Framework, the Committee will be updated.

Yours sincerely



Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Cc: Counsel General

Julie James MS

Minister for Housing and Local Government

18 November 2020

Dear Minister,

The National Development Framework and the Welsh language

The Culture, Welsh Language and Communications Committee discussed the latest iteration of the National Development Framework ('the Framework') at its meeting on 5 November.

The Committee heard from Dyfan Sion, from the Welsh Language Commissioner's Office, Wyn Thomas, Dyfodol i'r Iaith, Robat Idris, Cymdeithas yr Iaith and Dylan Foster Evans from the Welsh Place-Name Society.

I note the requirements in section 60B(4)(b) of the Planning and Compulsory Purchase Act 2004 (as inserted by section 3 of the Planning (Wales) Act 2015) for the Welsh Ministers to have regard to any recommendation made by a Senedd committee. As such, I would be grateful if you could consider our recommendations as contained in this letter, which seek to address issues which were raised during our discussions and consideration of the Framework.

Additionally, I note the requirement in section 60B(6) for the Welsh Ministers to lay before the Senedd a statement explaining how they have had regard to any such Committee recommendations. I look forward to reading this statement to see how the Committee's recommendations have been considered.

Mainstreaming of the Welsh Language

Concerns were raised in the evidence received, about the way in which the Framework deals with the Welsh language. The Committee heard of the need to mainstream the Welsh language throughout the Framework and ensure there are stronger links to other relevant strategies.

Those who spoke to the Committee commented that at the national strategic level the Framework does make a number of references to the Welsh language, but at the regional spatial level the references tend to be more general in nature.



Witnesses were concerned that there was insufficient accountability for delivering the outcomes for the Welsh language at a regional level. For instance, Dyfan Sion from the Welsh Language Commissioner's Office, said:

'You have the national framework at the top, yes, but feeding into that you have the local development plans and... there is an expectation on each of those LDPs to include a spatial strategy for the Welsh language. So, that connection is there at a national level, but as you go down to the regional level, then there is scope to strengthen that, I think.'¹

Witnesses spoke of the need for the contribution of the Framework to the Cymraeg 2050 strategy to be measured and monitored. Dyfan Sion said:

'one of the most important things for us is the reporting and monitoring elements and ensuring that the framework does lead to progress and contributes towards the Cymraeg 2050 strategy. So, as I said, I think there are elements of mainstreaming within the framework, but there are further questions to be asked as to how it will be implemented and monitored.'²

In terms of monitoring the contribution of the framework to the Cymraeg 2050 strategy, Dyfan Sion said, 'there's also a contribution for local authorities to make in that regard.'³

He noted the need for the Framework to link to the Welsh in Education Plans.⁴ Dyfan Sion stressed the need for the Framework to be flexible enough to allow opportunities for partnerships outside of the proposed regional structures to form. He gave the example of the Arfor scheme for the Welsh language which is a partnership between four west Wales counties.⁵

The Committee recommends that the regional level of spatial planning in the Framework should be flexible enough to allow for the growth of partnerships that address specific issues, such as the support and promotion of the Welsh language.

The Framework should specify how the contribution to the outcomes of Cymraeg 2050 will be measured and monitored.

Accountability at a regional level

There were concerns regarding the accountability of the regional structures proposed in the Framework. For instance, Dyfan Sion said:

'There is a lack of accountability in terms of regional structures more generally speaking. As a regulatory body with oversight of statutory duties, that creates a

¹ CWLC Committee 5 November 2020 p37

² CWLC Committee 5 November 2020 p15

³ CWLC Committee 5 November 2020 p37

⁴ CWLC Committee 5 November 2020 p36

⁵ CWLC Committee 5 November 2020 p116



problem, because those statutory duties that we have in terms of Welsh language standards and a number of other statutory duties are placed on individual bodies, legal entities. So, when there are so many decisions then happening through the regional partnerships, there is an accountability deficit, perhaps'.⁶

Wyn Thomas, from Dyfodol i'r Iaith, wrote:

'There are concerns that power is being transferred to unelected bodies. People understand the role of county councils in producing Local Development Plans, and people have become familiar with the influence of the Welsh Government. There is more concern regarding the Strategic Development Plans. It is not clear what powers these bodies have or how accountable they are.'⁷

The governance of the regional boards was also of concern to Robat Idris, Cymdeithas yr Iaith, who said 'there will be unelected members of those boards, which I don't think is healthy. You would usually ask why they are there.'⁸

He also commented that the regional approach and the emphasis on creating stronger links with urban areas in England would be damaging to the Welsh language because 'it moves the economic focus even more towards the east when we in western areas are having huge problems as it is'.⁹ He said:

'what we see is rather than looking at Wales as a single entity, we see three regions that are linked economically, and that aspiration being repeated time and time again, with the north of England, the midlands and the southwest of England. Now, as Cymdeithas yr Iaith, we understand that you can argue that there are economic benefits to that, but the trend will be, I would say, to weaken the Welsh language in the community through that'.¹⁰

The Committee notes the concerns regarding the governance and accountability of regional structures and recommends that the Welsh Government outline how it intends to ensure greater transparency of the work of the regional boards.

The need to balance the focus between rural and urban centres

There was concern that the NDF places too much focus on growth in urban centres at the expense of communities in rural areas. The Committee was told that there should be far more emphasis and focus on local communities within the framework, particularly as the social and economic context has changed so dramatically as a result of the pandemic.

For instance, Robat Idris argued that the Framework appeared to be based on economic drivers and large scale infrastructure projects like Wylfa. Such projects, he stated, have

⁶ CWLC Committee 5 November 2020 p115

⁷ Dyfodol i'r Iaith written evidence

⁸ CWLC Committee 5 November 2020 p119

⁹ CWLC Committee 5 November 2020 p119

¹⁰ CLWC Committee 5 November 2020 p25



failed to materialise in the past, but these large infrastructure projects 'drove local development plans', which in turn:

'was steering the demand for housing and where housing should be built. I think we need to build our communities from the bottom up, not the top down.'¹¹

He continued by asking how much discussion has been had in developing a framework that is 'relevant to local communities', stating that:

'it does appear, to some extent, that rural areas are almost seen as the lungs of our urban areas; they're areas to be enjoyed by the urban population and the population that lives there is there to serve.'¹²

Dyfan Sion also believed that there needs to be more of a balance between rural and urban centre growth. He told the Committee:

'the main thing I would say is that the framework needs to respond better to the social changes that have happened as a result of COVID. I think the framework, if it were drafted today, perhaps there would be less focus on urban centres of growth in the framework. What we've all learned, I think, from the COVID crisis, is that it's possible for us to live and work in any area of Wales; it's possible for us to work remotely and to work flexibly. And I think the Government itself, through remote working policies, is more focused on local centres now, rather than urban centres. So, that is something within the framework that we would want the Government to reconsider'.¹³

The Committee also heard that in order for rural and local communities to capitalise on work opportunities, suitable transport infrastructure, such as public transport, and fast broadband connections are needed.

The Committee would like to see more information on the Welsh Government's thinking on 'local hubs'. The Committee recommends that the Framework is updated to take account of:

- a more balanced approach to developing urban and rural centres to prosper rather than one which focusses on urban centres surrounded by a rural 'hinterland'.
- new working patterns, arising from the COVID-19 pandemic most recently, which have seen a greater need for fast, reliable and accessible broadband in all parts of Wales;

Affordable housing

There was a call for the Framework to address the issue of affordable housing more robustly. The ability for people from Welsh-speaking areas of Wales to live and work in

¹¹ CWLC Committee 5 November 2020, p27

¹² CWLC Committee 5 November 2020, p26

¹³ CWLC Committee 5 November 2020, p58



their communities is linked to the price of housing in these areas. Robat Idris told the Committee:

‘because so much property is out of the reach of local people, that weakens the indigenous community. So, I do think that there is a strong role for the planning system to look at the whole question of housing’¹⁴

In response to a question about whether the Framework should focus more on ‘social housing’ rather than ‘affordable housing’ as this would place greater responsibility on local authorities to meet local housing needs, Dyfan Sion said:

‘because of high house prices and a high percentage of second homes in some communities, it can be very difficult for some people to remain within their own communities if they wish to do so. And clearly, that is an issue of social justice. So, from the point of view of affordable housing and social housing, the risk is that affordable housing is more open to market conditions and there is less control and less ability to provide according to need. So, if focusing more on social housing would improve the problems facing Welsh-speaking communities, and that could happen more swiftly, then I would agree with the comment made in the question.’¹⁵

There was also a call for the Framework to address the pressures placed on Welsh-speaking areas from second homes and the fact that they price local people out of the market. The pressures were said to have increased as a result of the COVID-19 pandemic and concerns within local communities about second-home owners travelling during lockdown restrictions.

Robat Idris told the Committee that 40% of homes in Gwynedd were sold as second homes recently.¹⁶ He suggested there should be a maximum number of homes available in tourist areas. He said:

‘we do need to look at legislation as to whether it’s ethical that people should be able to own a second home, or a second house, where others can’t afford a first home. We need to look at particular areas where there is too much emphasis on tourism where there should be, perhaps, a maximum limit on the housing market that serves tourism, including Airbnb, or the second home market. There are examples in other places of where that’s done.’¹⁷

Wyn Thomas, wrote:

‘Following the route of Jersey and Guernsey would be a significant step towards safeguarding the Welsh-speaking communities. In those places, a significant percentage of housing is earmarked for residents who have lived on the islands

¹⁴ CWLC Committee 5 November 2020 p 27

¹⁵ CWLC Committee 5 November 2020 p81

¹⁶ CWLC Committee 5 November 2020 p83

¹⁷ CWLC Committee 5 November 2020 p84



their entire lives or who have a long and obvious connection with the area. The rest of the housing stock would be for sale on the open market.¹⁸

The Committee heard that the balance between ownership of second homes, holiday lets and affordable home ownership has an impact on the ability of people from Welsh-speaking areas to live and work in their communities. The impact of house prices, second home ownership and holiday lets on the Welsh language is an important aspect which needs to be explored in a planning strategy that aims to ensure:

‘Where Welsh is the everyday language of the community, development will be managed to ensure there are jobs and homes to enable the language to remain central to those communities’ identities’.¹⁹

The Committee recommends that the link between social housing and affordable housing in Welsh-speaking areas and the impact on the Welsh language should be explored more thoroughly in the Framework.

I have copied this letter to the Chair of the Climate Change, Environment and Rural Affairs Committee as part of their consideration of the Framework.

Yours sincerely,



Helen Mary Jones

Chair of the Culture, Welsh Language and Communications Committee

¹⁸ Dyfodol i'r Iaith

¹⁹ National Development Framework, pp54



Mike Hedges MS
Chair of the Climate Change, Environment, and Rural Affairs Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

Our ref: PO1027/EJ/MWJ

19 November

Dear Mike,

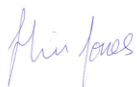
Environmental governance and principles post transition

I have received correspondence (included as an Annexe to this letter) from representatives of Wales Environment Link in relation to interim arrangements for environmental governance in Wales after the end of the EU-exit transition period.

In the letter, Wales Environment Link raise several issues concerning the appointment of an interim Environmental Protection Assessor for Wales, their functions and terms of reference, and the role of the Senedd in these new arrangements.

I am aware that the Climate Change, Environment and Rural Affairs Committee has undertaken detailed scrutiny work in respect of future environmental governance arrangements and holds regular Brexit-themed scrutiny sessions with the Minister for Environment, Energy and Rural Affairs. In light of this, I believe it would be helpful to seek your views on the matters raised with me in the first instance.

Yours sincerely,



Elin Jones MS
Llywydd



Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English



Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN

 llywydd@senedd.cymru
 0300 200 7403

Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN

 llywydd@senedd.wales
 0300 200 7403

Presiding Officer Elin Jones MS
Tŷ Hywel
Cardiff Bay
CF99 1NA

CC: Counsel General and Minister for European Transition Jeremy Miles MS, Rt Hon First Minister Mark Drakeford MS and Minister for Environment, Energy & Rural Affairs, Lesley Griffiths

12th October 2020

Dear Presiding Officer

Re: Environmental Governance and Principles post Transition

We write to you in relation to environmental governance arrangements in Wales following the Transition Period – January 2021 onwards. In particular we are concerned about both the immediate and longer term implications for the business and functions of the Senedd.

As you know, a number of Brexit related legislation have been deferred until after the 2021 Senedd election. This includes legislation required to establish statutory environmental principles and governance arrangements, which the First Minister confirmed in his statement on the Legislative Programme, would be brought forward after the election if the Welsh Government was “in a position to do so”. This is deeply regrettable as it leaves Wales facing the prospect next year of having the weakest environmental governance arrangements of any western European country.

In lieu of the necessary legislative action, the Welsh Government intends to apply environmental principles and establish interim governance arrangements on a non-statutory basis only, with the recruitment of an Environmental Protection Assessor for Wales in progress¹. The detail of the interim arrangements and guidance on the application of principles are yet to be finalised.

This Interim Assessor (as currently proposed) will have no powers to investigate complaints and, except from the most serious and urgent complaints, will hold the complaints for future investigation by the statutory environmental governance measures when established. This could mean that serious environmental damage, be that a persistent pollution incident from a power station, to a systemic failure to protect key species or habitats is permitted to continue without an effective investigation or potential remedy – shy of the prohibitively expensive route of judicial review by civil society organisations, which itself lacks the corrective remedies currently available through the CJEU.

In addition, citizens’ complaints will be stockpiled and remain un-investigated so that any public failures to uphold and enforce laws may remain unchallenged, leaving Wales’ environment especially vulnerable and citizens being unable to effectively discharge their rights under our existing international commitments.

¹ Vacancy –Interim Environmental Protection Assessor for Wales <https://cymru-wales.tal.net/vx/lang-en-GB/mobile-0/appcentre-3/brand-2/xf-4ae214241f4a/candidate/so/pm/1/pl/8/opp/6860-Interim-Environmental-Protection-Assessor-Wales/en-GB?fbclid=IwAR0DKS4afDXDK2rVFnBJuK6F3zFQQCKiwmmhBfqpps4EnwCYegLiEBIsW4k>

While coronavirus has impacted the legislative schedules in Westminster, Stormont and Holyrood, legislation has nevertheless been published and will be passed either before or shortly after the end of the transition period.

This creates significant uncertainty, including the role of the Senedd in terms of scrutiny and accountability, for example in dealing with complaints about breaches of environmental law by Welsh Government Ministers under these proposals which require consideration as a matter of urgency.

Given this, we are writing to identify the following:

- To what extent is the Senedd aware of and engaged in the development of these interim arrangements, and what discussions have been had with Welsh Government ministers on the matter?
- What work is currently underway to identify and develop the Senedd's role should they come to pass?
- What powers does the Senedd currently have which would permit it to support the Accessor in his/her duties and amplify their capacity?
- What powers does the Senedd have to censure a Welsh Government ministers found to have breached environmental law?
- Given the potential quasi-judicial functions this approach may create, how will it be ensured that the political balance of the Senedd does not give the appearance of influencing proceedings?

We would urge you to consider these matters as a key element of your transition planning for the Senedd, and with Welsh Government officials. We have also written to the Counsel General and Minister for European Transition Jeremy Miles MS outlining our concerns.

Yours sincerely

Alex Phillips
Co-Chair of WEL's Governance Working Group
WWF Cymru

Steve Lucas
Co-Chair of WEL's Governance Working Group
Bat Conservation Trust

Baltic House, Mount Stuart Square, Cardiff, CF10 5FH
Tŷ Baltic, Sgwâr Mount Stuart, Caerdydd, CF10 5FH

Tel: 02920 497 509

www.waleslink.org

Registered Charity Number / Rhif Elusen Gofrestredig: 1022675
Chair / Cadeirydd: Roger Thomas
Joint Directors / Cyf-Gyfarwyddwyr: Susan Evans & Karen Whitfield
Pack Page 73

Mike Hedges MS

Chair

Climate Change, Environment and Rural Affairs Committee

17 November 2020

Dear Mike

Written statements under Standing Order 30C: The Agricultural Products, Food and Drink (Amendment Etc.) (EU Exit) Regulations 2020

We considered the Welsh Government's written statement, laid under Standing Order 30C, in respect of **The Agricultural Products, Food and Drink (Amendment Etc.) (EU Exit) Regulations 2020** at our meeting on **9 November 2020**.

The Regulations that are the subject of the written statement make numerous amendments to domestic and EU derived legislation, the purpose of which is to provide for the domestic administration and enforcement of Geographical Indicators (GIs) for Great Britain.

We are aware of the **work** your Committee undertook last year on protected food names and, because of your Committee's general interest and responsibilities in this area, we wish to draw the Regulations and the written statement to your attention for the reasons set out below.

The UK and EU agreed in the Withdrawal Agreement's Ireland-Northern Ireland Protocol that Northern Ireland GIs will continue to be protected by the EU's GI regime after the end of the transition period. You may be aware that the future of GIs between the UK and EU is currently being negotiated as part of the future relationship negotiations. In the absence of an agreement, GB products will need to comply with the EU's third country application procedure to obtain EU registration.

The amendments made by these Regulations will therefore create working GB GI schemes, and domestically enforceable UK regulations for the wine and spirit drink sectors with the dual aim of ensuring continued protection for 86 existing UK product names registered as GIs under EU schemes and ensuring that the UK continues to meet its World Trade Organisation obligations.



Senedd Cymru

Bae Caerdydd, Caerdydd, CF99 1SN

 SeneddDCC@senedd.cymru

 0300 200 6565

Welsh Parliament

Cardiff Bay, Cardiff, CF99 1SN

 SeneddLJC@senedd.wales

 0300 200 6565

The Regulations also provide for a new GI logo to be used on products protected under the scheme, i.e. Welsh lamb as a protected food will be accompanied in the future by a 'UK protected' logo.

There is a disagreement between the Welsh and UK Governments as to whether GI schemes are devolved. In its written statement, the Welsh Government states its view on this point:

"Welsh Government officials are of the view that the 2020 Regulations contain provisions conferring functions on the Secretary of State in areas that are within the scope of the Senedd's legislative competence.

(...)

In relation to GI schemes, we have a strong interest in ensuring that Welsh GIs are protected throughout the UK (and ideally, through the negotiations on the future partnership, the EU). Previous instruments that are being consolidated into the 2020 Regulations have been the subject of continued correspondence between Defra and the Welsh Government, with Welsh Government officials disputing Defra's position that GIs relate to reserved matters."

However, Welsh Ministers have agreed to having a 'meaningful role' in the governance arrangements for the GI scheme. This role has been secured via an intergovernmental agreement; as your Committee will be aware, such agreements are not binding on either government. Furthermore, this solution to the dispute does not, of course, resolve the issue as to whether GI schemes are devolved. No intergovernmental agreement appears to have been published.

You may also wish to be aware that the Regulations create concurrent functions exercisable by both the Welsh Ministers and UK Ministers. If the Senedd wishes to remove the UK Minister element of a concurrent function, then the UK Government would have to consent to the removal. To that extent, the Regulations impact on the legislative competence of the Senedd. The Welsh Government is in discussions with the UK Government regarding an Order in Council made under section 109 of the *Government of Wales Act 2006*. Such an Order would negate the impact on the legislative competence of the Senedd by removing the need for UK Government consent in relation to concurrent functions, but the timetable for this Order is not yet available.

You will be aware that Food Geographical Indications (Protected Food Names) remain one of the common framework policy areas that is contested. The UK Government's September 2020 common frameworks analysis states that this matter is subject to ongoing discussions between the governments. It is unclear to us why the UK Government has proceeded with these Regulations when such discussions have not been concluded. Therefore, whilst these Regulations seek to maintain the current EU regime post-transition, should any government of the UK seek to diverge from the scheme introduced by these Regulations there is no agreed process for managing such a situation.

We are also aware that your previous work on this issue noted concerns about the impact of any future trade agreements on a GI scheme.



I am writing to the Welsh Government to express our concerns with the making of the Regulations, particularly as they raise matters of constitutional, political and legal importance. I also intend to highlight the increasing complexity of the devolution settlement in Wales, as demonstrated by the dispute over the Regulations.

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AM
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg
We welcome correspondence in Welsh or English



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