

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)**

### **Agriculture Bill**

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of, the Senedd.
2. The Agriculture Bill (the “Bill”) was introduced in the House of Commons on 16 January 2020 and has completed Public Bill Committee stage. This Memorandum sets out the relevant amendments to the Bill made during Public Bill Committee and Commons Report stage, and provides updates on the position in respect of the clauses on identification and traceability of animals (clause 32) and organic products (clauses 36 and 37). The latest version of the Bill, as amended in Report stage, can be found at:

<https://publications.parliament.uk/pa/bills/lbill/58-01/112/5801112.pdf>

3. The Bill completed its passage through the House of Commons on 13 May and will now move to the House of Lords on a date to be confirmed.

### **Policy Objective(s)**

4. The UK Government’s stated policy objectives are to provide, for England, a new system of paying farmers based on the principle of “public money for public goods” for the next generation of farmers and land managers.
5. The Bill also includes measures to enable the continuity of existing agricultural support and to ensure the effective functioning of the agricultural sector following the departure of the UK from the European Union (EU). In particular, the Bill includes provision to enable payments to continue to be made to farmers with powers to modify Direct Payments and Rural Development, for example, and to intervene in agricultural markets in the event of exceptional market conditions.

### **Summary of the Bill**

6. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.
7. The Bill provides the legal basis, in England, to transition away from the Common Agricultural Policy (CAP) and establish new financial assistance schemes based on the principle of public money for public goods.
8. The Bill also provides powers to enable the continuity of existing agricultural support and to intervene in agricultural markets in the event of exceptional

market conditions, as noted above, as well as provisions on the collection and sharing of data and marketing standards and carcass classification. At the request of the Welsh Government, these powers will be available to the Welsh Ministers in relation to Wales under the provisions of Schedule 5 to the Bill. The provisions in Schedule 5 (and a small number of related provisions) are time-limited to expire at the end of 2024 in accordance with the expiry provision at clause 44 (duration of provision in relation to Wales), as explained at paragraphs 57 and 58 of the Legislative Consent Memorandum laid on 12 February.

9. The Bill also includes provisions that apply in Wales on organic products; the identification and traceability of animals; fair dealing and producer organisations; matters relating to farming and the countryside, including red meat levy redistribution and agricultural tenancy reforms; a requirement for the Secretary of State to report to the UK Parliament on food security; and regulation-making powers for the Secretary of State to secure the UK's compliance with WTO Agreement on Agriculture. These are not subject to the expiry provision (clause 44).
10. The Welsh Government laid a Legislative Consent Memorandum in relation to the Agriculture Bill (as introduced on 16 January 2020) on 12 February. It noted concerns regarding the provisions in the Bill for the identification and traceability of animals (clause 32) and the regulation of organic products (clause 36 and 37). Those concerns relate to the absence of appropriate provision requiring the Welsh Ministers' consent when, in certain circumstances, the Secretary of State exercises powers to make subordinate legislation under those provisions. Good progress has been made in resolving these concerns and, if amendments can be agreed, a supplementary Legislative Consent Memorandum will be brought forward at the appropriate time.
11. The Welsh Government also noted concern around Agricultural Tenancies (Schedule 3). The concern relates to the referral of disputed requests for landlord's consent or variation of terms to arbitration or for third party consideration. The range of requests which could be referred includes requests relating to tenant's access to schemes of financial assistance under Part 1 of the Agriculture Bill. Consideration will be given to whether similar provision is required in a future Senedd Bill in relation to schemes of financial assistance in Wales.

### **Supplementary provisions in the Bill for which consent is required**

12. Since the publication of the first Memorandum, the Bill has been amended during scrutiny in the House of Commons.
13. This Supplementary Memorandum sets out those changes to the Bill made at Commons Committee and Report stages which require the consent of the Senedd. The first and Supplementary Memorandum must be considered together (with any further Supplementary Memorandums which may be laid

before the Senedd to cover any future amendments) when deciding on consent.

14. Consent is required for the following amendments to provisions of the Bill because they make provision with regard to devolved matters. Clause numbers below relate to the version of the Bill ordered to be printed on 18 May 2020 (the version as amended in Commons Report stage).

**Clause 31: (Fertilisers), Clause 37: (Organic products: supplementary), Clause 47: (Regulations), Clause 48 (Interpretation) Schedule 3, Part 1: (Amendments to the Agricultural Holdings Act 1986)) and Schedule 5, Part 2, paragraph 6: (Declaration relating to exceptional market conditions)**

15. Part 2 of the Senedd and Elections (Wales) Act 2020 (“the 2020 Act”) means that the National Assembly for Wales was renamed “Senedd Cymru” or “Welsh Parliament”, from 6 May 2020. The Bill was drafted to refer to the National Assembly for Wales and to Measures and Acts of the National Assembly for Wales. As the Bill will now receive Royal Assent after 6 May, those references have been amended to refer instead to Senedd Cymru or the Senedd, to reflect the changes made by Part 2 of the 2020 Act. Appropriate amendments have been made to clauses 31, 37, 47 and 48 and Schedules 3 and 5.
16. It is the Welsh Government’s view these amendments require consent because they make provision with regard to a devolved matter. The amendments take account of name changes made by the 2020 Act, the purpose of which is to improve the accessibility and operational arrangements of the legislature in Wales, in this case by better reflecting the evolution of the constitutional status of the legislature.

**Clause 32 (identification and traceability of animals)**

17. Clause 32(2) is amended so that the amendment that it effects to the Animal Health Act 1981 (“the 1981 Act”) applies to Wales. As a result, in section 8(1)(a) of the 1981 Act the term “marking of animals” is replaced by “means of identifying animals” and provision made under subsection (1)(a) made by the Welsh Ministers may bind the Crown. The amendment will allow secondary legislation that will be made under powers contained in the 1981 Act to reflect new developments in technology and methodology of identifying animals, for example, the use of electronic identification. Previously this amendment had been restricted to England.
18. Clause 32(3) is amended so as to dis-apply Title I of Regulation (EC) 1760/2000 (“1760/2000”) in relation to Wales. This relates to the identification and registration of bovine animals. Clause 32(3) is further amended to dis-apply related provisions in Title III (common provisions) of 1760/2000 in relation to England or Wales. These concern compliance provisions. Clause 32(4) is amended so as to dis-apply Regulation (EC) 21/2004 (“21/2004”) in relation to Wales. This relates to the identification and registration of ovine

and caprine animals. Consequential amendments have been made to clause 53(3)(a)(i) (which provides that these provisions come into force on such day as the Welsh Ministers may be regulations made by statutory instrument appoint) and clause 50(6)(a)(i) (power to make consequential etc provision). As originally drafted, clauses 32(3) and (4) made provision in relation to England only.

19. The amendments provide the Welsh Ministers with the power to replace the specified provisions of 1760/2000 and 21/2004 with an order made under powers contained in the 1981 Act, without the need to make further primary legislation at that point. At such time, the Welsh Ministers will dis-apply 1760/2000 and 21/2004 by commencing subsections (3) and (4). Previously the power to dis-apply the provisions of 1760/2000 and 21/2004 had been restricted to England.
20. It is the Welsh Government's view that these amendments require consent because they make provision with regard to devolved matters in so far as they apply to Wales, including agriculture and animal health.

#### **Schedule 5, Part 1: Financial Support after exiting the European Union**

##### *Paragraph 2 (power to modify legislation governing the basic payment scheme)*

21. Paragraph 2(1) of Schedule 5 provides powers for the Welsh Ministers by regulations to modify certain legislation governing the basic payment scheme so far as it operates in relation to Wales. As originally drafted the powers were available to "simplify or improve" the scheme, and have been amended so that the provision specifies five purposes for which the legislation may be modified as follows:

- (a) simplifying the administration of the scheme or otherwise making its operation more efficient or effective;
- (b) removing provisions which are spent or of no practical utility;
- (c) removing or reducing burdens, or the overall burdens, on persons applying for, or entitled to, direct payments under the scheme or otherwise improving the way that the scheme operates in relation to them;
- (d) securing that any sanction or penalty imposed under the scheme is appropriate and proportionate;
- (e) limiting the application of the scheme to land in Wales only.

22. Paragraph 2(2) clarifies that the Welsh Ministers may terminate greening payments using the powers available under paragraph 2(1). Paragraph 2(2) is amended to clarify that provision to terminate greening payments may only be made so long as that provision does not reduce the amount of a direct payment to which a person would have been entitled had the provision not been made.
23. A new paragraph 2(3) is inserted to define "burden" (as used in paragraph 2(1)(c)) as including a financial cost, an administrative inconvenience, or an obstacle to efficiency, productivity or profitability.

*Paragraph 4 (Other financial support: modification in relation to Wales of general provision connected with payments to farmers and other beneficiaries)*

24. Paragraph 4(1) of Schedule 5 confers on the Welsh Ministers powers by regulations to modify, so far as it operates in relation to Wales, retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy, and subordinate legislation relating to that legislation. As originally drafted, the Welsh Ministers could make regulations for the purpose of securing that any provision of that legislation ceases to have effect in relation to Wales, or simplifying or improving the operation of such legislation in relation to Wales.
25. Paragraph 4(1) and (2) is amended so that the Welsh Ministers can make regulations to modify that legislation, so far as it operates in relation to Wales, for one or more specified purposes. Those purposes are:
- (a) securing that any provision of the legislation ceases to have effect;
  - (b) simplifying the operation of any provision of such legislation, or making its operation more efficient or effective;
  - (c) removing or reducing burdens, or the overall burdens, imposed by such legislation on persons applying for, or in receipt of, payments governed by the legislation, or otherwise improving the way that the legislation operates in relation to such persons;
  - (d) securing that any sanction or penalty imposed by such legislation is appropriate and proportionate.

Sub-paragraph (3) provides a non-exhaustive list of the “retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy”. That list is amended to include “legacy regulations”, which are defined at sub-paragraph (4). Sub-paragraph (3) is also amended to define “burden”, which is used in paragraph 4(2)(c), as including a financial cost, an administrative inconvenience, or an obstacle to efficiency, productivity or profitability.

*Paragraph 5 (Support for rural development: modification of legislation in relation to Wales)*

26. Paragraph 5 confers powers on the Welsh Ministers to modify “retained direct EU legislation relating to support for rural development” (as described at paragraph 5(2)) and subordinate legislation relating to that legislation. As originally drafted, these powers could be exercised to secure that certain legislation ceases to have effect in relation to Wales, or to simplify or improve the operation of that legislation (pending that legislation ceasing to have effect). The provision is amended to broaden these regulation making powers by removing these restrictions, so that the relevant legislation can be modified so far as it has effect in relation to Wales. This clause is intended to be used to make extensions of schemes and projects beyond the existing RDP 2014-20 or to operate a domestic Welsh equivalent. The amendment also makes

the regulation making powers subject to the affirmative, rather than the negative, procedure.

27. The powers at paragraph 2, 4 and 5 of Schedule 5 remain subject to the sunset clause (clause 44) and will expire at the end of 2024 (along with the rest of Schedule 5 and certain other provisions as explained at paragraphs 57 and 58 of the Legislative Consent Memorandum laid on 12 February).
28. It is the Welsh Government's view that the amendments to paragraphs 2, 4 and 5 of Schedule 5 require consent because they make provision with regard to agriculture, a devolved matter.

### **Powers to create subordinate legislation**

29. The Annex describes a list of subordinate legislation making powers conferred on the Welsh Ministers, updated slightly from the Memorandum laid on 12 February to take account of amendments made at House of Commons Committee and Report stage as described in this Memorandum. 'Affirmative resolution procedure' and 'negative resolution procedure' are defined in clause 47(6)(c) and (7)(c) of the Bill respectively as those terms apply to subordinate legislation made by the Welsh Ministers under the Bill.

### **Reasons for making these provisions for Wales in the Agriculture Bill**

30. As set out in the first Memorandum, it remains Welsh Government's intention to publish an Agriculture White Paper before the end of this Senedd term which will build on the proposals set out in the Sustainable Farming and Our Land consultation and lay the groundwork for an Agriculture (Wales) Bill to be introduced in the next Senedd term. The detail of any new scheme is dependent on the outcome of policy and operational decisions which cannot be made until analysis of results from both the consultations and White Papers has been completed, and all relevant considerations are taken into account.
31. Making provision for Wales in the UK Agriculture Bill will enable the continued provision of existing agricultural subsidies beyond 2020, and ensure the effective operation of agricultural markets following the UK's departure from the EU.

### **Welsh Government position on the Bill as amended**

32. Welsh Government is content with the amendments tabled by UK Government Ministers during Commons Committee and Report stages in respect of the amendments to clause 32 (identification and traceability of animals) and Schedule 5 (Provision relating to Wales). There are outstanding concerns regarding the Secretary of State's powers to make subordinate legislation

under the identification and traceability of animals (clause 32) and the regulation of organic products (clause 36 and 37) and the absence of appropriate requirements to obtain the Welsh Ministers' consent in certain circumstances. Work to resolve these outstanding concerns will continue during the Bill's parliamentary passage and, if amendments can be agreed, a supplementary Legislative Consent Memorandum will be brought forward at the appropriate time.

33. Welsh Government remain content with the provisions in respect of the WTO Agreement on Agriculture in view of the agreement reached with the Secretary of State on the exercise of those regulation making powers. At the request of the Welsh Government the Parliamentary Under Secretary made a commitment on the floor of the House of Commons about working with the Devolved Administrations when using these powers.
34. Any further changes made to the Bill as it progresses through the Lords that require Memoranda, not least in order to respond to points raised by Committee scrutiny in the Senedd, will be laid before the Senedd as appropriate. A final recommendation in respect of the Senedd's consent will be provided once all amendments to the Bill have been made.

### **Financial implications**

35. There are no direct financial implications for the Welsh Government or the Senedd as a result of taking these powers in this Bill.

### **Conclusion**

36. This supplementary memorandum describes the relevant changes made to the Bill since introduction requiring Senedd consent. The Welsh Government is generally supportive of the Bill as drafted. It should be noted however, that it is not possible to give an unequivocal recommendation to the Senedd to consent to the Bill until we are closer to the end of the Lords stage. In the event of future amendments within the legislative competence of the Senedd then further Supplementary Legislative Consent Memoranda will be laid before the Senedd as appropriate, with a recommendation from Welsh Government in respect of the consent of the Senedd at the appropriate time.

**Lesley Griffiths AM**  
**Minister for Environment, Energy and Rural Affairs**  
**June 2020**

## Annex

### SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM: AGRICULTURE BILL – CONSOLIDATED LIST OF PROVISIONS WHICH CONTAIN POWERS FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION AS AMENDED AT HOUSE OF COMMONS COMMITTEE AND REPORT STAGES

<u>Bill provision</u>	<u>Description of Power</u>	<u>Legislative procedure</u>
31 (fertilisers)	Clause 31(4) amends section 74A of the Agriculture Act 1970 and allows for regulations made by the Welsh Ministers in relation to Wales (and the Secretary of State, Scottish Ministers and a Northern Ireland Department in respect of other parts of the UK) to set out an assessment, monitoring and enforcement regime for ensuring the compliance of fertilisers with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers.	The first regulations made by the Welsh Ministers under section 74A(1A) to (1E) of the Agriculture Act 1970 are subject to the affirmative resolution procedure. Subsequent regulations made by the Welsh Ministers, under section 74A(1A)(b) (conferring on a public authority functions relating to market surveillance and regulation) or (1E)(a)(i) or (ii) (amending and repealing retained EU law relating to fertilisers) are also subject to the affirmative resolution procedure (clause 31(5), amending section 84 of the Agriculture Act 1970). Otherwise the negative resolution procedure applies (see section 84(2), Agriculture Act 1970).
33 (red meat levy)	Powers for the Welsh Ministers (acting jointly with the Secretary of State and/or the Scottish Ministers) to make a scheme to make provision for amounts of red meat levy collected by the levy body for one country in Great Britain to be paid to the levy body for another such country.	No procedure
36 and 37 (organic products)	Powers for the Welsh Ministers in respect of the certification of organic products and import and export controls (if and to the extent that provision made by the regulations would be within the legislative competence of the Senedd if contained in an Act of the Senedd (ignoring any requirement for the consent of any person) (clause 37(1)(c)).	Affirmative resolution procedure where— (a) the regulations are made under section 36(1) and contain provision referred to in section 36(3), or (b) the regulations are made under subsection (1), (5) or (7) of section 36 and they are the first regulations to be made under that subsection by the authority making them. Otherwise, regulations under clause 36 are subject to



		negative resolution procedure (unless section 47(5) applies, in which case affirmative resolution procedure).
44 (duration of provision in relation to Wales)	Powers for the Welsh Ministers to make transitional, transitory or saving provision in connection with this section.	Regulations under this clause which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure. Other regulations under this clause are subject to negative resolution procedure.
50(1) (consequential etc. provision)	The appropriate authority may by regulations make supplementary, incidental or consequential provision in connection with any provision of this Act. The Welsh Ministers are the appropriate authority, for provision in connection with— (i) section 32(3) and (4), so far as relating to Wales, (ii) clause 43 and Schedule 5, (iii) clause 44, and (iv) clause 49 and Schedule 7 so far as they apply in relation to Wales.	Regulations under section 50(1) which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure. Other regulations under subsection (1) are subject to negative resolution procedure.
50(5) (consequential etc. provision)	The appropriate authority may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of the Act. The Welsh Ministers are the appropriate authority, for provision in connection with— (i) section 32(3) and (4), so far as relating to Wales, (ii) clause 43 and Schedule 5, (iii) clause 44, and (iv) clause 49 and Schedule 7 so far as they apply in relation to Wales.	No procedure
53(3) (commencement)	Powers for the Welsh Ministers by regulations made by statutory instrument to appoint— (a) so far as relating to Wales— (i) section 32(3) and (4), (ii) paragraphs 10 to 18 of Schedule 3, and (iii) section 34 so far as relating to those paragraphs, (b) Parts 2 and 4 of Schedule 5, and section 43 so far as relating to those Parts, and (c) Parts 2 and 4 of Schedule 7, and section 49 so far as relating to those Parts.	No procedure
Schedule 3, para 6(7)	Powers for the Welsh Ministers by regulations made in a statutory instrument to amend section 84 of the Agricultural Holdings Act 1986 so as to- a) include a person in, or remove a person from, the definition of “professional authority”; b) reflect changes in the name or internal	Negative procedure

	organisation of any body mentioned in that definition.	
Schedule 3, para 7	Powers for the Welsh Ministers by regulations to make provision for the tenant of an agricultural holding to refer for arbitration requests made by the tenant for landlord's consent or variation of terms	Negative procedure
Schedule 3, para 17	Paragraph 17 amends section 39(8) of the Agricultural Holdings Act 1986 to confer a power on the Welsh Ministers, in relation to Wales, to make regulations specifying the criteria that must be considered when determining a person's suitability to become a tenant of the holding.	Negative procedure
Sch 5, para 2(1)	Powers for the Welsh Ministers to modify legislation governing the basic payment scheme	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 3(1)	Powers for the Welsh Ministers to provide for the continuation of the basic payment scheme beyond 2020, including power to provide for the direct payments ceiling for Wales to be made by Welsh Ministers	Affirmative resolution procedure
Sch 5, para 4(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation.	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 5(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation.	Affirmative resolution procedure
Sch 5, para 8(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for the purposes of altering the operation of provisions of such legislation, so far as they have effect in relation to Wales in connection with exceptional market conditions which are the subject of a declaration under paragraph 6 of Schedule 5 (declaration relating to exceptional market conditions).	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 8(2)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for specified purposes	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 9(2)	Powers for the Welsh Ministers to make regulations requiring persons in or closely connected with an agri-food supply chain to provide information about matters connected with any of the person's activities connected with the supply chain so far as the activities are in Wales.	Affirmative resolution procedure
Sch 5, para 14(1)	Powers for the Welsh Ministers to make provision for enforcement of a requirement imposed under paragraph 9(1) or (2) of	Affirmative resolution procedure

	Schedule 5 (agri-food supply chains: requirement to provide information)	
Sch 5, para 15(1)	Powers for the Welsh Ministers by regulations, in relation to products which fall within a specified sector and are marketed in Wales, to make provisions about the standards with which those products must conform	Affirmative resolution procedure
Sch 5, para 16(3)	Powers for the Welsh Ministers to amend paragraphs 15 and 16 for or in connection with the purpose of— (a) adding or removing an agricultural product from paragraph 16(1); (b) altering the description of an agricultural product in paragraph 16(1).	Affirmative resolution procedure
Sch 5, para 17(1)	Powers for the Welsh Ministers to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales	Affirmative resolution procedure