



Llywodraeth Cymru
Welsh Government

Agriculture (Wales) Bill

Statement of Policy Intent for secondary legislation etc

Introduction

This paper summarises the Welsh Ministers' powers for making secondary legislation outlined in the Agriculture (Wales) Bill (the Bill), as introduced to the Senedd Cymru on 26 September 2022.

The Statement has been prepared to assist committees during the scrutiny of the Bill. It should be read in conjunction with the Bill and the Explanatory Memorandum and Explanatory Notes which accompany it. Details of the Senedd procedure associated with each of these powers are set out in chapter 5 of the Explanatory Memorandum and are not repeated in this document.

This document is also intended to provide stakeholders with an initial opportunity to provide feedback on the intended use of these powers so as to ensure robust and effective policy. The Welsh Ministers have considered the use of powers in the Bill as set out below and are satisfied that they are necessary and justified.

In developing subordinate legislation, the Welsh Government will work closely with stakeholders to ensure the provisions are relevant, valid and proportionate.

Overview of the Bill

The Bill contains 6 Parts and 3 Schedules.

Part 1 – Sustainable Land Management

Part 2 – Support for agriculture etc

Part 3 – Matters relating to agriculture and agricultural products

Part 4 – Forestry

Part 5 – Wildlife

Part 6 – General

Schedule 1 - Agricultural products relevant to marketing standards provisions

Schedule 2 - Minor and consequential amendments etc. relating to Parts 1 to 3

Schedule 3 - Consequential amendments etc. to the CMO Regulation

Part 1 - Sustainable Land Management

Ref	Section of Bill	Description of Power	Reason for and Policy Intention of the Power
Sustainable Land Management Reports			
	Section 6	<p>Power for the Welsh Ministers to amend section 6(9), which defines the “reporting period” for SLM reports.</p> <p>The Welsh Ministers are required to prepare a report, in relation to each reporting period, setting out their assessment of the progress made towards achieving the sustainable land management objectives (section 6(1)) through the exercise of the functions to which the duty in section 2 applies. This includes reporting on the progress made in relation to indicators and targets during the reporting period (section 6(2) to (6)). The report must be published and laid before the Senedd no later than 12 months after the end of each reporting period (section 6(8)). The reporting period is, (a) in the case of the first report, the period beginning with the day on which section 2 (Welsh Ministers’ duty in relation to the objectives) comes into force and ending with 31 December 2025; (b) in the case of subsequent reports, successive periods of five years (section 6(9)).</p>	<p>The Sustainable Land management (SLM) reporting provisions provide an important mechanism to assess SLM policy delivery and for accountability and scrutiny.</p> <p>The power to amend the reporting period provides flexibility in case the reporting period needs to be amended to take account of changing priorities and/or changes the contract length/starting times in any support schemes under the power to provide support such as the proposed Sustainable Farming Scheme (SFS). Evidence from the power to provide support reports is likely to be particularly relevant to the SLM report. The section 6 power allows Welsh Ministers to amend the reporting period for the SLM report, if they deem it necessary, to better align with other reporting and operational procedures such as the power of support reports.</p>

Part 2 – Support for agriculture etc

Ref	Section of Bill	Description of Power	Reason for and Policy Intention of the Power
Ch1	Welsh Ministers' power to provide support		
	Section 8 – 4 (a) to (c)	<p>Powers for the Welsh Ministers to add, remove or alter purposes as set out in section 8(2) of the power to provide support purposes.</p> <p>Provides the Welsh Ministers with the ability to add, remove or alter the purposes to the power to provide support purposes set out in the Bill.</p> <p>These purposes are not exhaustive but set out purposes that support may be provided for or in connection with agriculture and ancillary activities in Wales.</p> <p>The purposes may need amending in the future as land management practices and priorities change as a result of SLM.</p>	<p>These regulations could amend primary legislation in connection with the Power to provide Support purposes.</p> <p>The purposes outline the priorities for payments under the power to provide support and any changes (adding, removing or modifying entries) will have an impact on the design of any scheme under the power to provide support. As such it is necessary that any changes are given due consideration and opportunity for challenge.</p> <p>The first Scheme to be proposed pursuant to the power to provide support is the SFS. An outline policy document 'SFS: Outline Proposals for 2025' in which some of the purposes are described, as well as actions which can be taken at a support scheme level, in support of achieving the purposes can be found on the Welsh Government Website.</p> <p>Sustainable Farming Scheme GOV.WALES</p>
	Section 10 (1)	The Welsh Ministers may make regulations that make provision relating to the publication of information about support that is or has been provided.	<p>The regulations may provide for the specification of information, including about the recipient of any support provided, amount of any support provided, and the purposes of any support provided.</p> <p>The power may involve the publication of data relating to businesses and individuals that receive support under the</p>

			<p>power of support. For example, it is the policy intent the regulations should impose a requirement to publish specified information about individual payments. Providing transparency as to what public monies have been provided for.</p>
	<p>Section 11 (1)</p>	<p>The Welsh Ministers may make regulations to make provision for ensuring that eligibility for support has been met and compliance and enforcement measures are in place. This power may confer powers of entry, the withholding of support and the recovery of support already paid.</p>	<p>The regulations may make provision for ensuring that eligibility for support has been met and compliance and enforcement measures are in place. Such as a comprehensive and coherent system of checks, enforcement and monitoring of all support provided under the power to provide support. The system of checks will enable any irregularities to be identified and addressed and also needs to act as a deterrent for non-compliance.</p> <p>The Welsh Ministers will have the power to make regulations in respect of the enforcement for any support provided under the provisions set out in the power to provide support, in addition to having the power to set out (in regulations) provision about penalties and appeals (amongst other matters). This may include, but is not limited to, a financial penalty; recovery of any financial support paid; withholding any support (either financial or non-financial, or both); prohibiting access to specific support for a set period or until the specified conditions are met.</p> <p>The power used will be justified and appropriate in relation to what they are establishing (eligibility for payments and compliance to support conditions).</p> <p>Regulations under this power may not authorise entry to a private dwelling without a warrant issued by a justice of the peace.</p>

	Section 13 (7)	The Welsh Ministers may by regulations amend the reporting period, subsection (6), for the Impact Report.	<p>The reporting period is currently set for every five years, to align with a) the SLM reporting period and b) to align with the proposed contract length of the SFS.</p> <p>If the specified reporting period is no longer considered suitable for example if Welsh Ministers want to shorten the reporting length so that more frequent reporting can occur, then the reporting period can be amended accordingly. Consideration should be given to the reporting period of the SLM report in any amendments to the Impact report reporting period as evidence from the Impact report is likely to be particularly relevant to the SLM report.</p> <p>The reporting period may if the need arises be amended to align with the contract periods of any schemes under the power to provide support, this would ensure that relevant and recent evidence is captured.</p> <p>In the case of the first Impact Report, the “reporting period” means the period beginning with the day set in which the power to provide support comes into force and ends on 31 December 2029, and for subsequent Impact Reports, the reporting periods are set for every five years.</p>
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Ch2	Powers to modify legislation relating to financial and other support		
	Section 15 (1)	This is a power to make modifications to the legislation governing the basic payment scheme (BPS)	<p>These will only be used where necessary to make changes to current detailed scheme rules, contained in retained EU Law.</p> <p>It permits Welsh Ministers to make changes to legislation governing the BPS, this could include modifying BPS during a transition period, which (subject to consultation) may provide a stability payment and the closing down of the BPS</p>
	Section 16(1)	This is a power to make amendment to CAP (financing, management and monitoring) to provide for any changes that may be required for support going forward.	<p>These will only be used where necessary to make changes to current detailed scheme rules, contained in retained EU Law during the transition period.</p> <p>They will enable the Welsh Ministers the continued operation of existing farming support and to ensure the effective operation of the agricultural sector and agriculture markets following our departure from the EU.</p>
	Section 17(1)	This is a power to modify legislation as it relates to support for apiculture	<p>This power is required to modify the apiculture scheme and adapt to changes in order to support beekeeping.</p> <p>The scheme covered technical assistance to beekeepers, combatting disease and pests, transhumance, laboratory and market support for apiculture products, restocking, applied research programmes, market monitoring and enhancement of product quality.</p>
	Section 18(1)	This will allow for modification to rural development legislation.	It is intended that rural development measures will continue at least in the short term and will be necessary to support transition.

			<p>Regulation 2021/400 established a domestic RD framework which is being used to deliver transition schemes from 2022, which is expected to be phased out as part of transition to SFS (optional/collaborative)</p> <p>This power will only be used where necessary to make changes to current detailed scheme rules, contained in retained EU Law.</p>
Ch3	Intervention in agricultural markets		
	Section 22 (1)	Power to make regulations to modify retained EU legislation relating to public intervention and private storage aid.	<p>This power includes being able to alter the operation of Public Intervention and Private Storage Aid schemes in retained EU law to ensure the schemes are tailored to the domestic market. This could include, for example, changing the products which are eligible for specific aid schemes or to phase out the schemes if they were not deemed effective methods of stabilising market prices.</p>
Ch4	Agricultural Tenancies		
	Section 23	<p>This amends the definition of “relevant financial assistance” in Section 19A (7) of the Agricultural Holdings Act 1986 to refer to Section 8 of the Bill (Welsh Ministers’ power to provide support). The definition is also amended in respect of third-party schemes, the basic payment scheme, the common agricultural policy, support for apiculture and support for rural development.</p>	<p>It will allow the Welsh Ministers in relation to Wales to exercise regulation making powers in section 19A of the 1986 Act to enable tenants of an agricultural holding to refer to arbitration or third-party determination requests for the landlord’s consent to activities restricted under the terms of the tenancy agreement or requests for a variation of terms, where that request relates to the tenant accessing financial assistance provided under the power of support provision in the Bill.</p> <p>The intent of the amendment is to ensure agricultural tenants are not unfairly restricted from accessing financial assistance schemes provided for by the Bill.</p>

Part 3 – Matters relating to agriculture and agricultural products

Ref	Section of Bill	Description of Power	Reason for and Policy Intention of the Power
Ch1	Collection and sharing of data		
	Section 24 (2)	<p>Welsh Ministers may by regulations require a person 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 take place in Wales.</p>	<p>The Welsh Ministers, by regulations, will be able to require information to be provided on activities related to an agri-food supply chain. The agri-food supply chain provisions enable data to be collected from any activity that is connected to a supply chain, or part of a supply chain, that results in the production of food or drink for human consumption.</p> <p>For example, an agri-food supply chain would encompass the farmer who grows the crops for food, through to the milling of the crop for the making of bread, and to the shop that sells the bread to the end-consumer. Or from the farmer that tends to their livestock, to the livestock markets where they are sold, through to the shop that sells the food or drink products</p> <p>In addition, an agri-food supply chain could include information on productivity, animals and plants, within the agri-food supply chain. These powers will be used to help farmers and producers increase productivity through gathering and sharing data, including price information, on specific products at all stages of the food chain.</p> <p>This information will both support and help to manage risk and market volatility. It will also support animal and plant health and traceability improvements through the collection and sharing of data on animal births, deaths and movements, disease signs and veterinary medicine use.</p>

			<p>It is important to note that a farmer may be a part of both an agri-food supply chain <i>and</i> carrying out a relevant activity.</p>
	Section 26 (2)	<p>Welsh Ministers may make regulations which require a person who carries on a relevant activity (and who is not a person in, or closely connected with, an agri-food supply chain) to provide information about matters connected with the activity so far as the activity takes place in Wales.</p>	<p>The relevant activity provisions enable data to be collected from those who carry on activities which are agricultural in nature, but which sit outside of an agri-food supply chain. For example, crops grown for energy up until the point in which they are converted into energy (post-farm gate), or an activity related to ornamental horticulture.</p> <p>This information will help provide information needed to monitor market fluctuations as well as identifying market trends and increasing our understanding of the sector. If for example there is a market crisis Welsh Ministers will have the data to support a decision on if, and what kind of, intervention is required.</p> <p>It is important to note that a farmer may be a part of both an agri-food supply chain <i>and</i> carrying out a relevant activity.</p>
	Section 31 (1)	<p>Welsh Ministers may by regulations make provision for enforcement of a requirement to provide information under sections 24(1) or (2) or sections 26(1) or (2).</p>	<p>The data collection powers contained in the Bill, will enable Welsh Ministers to be able to respond quickly to any crisis in the agricultural sectors.</p> <p>It is important that the Welsh Ministers will be able to require the provision of certain information because sufficient data might be needed to justify launching a support scheme. If some businesses provide data, but not enough businesses respond, so that insufficient information is obtained to justify/ launch a support</p>

			<p>scheme, this means that businesses who have responded may not be able to access support.</p> <p>Whilst it is important to have the option of making data collection compulsory, any enforcement needs to be proportional.</p> <p>If data is being collected in a crisis, Welsh Ministers need to be mindful of the financial strain that is likely to be experienced by businesses in such situations, so penalties with a greater impact on businesses would not be appropriate.</p>
Ch2	Marketing standards: agricultural products		
	Section 32 (1)	The power for the Welsh Ministers to make provision concerning marketing standards relating to agricultural products listed in Schedule 1 of the Bill	<p>To ensure agricultural products marketed in Wales can keep in line with modernisation, to best suit the domestic sector and to align with changes elsewhere in the UK.</p> <p>For example, if the UK Government or another Devolved Government was to introduce changes to marketing standards in their territory, the power would enable Welsh Ministers to introduce similar standards to maintain alignment to avoid creating a heavy bureaucratic burden on Welsh farmers, food processors and retailers who are operating in an integrated cross-border market.</p>
	Section 32 (6)	This power enables the Welsh Ministers to make changes to be made to the Schedule 1 that lists agricultural products and Section 32 to account for future changes/development in this area.	<p>To ensure Welsh Ministers have the ability to adapt marketing standards for agricultural products to include new products in future.</p> <p>This might include adding products to the Schedule 1 list which are important to Welsh consumers and require additional clarity when presented for sale, such as labelling showing value-adding characteristics.</p>

Ch3	Classification etc. Of certain carcasses		
	Section 33 (1)	This power enables the Welsh Ministers to make carcass classification, identification and presentation provisions in relation to slaughterhouse in Wales. It will enable their modification to best suit the sector.	It will enable Welsh Ministers to make changes as appropriate to carcass classification, including to reflect technological changes such as Video Imaging Analysis / Automated Grading.

Part 4 – Forestry

Ref	Section of Bill	Description of Power	Reason for and Policy Intention of the Power
	Powers relating to amendments to Part 2 of the Forestry Act 1967 (“the Forestry Act”).		
	Section 35	Power to enable environmental conditions to be added to felling licences, after consultation with the applicant for the licence.	<p>Currently the Forestry Act 1967 allows certain conditions to be added to felling licences related to restocking and the subsequent maintenance of the restocked trees. It does not allow conditions to be added to felling licences to ensure the integrity of protected sites, protected species or other sensitive elements of the environment. This power will allow Natural Resources Wales (NRW) as forest regulator to add “environmental” conditions to felling licences to prevent felling that would contradict other environmental legislation or cause environmental harm.</p> <p>The effect of this is primarily to safeguard habitats and species and provide protection from environmental damage and are in addition to the existing conditions currently set out in the Forestry Act. They will only be used when the NRW consider that it is necessary to include a condition to protect a particular species, habitat or other environmental concerns or sensitivities that have been raised during consultation within the application process.</p> <p>The requirement to consult the applicant of the felling licence ensures that both parties share an understanding of the need for those conditions and discuss, if necessary to ensure what is contained in the licence is proportionate and justifiable.</p>

	Section 36	Power to amend tree felling licences by agreement	<p>Currently there are no powers for NRW to amend a felling licence.</p> <p>This power enables NRW to amend a felling licence with the agreement of the felling licence holder. The ability to amend a felling licence in mutual agreement with the licence holder will help address a number of issues, including changes in forest management objectives, instances where additional information has come to light since the felling licence was granted or where steps can be agreed to address a breach in felling licence conditions.</p>
	Section 37	Power to amend, suspend or revoke felling licences after they have been granted	<p>There are currently no powers to amend, suspend or revoke a felling licence owing to a breach of felling licence conditions or in other environmental legislation resulting in environmental damage.</p> <p>This power will allow NRW to serve notices to amend, suspend or revoke felling licences already granted. This could arise where environmental conditions within a felling licence have been breached, or where no environmental conditions have been breached but environmental harm is likely to occur e.g. where a new sensitivity has unexpectedly come to light. The powers enable NRW to take a number of actions through the serving of a notice, including varying the environmental conditions in the felling licence, amending the felling licence itself, setting out remedial or mitigation action where conditions have not been complied with, or suspending (either the whole or part of the licence) or revoking of the felling licence. Suspension or ultimately revocation are seen as extreme outcomes and would only be used in exceptional circumstances where amendment to conditions or the</p>

			<p>felling licence would not address the issue or cannot be agreed.</p> <p>As part of the new powers, the proposed amendments also introduce a new offence, enabling NRW to take enforcement action where steps specified in a notice arising from a breach of conditions have not been carried out. The level of fine is unlimited, in line with the existing fine within the Forestry Act 1967 for non-compliance with a notice.</p>
	Section 38	Provision of compensation	<p>Payment of compensation is already provided for within the Forestry Act for refusal of a felling licence.</p> <p>As part of the new powers, compensation will be made available where a felling licence is amended, suspended or revoked due to environmental harm arising through no fault of the licence holder. Compensation is also to be made available where a notice is served relating to a breach of conditions, but is later cancelled as a result of a successful appeal.</p> <p>Where “steps” have been carried out as a requirement of a notice served due to a breach of conditions which is later cancelled at appeal, compensation will be based on the actual costs of undertaking those steps. In all other cases, compensation will be based on the loss in value of the growing timber resulting from amending, suspending or revoking the felling licence where eligible. This reflects existing compensation provision already within the Forestry Act 1967. To date, there have been no cases of compensation having been paid in Wales under the existing provision within the Forestry Act.</p>

	Section 39	Extending the grounds for appeal	<p>Felling licence holders already have the right to appeal within the Forestry Act 1967 against a notice to comply with conditions within a felling licence.</p> <p>As part of the new powers, the grounds for appeal is extended to notices served for the purposes of amending, suspending or revoking a felling licence. Provision is also made to allow notices to amend, suspend or revoke to take immediate effect before an appeal is lodged, where NRW considers this necessary due to an imminent and serious risk of environmental harm.</p>
	Section 40	Increase in penalty for felling without a licence	<p>The current penalty for felling without a licence is limited to £2500, which is less than the current “unlimited” penalty for failing to comply with an enforcement notice to undertake required restocking conditions within a felling licence.</p> <p>As part of the new powers, the penalty for felling without a licence will be increased to an unlimited fine. This is relevant where a licence is suspended/revoked but felling continues. Increasing the penalty to an unlimited fine will address the discrepancy between the unlimited fine for not complying with a notice and the currently limited fine for illegal felling. This gives the Courts flexibility to impose a higher fine in the event of a major incident and will also act as a better deterrent against illegal felling.</p>
<p>Welsh Government will provide non-statutory guidance to NRW on how these powers should be implemented. This can be found on the Agriculture (Wales) Bill webpage.</p> <p>Based on this, NRW will draft full guidance for both internal and external stakeholders in time for Commencement of these powers. In the meantime, an outline on how these powers will be implemented by NRW can be found on the Agriculture (Wales) Bill webpage.</p>			

Part 5 – Wildlife

Ref	Section of Bill	Description of Power	Reason for and Policy Intention of the Power
Prohibition on use of snares and glue traps to kill or take wild animals			
	Section 43	Amendments to the Wildlife and Countryside Act 1981	<p>Calls to take action on snares have been prevalent and growing for many years. In 2015 this led to the development of a Code of Best Practice on the Use of Snares in Fox Control produced by Welsh Government in consultation with representatives of a number of interested stakeholders including snare users. Concerns on the welfare of target and non-target species captured by snares have, however, continued to grow. The call to ban snares is reflected elsewhere in Great Britain.</p> <p>Glue traps are considered inhumane, and animal welfare organisations have long called for them to be banned. This has been supported by professionals in the British Veterinary Association and the British Veterinary Zoological Society who have pointed to similar methods, such as, bird lime, which is already illegal. Both target and non-target species will be better protected by a complete ban and ensure alternative, more humane, methods are instead utilised.</p>

Part 6 – General

Ref	Section of Bill	Description of Power	Reason for and Policy Intention of the Power
	Power to amend sections 48 and 49		
	Section 50	Power to amend section 48 (Meaning of “agriculture” and related references) and section 49 (Meaning of “ancillary activity”).	<p>Provides the Welsh Ministers the power to amend section 48 (meaning of “agriculture” and related references) and section 49 (meaning of “ancillary activity”) by regulations.</p> <p>These regulations could amend primary legislation, and, specifically, two definitions that go to the heart of the Bill.</p> <p>This power ensures that the that the Bill, and the powers and functions within, including the definitions, can be amended to adapt to and to reflect any future changes in agricultural practices as a result of land management or technological changes in the future to ensure they remain fit for purpose.</p>