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**Llywodraeth Cymru**  
**Welsh Government**

Huw Irranca-Davies  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff  
CF99 1SN

7 December 2022

Dear Huw,

Thank you for your letter of 25 November regarding the committee evidence session on Monday 21 November for the Agriculture (Wales) Bill.

I have carefully considered the committee's further questions and in order to assist considerations of the Bill I have provided the information in the annex attached to this letter.

Regards,



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

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.

**Annex: Response to Legislation, Justice and Constitution Committee’s further evidence questions on the Agriculture (Wales) Bill – Dec 22**

**1. Please could you identify, for every regulation-making power in the Bill, when you first intend to use that power to make the relevant regulations?**

Due to some of the complexities of the provisions, policy decisions were taken during the drafting of the Bill that some provisions would be automatically commenced and some were to be commenced by Order.

We intend to commence them by Order two months after Royal Assent (along with most of the automatic provisions), so there will be no difference to timing, only the vehicle in which commencement occurs.

The provisions in respect of Sustainable Land Management ("SLM"), Welsh Ministers’ Power to Provide Support, Powers to Modify Legislation Relating to Financial and Other Support, Agricultural Tenancies and Wildlife come into force two months after the day on which the Bill receives Royal Assent.

All other provisions set out in the Bill (such as collection and sharing of data) will come into force by way of separate commencement Order.

Certain provisions in Part 4 relating to Forestry come into force the day after the date on which the Bill receives Royal Assent for the purposes of making regulations under section 32 of the 1967 Act. The other forestry provisions will come into force by way of separate commencement Order.

There are a number of regulation-making powers within the Bill which are outlined below:

**Part 1 Sustainable Land Management:**

Section 6(10) – power to amend section 6(9), which defines the “reporting period” for SLM reports. The reporting period for the first report ends on 31 December 2025 and for subsequent reports are successive periods of five years. There are no plans in place to amend the SLM reporting period. The power may be used, for example, to align with the power to provide support Impact Report (section 13) should the respective reporting periods fall out of synchronisation.

## **Part 2 Chapter 1: Power to Provide Support provisions**

Section 8(4) – power to amending the list of purposes. There are no plans currently to make any amendments to the list of purposes. However, following the evaluation of the support provided, it may be identified that some, or all of the purposes are no longer fit for purpose. If so, then, if required, the regulation-making power to add a purpose, remove a purpose or alter the description of a purpose from the list, could be used.

Section 10(1) – Publication of information about support. No date has been set for when this power will be first used.

Section 11(1) – power to make provision about checking eligibility for support (and other matters). No date has been set for when this power will be first used.

Section 13(7) – Power to amend the reporting period for the Impact Report at section 13(6). There are no plans in place to utilise this power. The Impact Report provisions already provide for an extended first reporting period which ends on 31 December 2029 and thereafter every five years to align with the SLM reporting period. They would be expected to be used, for example, should the alignment with the SLM report fall out of synchronisation.

## **Part 2 Chapter 2: powers to modify legislation relating to financial and other support**

As I have set out in question 2, we do not intend to make changes until we can demonstrate a new system is adequately designed, we have undertaken the relevant impact assessments and we are confident it is administratively practicable.

For the power to modify legislation relating to support for an apiculture scheme which is part of retained EU law. There are no plans currently to modify this legislation.

## **Part 2 Chapter 3: Intervention in Agricultural Markets**

Sections 20 and 21 – provisions to declare exceptional market conditions and provide financial support to agricultural producers in such conditions. No date has been set for when these powers will first be used.

Section 22 – provision to modify retained EU legislation relating to public market intervention and private storage aid.

The Welsh Ministers are planning to amend these provisions, due to the circumstances explained in the answer to Question 18. The changes planned to retained EU legislation governing public market intervention and private storage aid are due to use powers in the Agriculture Act 2020, as the provisions in the Agriculture (Wales) Bill will not be in force for when they are due to be made. No date has been set for when the powers in the Agriculture (Wales) Bill will first be used.

### **Part 3 Chapter 1: Collection and Sharing of Data:**

Section 24(2) – Provision of information relating to Agri-food Supply. No date has been set for when this power will be used.

Section 26(2) – Provision of information relating to relevant activities. No date has been set for when this power will first be used.

Section 31(1) – Provision for enforcement of information requirements. Again no date has been set for the first time this power will be used, however it is expected that its use will align with the regulation-making powers at sections 24(2) and 26(2).

### **Part 3 Chapter 2: Marketing Standards**

Sections 32(1) and 32(6) – provision about the standards with which the agricultural products listed in Schedule 1 must conform and provision to amend Schedule 1. No date has been set for when these powers will first be used.

### **Part 3 Chapter 3: Carcass Classification**

Section 33(1) - provision about the classification, identification and presentation of bovine, pig and sheep carcasses. No date has been set for when these powers will first be used. We are planning to create sheep carcass classification regulations, but using powers in the Agriculture Act 2020, as powers under this Bill will not be in force when these regulations are expected to be laid.

### **Part 6: General**

Section 50 – Provides the power to amend the meaning of “agriculture” (section 48) and “ancillary activity” (section 49). There are no plans to amend these definitions at present. The power to amend has been developed alongside an exhaustive definition of Agriculture and Ancillary Activities, and is there to ensure that the Bill, and the powers and functions within, are able to adapt to reflect any changes to agricultural practices as a result of land management or technological changes in the future and remain in pace with the sector.

**2. Please can you provide further information about why you do not have any plans to sunset either the BPS or the CAP continuation powers, particularly when it is intended that the Sustainable Farming Scheme will be the main source of funding for farmers in future and the BPS will be phased out over the transition period.**

I have announced my intention to continue with the Basic Payment Scheme to 2023 to provide support for farmers as we work together to transition to the Sustainable Farming Scheme.

We will not make changes until we can demonstrate a new system is adequately designed, we have undertaken the relevant impact assessments and we are confident it is administratively practicable.

Evidence being gathered through Co-design will feed into a wider evidence base (alongside other evidence workstreams) and help shape future scheme design. I will consult on the final scheme and how we transition in 2023.

A final decision on the proposals and, therefore, regulations which form the scheme will be made after the consultation in 2023.

**3. Please can you identify what assessment you have made of the potential impact of UKIMA on the effectiveness of the provisions of the Bill should they be passed by the Senedd and become law?**

Wales will be able to make its own standards with which the agricultural products listed in schedule 1 to the UK Internal Market Act must conform when they are marketed in Wales and the classification, identification and presentation of bovine, pig and sheep carcasses.

Likewise, England, Scotland and Northern Ireland will have the power to make their own provisions in these subject matters.

As is the case in respect of the Environmental Protection (Single-Use Plastics Products) (Wales) Bill, we are clear that the Senedd can legislate free from the requirements of UKIMA.

Therefore, the standards set in respect of agricultural products marketed in Wales will apply regardless of where in the UK those products come from.

The Welsh Government has made its position on UKIMA very clear throughout the passage of the Environmental Protection (Single-Use Plastics Products) (Wales) Bill. This remains our position – In devolved areas, the Senedd continues to be able to legislate free from the requirements of UKIMA.

**4. Section 23 of the Bill provides Agricultural Holdings Act tenants with a route to dispute resolution. Is this sufficient to ensure that tenants can access agricultural support provided under the Bill? Have you considered any alternative, or additional, provision to promote access?**

Tenanted land makes up a significant portion of farmland in Wales and making sure tenants have fair access to the Sustainable Farming Scheme (SFS) and future support is important for us to deliver our outcomes.

The provision, in combination with careful scheme design, aims to ensure fair access for tenant farmers to agricultural support under the Bill.

The universal actions are being designed with the aim that they can be delivered by farmers on tenancy agreements. These actions will help farms become more sustainable. They should be within reach of most farmers and can be integrated into current farming practice. The intention being to provide the building blocks to enable the farmer to go on and do more by choosing optional actions and receiving additional payments.

We want to offer as much flexibility as practicable for farmers to carry out the universal actions in a way which works best for their farm, while seeking to achieve the purposes for which support may be given, and which contributes towards the SLM objectives. We recognise some farms may not be able to deliver the full range of universal actions from the outset (for example, because of their farm type, topography, or contracts). Exemptions may therefore be in place, but our starting position is that farms in the SFS should undertake all universal actions.

We understand some tenants may find their ability to take up optional actions constrained by the terms of their tenancy agreement. We are exploring how landlords and tenants could collaborate to enter mutually beneficial agreements, similar to the examples included in the Rock Review.

We have established a tenancy working group to work with us to explore barriers tenant farmers may face to participation in the SFS.

The provision in the Bill introduces a route to dispute resolution for 1986 Act tenancies. We did consider whether similar provisions should be inserted into the 1995 Act, however it already includes a general dispute resolution procedure, making additional procedures unnecessary.

**5. Accessibility Section 29 of the Bill requires the Welsh Ministers to “publish” a draft requirement under sections 24(1) or 26(1). Where will this be published? Will the lack of precision in relation to the publication of this information impair accessibility?**

In line with all consultations, the requirements and privacy notices for data collection and sharing will be published on the Welsh Government website and will be available bilingually.

**6. In addition to a range of subordinate legislation making powers, the Bill amends a number of older pieces of (English language) legislation, such as the Forestry Act 1967. Did you consider making provision on the face of the Bill, rather than amending other legislation, so as to enable the provisions to be fully bilingual and to improve the accessibility of the law for the people of Wales?**

The Bill amends some well-established statutory regimes, such as those set out in the Forestry Act 1967 and the Wildlife and Countryside Act 1981.

Achieving the policy by way of freestanding provisions in a Senedd Bill would have resulted in inaccessibility issues and undesirable complexity.

If what is being suggested is that the Bill could have been used to remove all Welsh provision from the 1967 Act, and re-state it subject to any necessary revisions, then this would have been a significant piece of work and faced with that and refocussing the Bill at the expense of agricultural reforms, or making the amendments that I consider necessary to implement my important policies in this area, I chose the route set out in the Bill.

**7. How are the powers to allow the Natural Resources Body for Wales (NRW) to amend, suspend or revoke a tree felling licence it has issued, appropriate and proportionate? How will Welsh Government ensure that NRW are using these powers appropriately?**

Officials have issued non-statutory guidance to NRW on how these powers are to be implemented to ensure appropriate and proportionate use.

NRW have developed a high level approaches paper reflecting this guidance. These documents have been published on the Welsh Government website as part of the Statement of Policy Intent which supports the Bill.

NRW are now developing full internal and external guidance to ensure a consistent and proportionate approach to implementing these powers. These will be published to align with commencement of the provisions.

My officials will conduct a post implementation review of the legislation within 3 years of commencement of amendments to the Forestry Act 1967.

We will work with NRW and stakeholders to agree a collection of relevant data following commencement in order to monitor the impact of the forestry provision within the Bill.

**8. Do the Welsh Ministers have sufficient powers to intervene in the event that NRW were found not to be using their powers appropriately?**

Welsh Government has powers to give a direction to NRW in respect of the implementation of these powers if necessary.

**9. Section 40 amends section 17 of the Forestry Act 1967 (penalty for felling without licence) to increase the maximum fine for illegal felling from a level 4 fine (£2,500) to a level 5 fine (unlimited). In your view, is this increase in monetary penalty proportionate and justified?**

As the Forestry Act 1967 currently stands, a person can be fined less for illegal felling than for being in breach of a felling licence condition.

This anomaly is addressed by increasing the monetary penalty for illegal felling in line with the existing enforcement penalty for non-compliance with felling conditions. Leaving this anomaly unresolved would potentially undermine the new powers set out in the forestry provision.

It also gives the Courts flexibility to impose a higher fine in the event of a major incident and should also serve as a better deterrent for illegal felling.

This is in line with England, where the limit on these fines was removed by the 2021 Environment Act Schedule 16 para 2. (not yet commenced).

**10. What safeguards are provided in the Bill to protect individuals' personal data?**

The Bill's data collection provisions are compliant with the UK GDPR and overarching data protection legislation.



The Bill's data sharing provisions are very detailed and include several limitations and safeguards, such as the purposes for which data can be collected and how the data is to be processed.

Data can only be collected in furtherance of one or more of a specific and limited list of purposes which are set out in the Bill, such as helping to increase productivity, promoting transparency or fairness in agri-food supply chains or monitoring supply sources for food.

Furthermore, any regulations under the Bill made by the Welsh Ministers introducing obligations to provide information can only be made using the affirmative Senedd procedure, which provides significant scrutiny powers to Senedd members in relation to the information being collected.

There are further safeguards in place. As per our statutory obligation to consult with the Information Commissioners Office (ICO), as the UK Regulator (Article 36(4) of the General Data Protection Regulation) when drafting legislation which impacts upon the processing of personal data, my officials have consulted with the ICO on the data provisions within the Bill.

This is an area of ongoing engagement on all aspects of data collection and data protection regarding the Bill. The ICO ensures the provisions are compliant with the data protection principles enshrined in the UK GDPR and the Data Protection Act 2018. Consequently, the Welsh Government cannot put in place legislation which overrides these principles and which does not respect UK GDPR.

**11. Could you explain the measures that the Welsh Government will put in place to ensure that individuals clearly understand how their information will be used and processed?**

In advance of any data being collected, we will publish our intent on the type of data to be collected, the purpose for the collection, how the data will be collected and used, as well as the frequency for collecting data under the requirement.

The Bill requires the Welsh Ministers to have published their proposed draft requirements for at least four weeks, for comment, prior to information requirements being introduced. These requirements must set out the purposes for which the information will be processed and the processing of the information cannot breach the set requirements.

Individuals will be provided with clear privacy information about how their data will be used by Welsh Government and any partners.

**12. In line with UK GDPR and other data protection legislation, will individuals, including farmers, be required to consent to the processing of their data?**

Where data is collected from farmers on a voluntary basis, for example, the Annual Farm Business Survey, their consent is required to the processing of the data.

The Bill also contains statutory mechanisms which can require specific types of data to be provided by farmers for limited and particular purposes and whilst farmers' consent will not be required where these mechanisms are used, farmers will be able to influence those requirements by making representations themselves, via stakeholder representatives or Senedd members about the nature, effect and practical impact of the proposed requirements.

As previously stated, individuals including farmers will be provided with clear privacy information about how their data will be used by Welsh Government and any partners.

**13. We note that it is not the Welsh Government's policy nor wider intent to sell any data collected in accordance with Chapter 1 of Part 3 of the Bill to third parties. As such, would you consider amending the Bill to expressly prohibit the sale of such data?**

Whilst there is no provision within the Bill which specifically prevents the sale of collected information to third parties, it is not the policy nor wider intent of the Welsh Government to sell data onto third parties, therefore I do not think it is necessary to expressly prohibit the selling of data.

Under **UK GDPR it is only necessary to state what will be done with any data**, and, therefore, it is not a requirement to state what will not be done. We only state what can be done with the data within the Bill and accompanying regulations.

Including a provision to expressly prohibit the selling of data, would result in also needing to consider implementing further provisions to address **all** areas for which data will not be used.

**14. The Bill would grant powers to the Welsh Ministers to modify retained EU law. Does the Welsh Government intend to preserve retained EU law in the fields covered by this Bill using powers under the Retained EU Law Bill?**

The Welsh Government is considering how it will respond to the situation, in effect, imposed by the UK Government on reviewing REUL. In general our position is that retained EU law, like EU law before it, works well and, consequently, beyond gradually amending the law as appropriate over time as with any body of law, we had no intention to repeal, revoke or amend REUL to an arbitrary deadline on ideological grounds.

**15. Could the Welsh Government preserve retained EU law in the fields covered by this Bill, or is it reliant on the UK Government to also preserve relevant retained EU law, in whole or in part, to replicate the situation as it currently stands?**

As currently drafted the REUL Bill has powers which the Welsh Government could exercise to preserve REUL in areas of devolved competence. The Welsh Government is considering how it will respond to this Bill and will work with the UK Government to identify all devolved REUL including those instruments made by the UK Government and Parliament.

**16. What discussions have taken place with other UK governments in relation to retained EU law in the fields covered by this Bill, for example, is the Welsh Government aware of any UK Government plans for this retained EU law?**

Some UK Government departments (including DEFRA) have started to share their initial interpretation of the reserved/ devolved split of REUL with Welsh Government officials and they are considering how to respond and what further information is required. This work is dynamic as new REUL instruments are being identified as work progresses.

**17. How might such plans affect powers granted to Welsh Ministers by this Bill?**

We will continue to engage and in parallel are considering how to respond in the coming months as the new UK Government's position on the Bill is understood.

**18. Under the Retained EU Law Bill, the retained EU law in the fields covered by this Bill could automatically expire at the end of 2023. How might that impact the ability of the Welsh Government to deliver the objectives of**

**this Bill (specifically in relation to public market intervention or aid for private storage)?**

As I have said previously, we will continue to engage and in parallel are considering how to respond in the coming months as the new UK Government's position on the Bill is understood. Once we have more clarity, we will then be in a better position to assess how the REUL Bill will impact on public intervention and private storage aid.

We are planning to end Public Intervention and reform Private Storage Aid schemes in Welsh legislation next year.

Public Intervention schemes are an inefficient form of market support and have high associated costs, so we are planning to end their use because they represent poor value for money.

We are also planning to remove the requirements for operators to lodge a security for Private Storage Aid contracts and for the Rural Payments Agency to conduct interim inspections of products in such schemes.