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Food (Wales) Bill: Stage 1 scrutiny session with Minister

Dear Huw,

Ahead of my appearance before the Legislation, Justice and Constitution Committee on Monday 30 January, I thought it might be helpful if I provide a written response to a number of the concerns raised by the Minister for Rural Affairs and North Wales during her evidence with the Committee this week.

This response does not include all of the areas covered by the Committee during the session, or all of the concerns raised by the Minister. However, a number of the concerns raised by the Minister were more technical or detailed in nature and as such the Committee may find it useful to have a detailed response at this stage. I will of course be happy to discuss any of these areas further when I attend Committee next week.

Issue 1: The Bill has changed substantially during its progress?

While there have been some changes to the Bill, it has not changed significantly during its progress. I set out below how the Bill has changed during the stages of its development.

The initial 'pre-ballot' proposal set out the wide policy objectives for the Bill, and these are still relevant to the Bill as introduced. On 17 November 2021 the Senedd debated whether to grant leave for the Bill to proceed to full development. In accordance with Standing Order 26.91A, I published an Explanatory Memorandum to accompany the debate.¹ This EM stated the main policy objectives were to:

- establish a Welsh Food Commission
- place a duty on Welsh Ministers to produce a Welsh Food Strategy

¹ [Explanatory Memorandum for leave to proceed debate](#) – 17 November 2021

- introduce Community Food Plans
- require Welsh Ministers to report annually on food production
- eliminate food waste

All of these main policy objectives are included in the Bill as introduced, the first three of which as standalone parts of the Bill, with local food production and food waste being included within the detail of the food goals.

There was at that time an additional proposal to strengthen food labelling requirements. However, because of the potential implications of the UK Internal Market Act 2020 it was decided not to include such provisions in the Bill.

Therefore, the only substantial difference between the Bill as introduced and the proposal put forward to the Senedd, and agreed on 17 November 2021, is the inclusion of the Food Goals and associated targets. As the Food Goals themselves provide a mechanism for helping achieve the Bill's policy objectives, I do not believe this is a divergence from the policy objectives originally set out.

Issue 2: The Bill is based on the Good Food Nation (Scotland) Bill

In short – this is simply not the case. You only have to compare the text of the Food Bill against the provisions of the Good Food Nation (Scotland) Act 2022 (“the Scottish Act”) to see that while they cover similar issues they have been drafted in very different ways, and include clearly different provisions.

A prime example of this is the inclusion of food goals in the Bill, which are not included in the Scottish Act. The Minister is correct in her assertion that the legislative framework that we work in in Wales is different to that in Scotland. It is also fair to say, as can be seen from the inclusion of overarching food goals, that it is the Government's own Well-being of Future Generations (Wales) Act 2015 that influenced the development of the Food Bill more than the Scottish Act.

The timing of both Bills would also have made it very difficult for the Food Bill to be based on the Scottish Act. The Good Food Nation (Scotland) Bill, was introduced to the Scottish Parliament on 7 October 2021. My initial proposal (including the call for the Food Commission and food strategies) was submitted to the Senedd's ballot process several months before that Bill was introduced.

On the provision to establish a Food Commission specifically, I'm sure that the Minister will be aware that the provision in the Scottish Act establishing a Scottish Food Commission was inserted by amendment during the passage of the Bill (the relevant amendment being considered on 11 May 2022). The establishment of the Welsh Food Commission has been central to my proposal since the very beginning, it could well be therefore that it was my proposal that helped shape the development of the Scottish Act.

Issue 3: A 3 Month period for establishing the Food Commission

As the Committee will be aware, the commencement provisions set out in the Bill provide that the Act will come into force three months after the date of Royal Assent. At that time (in accordance with Section 8) the Welsh Food Commission will be established as a body corporate. Unfortunately, the Minister's comments around this were very misleading, and misrepresent the effect of the Bill's provisions and what the Bill requires.

The establishment of a statutory body in law at a certain point (in this case three months after Royal Assent) is not the same as requiring that body to be up and running and fully functional at that same point. There are no timescales within the Bill setting out when the Commission has to be operational.

I have been clear all along, and advice from Counsel when drafting the Bill was also clear, that the structure of the Commission will need to be in place very early on as it underpins a lot of the Bill's other provisions. This includes the Commission's commitments to assist Welsh Ministers and public bodies with meeting their own statutory requirements.

It is not, however, the case that the Commission needs to be fully functional before work can begin on other statutory requirements set out in the Bill such as the development of the National Food Strategy or the food goal targets. There will inevitably be a period where work to meet statutory requirements and work to ensure the Commission is fully functional will overlap. I am confident that all of that can be achieved within the deadlines set out in the Bill.

Issue 4: An overlap of functions with the Food Standards Agency

The Minister has raised concerns about the potential cross-over of functions between those set out in the Bill for the Welsh Food Commission and those of the Food Standards Agency (FSA). This is something that was carefully considered during the drafting of the Bill, and I do not believe such a cross-over exists.

The functions of the FSA are set out in the Food Standards Act 1999 ("the 1999 Act")². These functions are fairly extensive, but are also very specific in most areas, and focus more directly on areas such as food safety and standards. Their *general functions in relation to food* (Sections 6 to 8 of the 1999 Act) relate to matters 'connected with food safety or other interests of consumers in relation to food'. The Explanatory Notes to the 1999 Act explain further that the advice, information and assistance the FSA has the function of providing is in relation to improving food safety and standards. For this reason I do not believe there is a cross-over with the proposed functions of the Food Commission as set out in section 10 of the Bill, where food safety does not feature.

As you will be aware, the draft Food (Wales) Bill was subject to formal public consultation, and we received no response from the FSA setting out concerns in this area (or any contact since). I would, of course, be very happy to work directly with the FSA to consider any concerns they have in relation to the Bill generally, but more specifically in relation to the functions of the Food Commission.

² [Food Standards Act 1999](#)

In more general terms, it was disappointing that there appeared to be a lack of engagement on the detail of the Bill by the Minister. While I fully appreciate that this is 'not her Bill' the Food Bill will have major implications for Welsh Ministers if it was successful in securing the support of the Senedd to become an Act of Senedd Cymru.

I look forward to working with the Legislation, Justice and Constitution Committee, with the Minister and with Members across the Senedd as the Bill progresses through the legislative process.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter', written in a cursive style.

Peter Fox MS for Monmouth