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Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Welsh Parliament

7 March 2023

Dear Huw

Thank you for the Legislation, Justice and Constitution Committee's Report published on 27 January regarding the Agriculture (Wales) Bill as part of Stage 1 scrutiny.

I am grateful to the Committee for its considered Stage 1 scrutiny. I have carefully considered the committee's recommendations and considerations of the Bill.

As outlined during the Stage 1 General Principles Debate on 7 February 2023 please find enclosed at Doc 1 my response to the set of recommendations within the Report.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end.

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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 report on the Agriculture (Wales) Bill – March 2023

Recommendation 1. Any subsequent Agriculture Bill introduced by the Welsh Government should not be a framework Bill and as such, should not contain extensive delegated powers for the Welsh Ministers that would set out in regulations policy details that should appear on the face of the Bill.

As set out in the Programme for Government, tackling the climate and nature emergencies are a priority for this Government. The Agriculture (Wales) Bill represents the first stage of our programme of agricultural reform, and we will continue to work closely with stakeholders and farmers on our long-term proposals. Any future Agriculture Bill will have to consider matters relevant to that period including for example the implications of the UK Government REUL Bill. As and when further information on any future proposals is available, an update will be provided to the Committee.

Recommendation 2. The Minister should state clearly what policy she intends to cover in the next Agriculture Bill to be introduced into the Senedd and the likely date of introduction.

As set out in the Programme for Government, tackling the climate and nature emergencies are a priority for this Government. The Agriculture (Wales) Bill represents the first stage of our programme of agricultural reform, and we will continue to work closely with stakeholders and farmers on our long-term proposals including the content of the next Agriculture Bill. Any future Agriculture Bill will have to consider matters relevant to that period including for example the implications of the UK Government REUL Bill. As and when further information on any future proposals is available, an update will be provided to the Committee.

Recommendation 3. The Minister must provide a more definitive view of how the Bill will be impacted by the Retained EU Law (Revocation and Reform) Bill by the start of Stage 3 proceedings (subject to the Senedd agreeing the general principles).

Accepted in principle

The Welsh Government is considering how it will respond to the situation, in effect, imposed by the UK Government on reviewing Retained EU law.

We will continue to review the progress of the UK Government’s Retained EU Law (Revocation and Reform) Bill (REUL Bill), and will, if possible, provide a more definitive view by the start of the stage 3 proceedings.

The Welsh Government fundamentally opposes the intent of the REUL Bill. The way that UK Government has constructed the Bill would remove essential economic, social and environmental protections.

Recommendation 4. The Minister should explain why the Welsh Government did not take the opportunity, on the face of the Bill, to save, reform or remove law in the field of agriculture that is currently contained in retained EU law.

Accepted

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 retained EU law including those instruments made by the UK Government and Parliament.

The purpose of the Agriculture Bill is to create a long term made-in-Wales sustainable land management provision that will not rely upon retained EU law.

Recommendation 5. The Minister should state clearly whether the effectiveness in Wales of any of the Bill's provisions (should it be passed and enacted) will be dependent on, or affected by, any of the requirements of the United Kingdom Internal Market Act 2020.

Accepted

As was made clear throughout the passage of the Environmental Protection (Single-Use Plastics Products) (Wales) Bill, the Welsh Government's position is that the Senedd can legislate free from the requirements of the UK Internal Market Act.

Therefore, the effectiveness of this Bill in Wales will not be dependant, or affected by, the provisions of that Act.

Recommendation 6. The Minister should table amendments to the Bill to insert overview sections into Parts 1, 2 and 3 of the Bill as a means of explaining clearly the purpose of each Part and what it is seeking to achieve.

Not Accepted

The inclusion of overview provisions for Parts 1, 2, and 3 of the Bill was considered as part of the Bill's development, recognising overview provisions can be useful to aid accessibility, particularly where provisions are dense by their nature, for example when amending existing legislation (as with Parts 4 and 5 of this Bill).

For this Bill, an overview (for Parts 1, 2 and 3) was considered unnecessary as they would add little or nothing to the Bill contents and might have unintended consequences. The Explanatory Memorandum, however, will be reviewed and updated, as appropriate, to provide further clarity.

Recommendation 7. The Minister should table an amendment to section 1 of the Bill to provide a Wales-specific definition of sustainable land management.

Not Accepted

Sustainable Land Management (SLM) is clearly and precisely described in the Bill by the four SLM objectives and the SLM duty (sections 1 to 3). The objectives set a clear and ambitious framework for agricultural policy in Wales, focussing action to contribute to sustainable food production, to address the urgent nature and climate emergencies, to conserve and enhance the countryside and cultural resources and improve access to them and to promote and sustain the Welsh language. The SLM objectives provide a made in Wales, for Wales, approach which focusses on the outcomes the agricultural sector should be providing for those who work our land and for the wider population of Wales. I want SLM to be actionable and for it to deliver for Wales.

The SLM duty determines how the objectives will be applied and sets a high threshold so the Welsh Ministers must exercise relevant functions in the way they consider best contributes to achieving the objectives (so far as consistent with the proper exercise of the function). In this way, the objectives and the duty do not expand the powers of the Welsh Ministers, but rather focus the exercise of certain functions, such as, for example, the power to provide support, to contribute to achieving particular outcomes.

The duty and the objectives apply to a very wide range of functions and address complex, fundamentally important and ongoing issues. It is appropriate, as the SLM provisions do, to establish clear objectives to address those issues, alongside a strong duty that focusses action in a balanced and ambitious way.

I am pleased to note that although there were a number of detailed comments and suggestions for amendments, the ETRA committee report explains that the four SLM objectives “were generally welcomed” by stakeholders (paragraph 76) and has not recommended a definition of sustainable land management on the face of the Bill.

The SLM objectives and the duty establish a bespoke Wales-specific approach that has been informed (amongst other things) by the UN definition, developed in the specific legislative context in Wales, in particular the Well-being of Future Generations (Wales) Act 2015 (“WFG Act”) and the Environment (Wales) Act 2016 (“Environment (Wales) Act”), and through extensive stakeholder consultation and engagement.

Importantly, the SLM provisions support and are consistent with the WFG Act and the Environment (Wales) Act. In particular, the provisions are consistent with the definition of the sustainable management of natural resources (section 3, Environment (Wales) Act) which proceeds by reference to the objective specified at section 3(2) of that Act. The approach also compliments and is consistent with the WFG Act, including in particular section 3(2) of that Act, which requires public bodies to set and publish objectives (“well-being objectives”) that are designed to maximise their contribution to achieving each of the well-being goals when carrying out sustainable development.

Recommendation 8. The Minister should review Part 1 of the Bill to consider whether it would benefit from more detail explaining how the new system of sustainable land management will operate in practice and in conjunction with Part 2, with a view to tabling amendments that will make the legislation more accessible to stakeholders.

Accepted in principle

The SLM provisions apply to a very wide range of functions and address complex, fundamentally important and ongoing issues. These include food production, the urgent nature and climate emergencies and the Welsh language. The provisions provide a clear and ambitious framework with a strong duty on the Welsh Ministers to take action they consider best contributes to achieving the objectives. It is not possible to legislate to define in further detail how the provisions may operate in practice across the wide range of agricultural functions to which they will apply, and in the wide range of circumstances that may arise. The provisions have also been designed to enable the Welsh Ministers to provide timely and effective support, which is able to respond to the changing needs of the farming industry and its supply chains.

The Explanatory Memorandum will be reviewed and updated, as appropriate, to provide further clarity on the relationship between Part 1 and Part 2 of the Bill for stakeholders.

The principal delivery mechanism for SLM; the Sustainable Farming Scheme is still being designed and will go out for consultation this year. This consultation will provide further clarity as to how the scheme will operate and in turn how it will contribute to achieving of the sustainable land management objectives.

Recommendation 9. The Minister should, before the start of Stage 3 proceedings, provide to this Committee and the Economy, Trade and Rural Affairs Committee a list of the organisations she would intend to consult regularly under section 5(3)(b) of the Bill.

Accepted

Section 5(3)(b) states that the Welsh Ministers must consult “any other persons they consider appropriate” (that is, in addition to the Future Generations Commissioner for Wales (section 5(3)(a)). Consultees may change over time, for example as land management changes and/or depending on the outcomes of the SLM reports.

The Welsh Ministers will engage with those organisations best placed to offer advice on preparing and revising indicators and targets. The setting, and subsequent reviewing, of the SLM indicators and targets will be an iterative

process meaning that it may be necessary to consult with different organisations at different times.

The following list provides a non-exhaustive indication of the organisations I intend to consult as part of the process of preparing SLM indicators and targets under sections 4 and 5 of the Bill along with an indication of the type of indicator and target I would ask them to consult on:

- Office of the Chief Veterinary Officer (OCVO) – in relation to animal health and disease control.
- Natural Resources Wales (NRW) – general advice, checking and monitoring, SoNaRR and ERAMP support.
- Welsh Language Commissioner – general and in relation to Welsh language provision.
- Cadw – cultural resources and heritage considerations
- Information Commissioners Office (ICO) – data collection and GDPR considerations
- Academic institutions – for specific advice and research support
- Sector representative bodies – in relation to sector specific subjects.

As noted above, this list will change from time to time depending on the SLM indicators and targets being considered and as circumstances require.

Recommendation 10. The Minister should table an amendment to section 8 of the Bill setting out the full basis on which support would be provided and the objectives she is aiming to meet in providing that support.

Not Accepted

The purposes as set out in section 8 provide examples of the priority areas where support may be provided.

It is not considered to be appropriate to create an exhaustive list of purposes as this could restrict the scope for which support could be provided and not provide the flexibility needed to allow for unexpected events such as a new exotic disease outbreak or war or other market crisis. It could also potentially prevent support being provided in the future in response to advances in agricultural practices, policy development or the inevitable consequences of climate change.

The purposes set out in section 8 provide an indication of the type and range of support that is being proposed, for example supported under the SFS. It is intended that the SFS initially will be the main support scheme created under the power to provide support, but it may not be the only support scheme as the power allows for the provision of support by multiple schemes or otherwise.

The power of support provision provides the flexibility to provide support (financially or otherwise) where required for or in connection with agriculture and ancillary activities. It would, therefore, not be possible for the provision to detail the full basis of support.

Recommendation 11. The Minister should table an amendment to section 10 of the Bill, setting out the purpose of requiring specified information to be provided and the criteria or limitations that apply to exercising the regulation-making power.

Not Accepted

An amendment to section 10 of the Bill setting out the purpose of requiring specified information to be provided, is unnecessary. Section 10(1) to (3), along with the detailed explanation provided within the Explanatory Memorandum at paragraphs 3.100 to 3.103, already provides sufficient detail, to ensure the appropriate accountability and transparency of the provision.

The Explanatory Memorandum at paragraph 3.101, provides examples of the type of information to be published, as is currently published under existing agricultural support schemes. For example, the trading name of the business, the first four digits of their postcode, and is only applicable where support received has exceeded a specific amount, which is currently set at £1,250.

The Explanatory Memorandum also explains what section 10 is not intended to capture, for example, it is not the intent to publish data about the total amounts paid out under the power to provide support, on the basis that the Annual Report will provide this information.

Any resulting regulations will be subject to robust Senedd scrutiny, as the regulation-making power is subject to the affirmative procedure.

Recommendation 12. The Minister should explain why more detail is included on the face of the Bill about regulations to be made in respect of monetary penalties under section 31 than is contained in respect of the regulations to be made about monetary penalties under section 11.

Accepted

I intend to bring forward a Government amendment to section 11, which is “*for recovery of amounts due in respect of monetary penalties, including provision for interest, set-off and security for payment;*”. This amendment seeks to build upon the existing provision in 11(2)(i) and provides that the regulation making provision in respect of checking eligibility for support, etc, is broad enough to enable the recovery of any amounts due against monetary penalties

However, in respect of the detail in section 31, it is the Welsh Government view that this detail is not necessary for the purpose of section 11. Section 31(3)(a) is quite distinct due to the specific nature of the data collection provisions. It focuses on the enforcement of information requirements for non-compliance and the provision of imposing monetary penalties therein. This differs from the enforcement in relation to the provision for checking eligibility for support, which relates to compliance.

Recommendation 13. The Minister should table amendments to the Bill to provide more detail about the policies that underpin the subject matter of section

11 (including, setting out the purpose of checking eligibility for support), as well as any criteria or limitations that should apply to the making of regulations (including for example in respect of powers of entry and monetary penalties).

Not Accepted

It is not appropriate or necessary to table an amendment for the provision of policy detail within section 11 of the Bill. The supporting documentation of the Bill and the schemes created under the Bill will detail the policies underpinning section 11. The policies which underpin the subject matter of section 11 may vary according to each support scheme established under section 8. To apply an amendment would have the potential of restricting our ability to respond effectively to changing conditions and the possible need for flexible mechanisms of support.

The co-design and consultation process for the main delivery scheme, the SFS, is still ongoing and will go through a period of consultation later this year. The detail about the policies which underpin the subject matter of section 11, including setting out the purpose of checking eligibility for support will be set out in the consultation and ultimately in the scheme documentation.

Regulations made under section 11 will be subject to the affirmative procedure.

Recommendation 14. The Minister should table amendments to sections 6, 8, 10, 11 and 13 of the Bill to include a duty on the Welsh Ministers to consult on the making of regulations in each case.

Not Accepted

The sections referred to in the recommendation are listed in section 47(7) as subject to the affirmative procedure (pursuant to section 47(6)), which requires approval by the Senedd before any regulations are made. This process provides sufficient scrutiny which is proportionate and appropriate for the powers in question.

For each of the sections referred to, a duty on Welsh Ministers to consult on the making of regulations is also considered unnecessary due to the scope of each provision. The Bill contains detailed and comprehensive monitoring and reporting provisions to ensure accountability and facilitate ongoing scrutiny of the implementation of the SLM duty and progress against the objectives.

Section 6(10) refers to the reporting period for the SLM reports. It is not considered necessary to include a provision to consult on amending the reporting period, on the basis that any changes to the reporting period will likely be technical in nature to ensure that the SLM reporting periods are aligned with the Impact Reports (section 13) in so much as the Impact Report precedes the SLM Report, and is considered as one of the key reports which provides information towards achieving the SLM objectives. Furthermore, Section 6 of the Bill relates to the preparation of the SLM reports with provisions that include (among other things) reporting on the cumulative progress made towards achieving the SLM objectives, whether a target

has been achieved during the reporting period, and reporting on the key priorities, risks and opportunities in relation to achieving those objectives.

I believe these provisions provide significant accountability and transparency and that there is no need for a requirement to consult, particularly given that Welsh Ministers are required to consult on the setting of the targets and indicators (section 5) which will very much set the tone and direction of the reports detailed under section 6. It is not clear, if there were to be a regulation making power to consult on the report itself what, if any, additional actions we would be consulting on.

Section 8 refers to the power to provide support, with 8(4) providing a regulation making power to add, remove or amend or alter the purposes in subsection 8(2). Subsection 8(2) is a non-exhaustive list of purposes for which support may be provided for or in connection with. It is unnecessary to add a provision to consult on any amendments, additions or removal of the non-exhaustive list of purposes, the inclusion of a consultation may lead to the delay in Welsh Ministers being able to respond swiftly to changes in government or sectoral priorities.

Section 10 refers to the power to make provision about publication of information about support. This section is primarily about providing the appropriate accountability and transparency on the spend of public money. Section 10(1) is subject to the affirmative procedure which provides the appropriate level of scrutiny, without the need for a consultation.

Section 11 concerns the ability of Welsh Ministers to check eligibility for support. An important process which helps to ensure that outcomes are met and provides accountability for public money. Section 11 is already subject to the affirmative procedure as set out above and wider consultation on such a necessary and technical issue would be inappropriate.

Section 13 refers to the Welsh Ministers preparing an impact report in relation to each reporting period. The purpose of having a regulation power to amend the reporting period for the Impact report which does not include a duty on the Welsh Ministers to consult on amending the reporting period, currently set for every five years following the first reporting period, is so that it remains aligned with the SLM report. If the timetable for the SFS is changed or if there is a change to the contract periods of farmers then this could affect the timing of the impact reports, which could mean they fall out of alignment potentially lessening the usefulness of the reports.

Recommendation 15. The Minister should explain, in respect of sections 15 and 16, why the provisions identified as being part of the Agriculture Act 2020 in Table 1 have not been included in the Bill. The explanation should set out what could be achieved by the Welsh Ministers under the regulation-making powers in section 15 and 16 that could not be achieved using the powers in paragraphs 2, 3 and 4 of the Schedule 5 to the 2020 Act.

Accepted

The list of purposes given in Schedule 5 of the Agriculture Act 2020 was not required as the Bill contains broad powers which incorporate these purposes. The Bill's broad powers in sections 15 and 16 have been drafted to capture all eventualities and to ensure the Welsh Ministers are not restricted in their modification powers in the way that they are in the 2020 Act.

In respect of paragraph 3(2) and (3) of Schedule 5 to the Agriculture Act 2020, these were no longer needed as the necessary changes were made by the Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020 which came into force on 17 December 2020.

Recommendation 16. The Minister should explain why the regulation-making power under section 18 of the Bill is subject to the negative procedure, when the equivalent power under paragraph 6 of Schedule 5 to the Agriculture Act 2020 is subject to the affirmative procedure.

Accepted

I agree this should be consistent and I will bring forward an amendment so the regulation-making power under section 18 is subject to the affirmative procedure.

Recommendation 17. The Minister should table amendments to the Bill setting out the purposes for which the regulation-making powers under sections 15, 16, 17 and 18 of the Bill are to be exercised.

Not Accepted

I do not agree this would be appropriate or possible to do without compromising our ability to respond quickly and positively to changing situations, for example, even the recent unexpected events such as the COVID pandemic and the war in the Ukrainian could not have been planned for, especially in legislation.

The acceptance of recommendation 18, to amend the regulation-making power to be subject to the affirmative procedure, should provide further reassurance.

Recommendation 18. If recommendation 17 is not accepted and / or limitations are not applied to the exercise of the regulation-making powers in sections 15, 16, 17 or 18 of the Bill, the Minister should table an amendment applying the affirmative procedure to the regulation-making powers in these sections.

Accepted

I will bring forward an amendment so the affirmative procedure is applied to the regulation-making powers in sections 15,16, 17 and 18.

Recommendation 19. Recommendations 17 and 18 should be read as applying to each section individually.

Accepted

The recommendations have been considered individually. In respect of sections 15, 16, 17 and 18, it was not considered appropriate to proceed with an amendment as set out in recommendation 17.

It was considered appropriate that an amendment to the regulation-making power as set out at recommendation 18 should be applied to each section. I will bring forward an amendment to section 47(7) for each of the sections 15, 16, 17 and 18 respectively.

Recommendation 20. The Minister should confirm whether there are any circumstances in which regulations under sections 15, 16, 17 and 18 of the Bill could amend primary legislation and, if so, why the affirmative procedure should therefore not apply.

Accepted

The affirmative procedure will apply as I am accepting recommendation 16.

Recommendation 21. The Minister should table amendments to sections 15, 16, 17 and 18 of the Bill requiring a duty on the Welsh Ministers to consult on the making of regulations in each case.

Not Accepted

I have accepted recommendation 18 to bring forward an amendment so regulations made under these sections are subject to the affirmative procedure. This will provide for the appropriate level of scrutiny by the Senedd, therefore, it is not necessary to apply a duty to consult on the making of the regulations for each of the sections 15, 16, 17 and 18.

Recommendation 22. The Minister should table an amendment to the Bill to include an end date for transitioning to the new system of agricultural support under chapter 1 of Part 2 of the Bill. If provision is included to allow an end date to be amended by regulations, such regulations should be subject to the affirmative procedure.

Not Accepted

I have previously stated that we will not sunset BPS in the Bill. The ETRA committee listened to evidence from stakeholders on transition plans and a sunset provision for the Bill. Whilst farming unions and environmental organisations agreed that there should be no cliff edge in financial support, there was varying views on the need to legislate for a transition or 'sunset' period. In its conclusion on the topic, ETRA does not advocate a sunset provision.

Section 15 of the Bill enables Welsh Ministers to amend BPS, which would allow for the tapering of payments during a transition period, providing the flexibility needed to ensure that changes to the BPS will not be made until the new scheme is ready.

Further detail on how the transition to the new system of agricultural support will form part of the final SFS consultation.

Recommendation 23. The Minister should clarify: ▪ how she intends to amend section 22 and commit to ensuring relevant policy detail is included on the face of the Bill regarding changes she proposes in relation to the ending of public

intervention and reform of private storage aid schemes; ▪ why it was not possible for this detail to be included in the Bill on its introduction.

Not Accepted

The policy detail of how the Welsh Government intends to modify retained EU legislation governing Public Intervention and Private Storage Aid in the short term will accompany a Statutory Instrument which is intended to be laid in the Senedd , using powers in the Agriculture Act 2020.

Policy development considering further reforms to the retained EU legislation governing these schemes is ongoing, so further detail on the face of the Bill would not be appropriate at this time.

Recommendation 24. The Minister should explain why provisions contained in paragraphs 9(1), 9(2) and 9(3) of Schedule 5 to the Agriculture Act 2020 have not been transferred to section 22 of the Bill and, as a consequence, what effect this has on the exercise of the regulation-making power in that section.

Accepted

The wording of the provisions contained in paragraphs 9(1), 9(2) and 9(3) of Schedule 5 to the Agriculture Act 2020 was unclear and difficult to interpret, so the text has been simplified for clarity. The purpose of the provisions are to allow the Welsh Ministers to amend or cease the effect of retained EU legislation governing Public Intervention and Private Storage Aid.

Recommendation 25. The Minister should table an amendment to the Bill setting out the purposes for which the regulation-making power under section 22 is to be exercised.

Not Accepted

The regulation-making power in section 22 provides flexibility for the Welsh Ministers when making regulations to deal with a range of urgent and potentially unpredictable circumstances. Any list of purposes could have the effect of restricting the Welsh Ministers' powers should a scenario not covered by that list arise.

Recommendation 26. If recommendation 25 is not accepted and / or limitations are not applied to the exercise of the regulation-making power, the Minister should table an amendment to the Bill applying the affirmative procedure to the regulation-making power under section 22.

Accepted

I agree and will bring forward an amendment to change this to the affirmative procedure.

Recommendation 27. The Minister should table an amendment to section 22 of the Bill to include a duty on the Welsh Ministers to consult on the making of regulations under that section.

Not Accepted

We do not consider there should be a duty to consult on every regulation-making provision within the Bill. Welsh Ministers risk challenge on procedural impropriety if we do not consult in accordance with the public law principles and our own guidance. Regulations under this section will be made under the affirmative procedure, allowing additional scrutiny by the Senedd.

Recommendation 28. The Minister should table an amendment to section 29 of the Bill to set out an indication of what a person can expect to be included in a draft of the requirement referred to in section 29(1)(a)(i).

Not Accepted

The data collection provisions are broad, spanning the breadth of the Bill, enabling for data to be collected across two distinct yet complementary areas, namely from those connected to an agri-food supply chain 24(1) and those undertaking a relevant activity 26(1). 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.

The anticipated information to be captured by virtue of the data collection provisions in this area may range from the number of nurseries across Wales, to details on the level of peat used in fertilizers, etc. The requirement will, therefore, vary according to the purpose for which it is needed as well as from whom the data is to be collected.

The provision already provides that a draft of the requirement must be published. This will state the purpose or purposes for which the data will be processed (which are limited to those purposes set out in section 28(4)) information on whom the requirement will be applied, and also for a period of at least four weeks for comment prior to requirement being imposed. Any regulations, under the data collection provisions, made by the Welsh Ministers imposing obligations to provide information can only be made using the affirmative Senedd procedure, giving significant scrutiny powers to Senedd members.

Recommendation 29. The Minister should table amendments to section 31 of the Bill to provide more detail about the policies that underpin the enforcement of information requirements, as well as any limitations or criteria that should apply to the making of regulations under this section.

Not Accepted

It is not considered appropriate or necessary to table an amendment for the provision of more detail than already exists within section 31 of the Bill. The supporting documentation of the Bill provides information about the policies which underpin the enforcement of the information requirements which may vary according to the purpose for the collection of data, and in each instance a specific requirement will need to be laid out.

Whilst it is important to have compulsory data collection, any enforcement of the requirements needs to be proportional, and needs 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.

To apply an amendment would therefore have the potential of restricting our ability to respond proportionately and effectively to changing conditions and the possible need for flexibility.

The enforcement of the information requirements will be subject to the affirmative procedure giving significant scrutiny powers to Senedd members.

Recommendation 30. The Minister should table an amendment to the Bill expressly prohibiting the selling of data which is provided in accordance with the requirements of the Bill.

Not Accepted

This is not considered to be a necessary amendment to the Bill, for reasons previously stated. Under existing UK GDPR, it is not a requirement to state what will not be done with any data, only what will be done with that data.

Furthermore, the data collection and sharing provisions within the Bill are very detailed and include several limitations and safeguards relating to the purposes for which data can be collected and how the data is to be processed. For example, data can only be used in furtherance of one or more of a specific and limited number of purposes, such as helping to increase productivity, promoting transparency or fairness in agri-food supply chains or monitoring supply sources for food.

It continues to be both the policy and wider Welsh Government intent to not sell data on to third parties. In the case of this Bill there is no express provision allowing data to be sold to third parties and so selling that data would be outside the scope of the powers.

As per our statutory obligation to consult with the Information Commissioners Office (ICO), as the UK Regulator (Article 36(4)) when drafting legislation which impacts upon the processing of personal data, officials have consulted with the ICO on the data provisions within the Bill. This is part 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. This statutory consultation process with the ICO provides an additional level of safeguarding.

I understand Members and stakeholders are concerned over the UK Government's decision to possibly abolish the UK GDPR, however, as I have stated previously in my letter to the Chair of the ETRA Committee, Welsh Government officials have been working with UK Government officials on the draft Data Protection and Digital Information (DPDI) Bill. Accordingly, I and my officials continue to work on the basis the UK GDPR and other existing overarching data protection legislation remains in force until such time as it is amended or replaced by the UK Government. Any proposed replacement of the UK GDPR will need to be carefully considered once the detail is known.

Recommendation 31. The Minister should table an amendment to the Bill replicating the provision about data protection contained in paragraph 19 of Schedule 5 to the Agriculture Act 2020.

Not Accepted

It is not considered necessary for an equivalent provision to paragraph 19 of Schedule 5 to be incorporated in the Agriculture (Wales) Bill as it fails to add anything substantively to the data sharing provisions. This is a Bill for Wales and we do not need to legislate in the same way as the UK Government.

The data sharing provisions in this Bill will still need to comply with overarching data protection legislation, therefore, that protection still exists without the need to directly legislate for this purpose using provisions within the Agriculture (Wales) Bill.

Recommendation 32. The Minister should table amendments to the Bill to provide more detail about the policy that underpins the subject matter of section 32 (Marketing standards) and section 33 (Carcass classification), as well as any limitations or criteria that should apply to the making of regulations (including for example in respect of powers of entry and monetary penalties).

Not Accepted

The development of marketing standards and carcass classification legislation, which underpins this section, is explained in the Explanatory Memorandum to the Bill. Part 2 of Section 33 provides an inexhaustive list of what enforcement provisions the powers could be used for.

The consideration of future policy changes for carcass classification is ongoing, so not available for inclusion in this Bill.

Regulations over marketing standards or carcass classification must be made using the affirmative procedure to allow for Senedd scrutiny at that time.

Recommendation 33. The Minister should explain why more detail is included on the face of the Bill about regulations to be made in respect of monetary penalties under section 31 than is contained in respect of the regulations to be made about monetary penalties under sections 32 and 33.

Accepted

Section 31 is specifically to do with the area of enforcement of information requirements which differ significantly from enforcement in relation to product standards. It is Welsh Government view that further detail is not necessary in relation to section 32 and 33.

Recommendation 34. The Minister should table amendments to sections 32 and 33 to include a duty on the Welsh Ministers to consult on the making of regulations under each section.

Not Accepted

The Welsh Ministers have always consulted on any Statutory Instruments made in the areas in section 32 and 33, unless the changes are technical in nature.

There are a wide range of areas on which the Welsh Ministers consult and we do not consider that there should be a duty on every provision within the Bill. The Welsh Ministers risk challenge on procedural impropriety if they do not consult in accordance with the public law principles and their own guidance.

Recommendation 35. The Minister should explain why Schedule 1 to the Bill makes cross-references to tables included in Annexes to the CMO Regulation, rather than replicating the tables themselves.

Accepted

Replicating the tables would be extensive and would not improve accessibility sufficiently to justify doing so. The cross references are considered sufficient and in line with other legislation which refers to the Common Market Organisation.

Recommendation 36. The Minister should table amendments to Schedule 1 to the Bill to include the relevant detail of the tables currently referred to in that Schedule, in order to aid accessibility for readers of the Bill.

Not Accepted

Replicating the tables would be extensive and would not improve accessibility sufficiently to justify doing so. The cross references are considered sufficient and in line with other legislation which refers to the Common Market Organisation.

Recommendation 37. In order to ensure the accessibility of Part 4 of the Bill, we recommend that the equivalent of Annex 4 to the Explanatory Memorandum is re-published, and amended if required, if and when the Bill is passed by the Senedd and receives Royal Assent.

Accepted

The Explanatory Memorandum will be updated and published along with its Annexes to reflect all amendments at the end of each of the relevant stages and after Royal Assent.

Recommendation 38. The Minister should clarify whether a free-standing 'forestry-related' Bill was considered and why such an approach was not adopted.

Accepted

The amendments to the Forestry Act 1967 being proposed are cohesive to the scope of the Bill. The amendments enable better protection against environmental harm during felling operations, in line with the third SLM objective of the Bill relating to maintaining and enhancing the resilience of ecosystems. Forestry and forestry management is an integral part of delivering sustainable land management outcomes in our response to climate change. It relates directly to our action to mitigate and adapt to climate change in the second SLM objective of the Bill.

The Bill provides a suitable and timely mechanism for their introduction which was recognised in stakeholder responses to the White Paper.

Recommendation 39. The Minister should table an amendment to the Bill to require a review of Part 4 of the Bill to be undertaken by the Welsh Government within three years of its commencement.

Not Accepted

We have made the commitment to conduct a post implementation review of the legislation within 3 years of commencement of amendments to the Forestry Act 1967. This is set out in the Explanatory Memorandum.

Undertaking a post implementation review is a normal part of introducing primary legislation.

Recommendation 40. In order to ensure the accessibility of Part 5 of the Bill, we recommend that the equivalent of Annex 4 to the Explanatory Memorandum is re-published, and amended if required, if the Bill is passed by the Senedd and receives Royal Assent.

Accepted

The Explanatory Memorandum will be updated and published along with its Annexes to reflect all amendments at the end of Stage 2, stage 3 and again after Royal Assent.

Recommendation 41. The Minister should clarify whether a free-standing 'wildlife-related' Bill was considered and why such an approach was not adopted.

Accepted

Introducing a ban on the use of snares is a Programme for Government commitment and as such is a priority for this government term.

A separate free-standing 'wildlife-related' Bill was considered in the development of the Agriculture Bill. However, Wildlife law is wide-ranging and complicated, spanning many pieces of legislation, Welsh Ministers have competence in most but not all areas. The consolidation of wildlife law is something officials are considering but bringing forward a Wildlife Bill in this Senedd would not be possible.

To have these powers in this Bill will ensure this important change will be brought forward at the earliest legislative opportunity in an important step forward in animal welfare standards in Wales.

Recommendation 42. The Minister should table an amendment to the Bill to apply the affirmative procedure to regulations made under section 46 which modify primary legislation (as permitted by section 46(2)).

Not Accepted

It is unnecessary to table an amendment for this purpose. Section 47(8) of the Bill ensures that any modification to primary legislation is already subject to the affirmative procedure.

Recommendation 43. In respect of section 50 of the Bill, the Minister should: ▪ clarify why the power is needed; ▪ clarify why an exceptionally broad power is being taken when the Welsh Government has no plans to use it at present; ▪ provide specific examples of how the definition of agriculture and ancillary activities could be amended; ▪ clarify why regulations would be a more appropriate vehicle for a future government to make potentially significant policy changes rather than primary legislation.

Accepted in principle

Section 50 provides the power to amend sections 48 and 49 by regulations to enable Welsh Ministers to be responsive to the future challenges and opportunities in the sector. Where emerging, novel and good practice is identified in the sector, we would not wish to see it excluded from the powers in the Bill and our farmers not being supported.

As a government we need to be able to respond to changing agricultural practices to ensure support may be provided if required.

This is an ambitious and transformational Bill and the definition includes activities relevant to the modern day farmer (such as Controlled Environmental Agriculture). As land management changes in the future, including as a result of practices enabled by this Bill, this power provides the ability to ensure the definition can be amended and support, if suitable, provided.

Regulations are considered to be a more appropriate vehicle for future Governments to amend the definition. If changes do need to be made to existing definitions, then there could be a lengthy wait for an appropriate primary legislative vehicle to effect that change whereas changes by regulations using existing powers can be made much more quickly to respond to those changes. See also the response to recommendation 44 below.

Recommendation 44. If the Minister decides to retain section 50, she should table an amendment to the Bill applying a super-affirmative procedure to the regulation-making power to include a requirement: ▪ for consultation (and a minimum period for that consultation), including with Senedd committees, and ▪ to make a statement before any such Regulations are made, detailing the outcome of the consultation (including areas of agreement and disagreement with stakeholders) and accordingly how the Regulations have taken account of engagement with stakeholders.

Accepted in principle

Section 50 is to be retained for the reasons outlined above in response to recommendation 43.

Please also note the response to the ETRA committees' recommendation 2 which covers similar ground in respect to section 50.

Officials are engaging with government drafters to explore the best way to apply a super-affirmative procedure to section 50. There is no fixed template for super-affirmative procedure statutory instruments and so a range of options is being explored. This could include a requirement to consult with the Senedd before any amendment to sections 48 and 49 are formally laid as part of the affirmative procedure. The current policy intent is that any amendment to the section 50 process will contain details of the type and length of consultation to be undertaken. This will provide for additional scrutiny and discussion around any changes to sections 48 and 49. Consideration of a bespoke super-affirmative procedure is ongoing.