



Finance Committee
National Assembly for Wales
Pierhead Street
Cardiff
CF99 1NA

Your Ref:
Our Ref:
E-mail:
Phone: 01982 554200
Date: 25th May 2017

Dear Finance Committee

Inquiry into the financial estimates accompanying legislation – Consultation

NFU Cymru champions Welsh farming and represents farmers throughout Wales, across all sectors. We are funded by member subscriptions and our aim is to establish the background conditions in which farm businesses can be profitable and are able to develop.

Introduction

The Union very much welcomes the fact that the National Assembly for Wales' Finance Committee is to enquire into the accuracy and reliability of estimated costs provided by the Welsh Government in Regulatory Impact Assessments (RIAs) accompanying legislation.

It is NFU Cymru's view that Comprehensive RIAs should provide an effective and dependable evaluation of the costs and benefits of each and every piece of regulation and should also take into account factors such as any skills and training farmers would need to undertake in order to meet the policy proposals.

Core to the Welsh Government's policy making and legislative process should be achieving the right balance between social, cultural, environmental and economic considerations. In the absence of a RIA, it is difficult to judge the impact of proposed legislative and policy changes on this balance between social, cultural, environmental and economic considerations.

Whilst NFU Cymru is aware of the fact that the focus of the Committee's consultation is on RIAs which accompany enacted legislation, NFU Cymru's concerns relate to RIAs which accompany consultations which typically prefigure legislation and policy developments, as well as RIAs which accompany draft legislation.

In the context of Brexit, and the necessity for the creation of a new agricultural policy framework designed in Wales, NFU Cymru takes the view that it is more important than ever that decisions are founded on a strong and comprehensive evidence base. This need for decisions underpinned by a sound evidence base ranges from the consultation stage, to the preparation and implementation of legislation.

NFU Cymru's Concerns about current arrangements

NFU Cymru's concerns about the Welsh Government's current approach to RIAs are two-fold. Firstly we are concerned about the total lack of RIAs that have accompanied some consultations, even when what is proposed by the consultations gives rise to a significant and extensive regulatory and financial burden. Secondly we would question the quality of RIAs which accompany some consultations.

The Welsh Government's recent consultation on proposals regarding Nitrate Vulnerable Zones (NVZs) is one instance of where Welsh Government opted not to publish a RIA alongside the consultation. The NVZ consultation is one of the most significant consultations affecting the agricultural sector that the Welsh Government has undertaken in recent times, and it has the potential to add very significant cost and regulatory burden to all, or a very significant portion of Wales' farmers.

It was very much NFU Cymru's feeling that in the absence of a comprehensive RIA neither our members nor decision makers within the Welsh Government were fixed with the knowledge needed to make an informed evidence-based decision on what was being proposed.

Whilst the consultation acknowledged the fact that that having land within the NVZ imposes additional costs on landowners, and that these costs would have the greatest impact on dairy and beef farmers, no attempt to quantify these costs and impacts was presented alongside these proposals. NFU Cymru is very much of the view that such analysis needs to be completed pre-consultation, and we very much question the point of conducting a RIA later on in the process, when decisions have already been taken, as would appear to be the Welsh Government's intention in its approach to NVZs.

NFU Cymru recorded its surprise and disappointment at the Welsh Government's failure to publish a RIA in a letter to the Welsh Government's Legal Services Department in December last year. In our view this failure amounts to a serious procedural defect in the NVZ consultation process, which greatly diminishes the ability of our members to assess the proposals within the NVZ consultation and respond to them in a meaningful fashion. In the absence of an RIA, then the adverse inference that must be drawn is that the Welsh Government is consulting in respect of proposals in respect of which it has no idea of likely costs and impacts for those affected.

An instance where the Welsh Government's Regulatory Impact Assessment has in our view been seriously deficient is the RIA which accompanied the Welsh Government's Consultation on draft regulations concerning Water Pollution Prevention and Oil Storage Standards during the summer of 2015.

The Welsh Government's consultation in that instance spoke of how despite voluntary efforts over the last 20 years there had been no downward trend in the number of incidents of oil pollution. This did not however accord with the RIA, which at page 3, table 1 showed that over the 10 year period to 2014 there had been a steady decline over the preceding 10 year period.

The consultation's accompanying RIA also failed to take account of the impact of existing regulation (i.e. the Storage of Slurry and Agricultural Fuel Oil (SSAFO) (2010) Regulations, with the RIA seemingly predicated on an erroneous assumption that there was until that point, no regulatory baseline.

In our view the RIA also erred in assuming that oil storage tanks have a lifespan of 25 years, and in assuming that the proposed new oil storage standards would place no additional burden on the agricultural sector in terms of the purchase of new tanks. It is wholly inaccurate to assume that the proposed regulations will place no additional cost or burden on the agricultural sector.

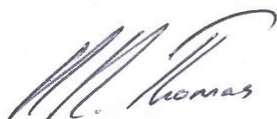
The Oil Storage Regulations also brought to within their scope storage facilities with a capacity of 200 litres or more, whereas the previous SSAFO regulations only captured facilities with a capacity in excess of 1500 litres. No effort had been made within the RIA to understand the impact of revising down the ceiling for regulatory capture of oil storage facilities from 1500 to 200 litres. The RIA made reference to evidence suggesting that un-banded and inadequately banded existing oil storage stock is relatively more likely to give rise to a pollution incident than properly banded stock. NFU Cymru would have liked to have seen data substantiating this point made available at the time of the consultation in order to fully inform decision making.

As a more general point, NFU Cymru would make the comment that sometimes RIAs will only consider the impact of a binary choice of either doing nothing or regulating. NFU Cymru believes that there are often options which lie in between doing nothing on one hand and regulating on the other, these other options include awareness raising campaigns around best practice as well as enhancing information provision on existing regulatory requirements.

We are of the view that the need for an approach which moves away from the notion that a consultation only presents a choice between doing nothing or opting for a completely regulatory solution is increasingly relevant in the context of the environment. We would refer to the Environment (Wales) Act 2016 which establishes working together and evidence – not only environment, but economic, social and cultural – as key principles to achieve the sustainable management of natural resources.

I trust that you will find my comments useful as part of your enquiry, should you require any further information the please do get in touch.

Yours faithfully



Huw Thomas
Political Adviser
NFU Cymru