

LEGISLATIVE CONSENT MEMORANDUM

Agriculture Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Agriculture Bill (the “Bill”) was introduced in the House of Commons on 12 September 2018 The Bill can be found at:

[Bill documents — Agriculture Bill 2017-19 — UK Parliament](#)

Policy Objective(s)

3. The UK Government’s stated policy objectives are to provide, for England, a new system of paying farmers “public money for public goods” – principally their work to enhance and protect the environment – and to phase out Direct Payments under the rules of the Common Agricultural Policy (CAP).

Summary of the Bill

4. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.
5. The key provisions of the Bill provide the legal framework for the United Kingdom (UK) to leave the Common Agricultural Policy (CAP) and, in England, establish a new system based on public money for public goods for the next generation of farmers and land managers.
6. In addition, at the request of the Welsh Government, the Bill provides powers for Welsh Ministers.

Provisions in the Bill for which consent is required

7. Clause 26 gives the Secretary of State powers to make regulations about securing compliance by the United Kingdom with its obligations under the World Trade Organisation’s Agreement on Agriculture. These regulations can include provision about the classification of domestic support for the purposes of the Agreement on Agriculture; provision about the levels of domestic support; provision requiring devolved authorities to provide

information to the Secretary of State. It is the Welsh Government's view that consent is required for the provisions of Clause 26 because they fall within the legislative competence of the National Assembly for Wales as they relate to agriculture and the observation and implementation of international obligations, namely the Agreement on Agriculture.

8. Clause 27 Bill introduces Schedule 3 of the Bill which makes provision in relation to Wales. Schedule 3 of the Bill extends broadly similar powers to the Welsh Ministers as those conferred on the Secretary of State in Parts 1-5 of the Bill. Schedule 3 does not include a power for the Welsh Ministers which corresponds with the Secretary of State's powers under clause 21 (power to reproduce modifications under section 20 for wine sector, nor does it include provision about powers to modify aid schemes for fruit and vegetable producer organisations in Wales, as there are no such organisations in Wales. However, Schedule 3 does contain additional purposes for which Welsh Ministers may give financial assistance and there are small number technical differences to reflect the redistributive payments made under the basic payment scheme in Wales.

Schedule 3, Part 1: New financial assistance powers.

Part 1 allows Welsh Ministers to provide new financial assistance for future schemes. Additional powers for the Welsh Ministers enable them to give financial assistance for or in connection with, supporting businesses or communities in rural areas and supporting people who are involved in the production, processing, marketing or distribution of products deriving from an agricultural, horticultural or forestry activity.

Schedule 3, Part 2: Financial support after exiting the EU.

Part 2 makes provision about the Welsh Ministers' powers to modify after exiting the EU retained EU law relating to the financing, management and monitoring of payments to farmers.

Part 2 makes provision about an agricultural transition period for Wales which can be extended by regulations made by the Welsh Ministers.

Schedule 3, Part 3: Collection and sharing of data

Part 3 gives the Welsh Ministers powers to collect and share data from those within or closely connected to the agri-food supply chain. The data collected and shared under these provisions, for example, will help farmers and producers increase productivity, help producers to manage risk and market volatility and support animal and plant health and traceability.

Schedule 3, Part 4: Intervention in Agricultural Markets

Part 4 allows the Welsh Ministers to take action to declare a period of exceptional market conditions, and, during the period for which the declaration has effect, to give, or agree to give financial assistance to support agricultural producers in Wales whose incomes are being, or are likely to be adversely affected by the exceptional market conditions described in the declaration. Part 4 also allows the Welsh Ministers to make such use as they consider appropriate of any available powers under retained direct EU legislation which provides for the operation of public intervention and aid for private storage mechanisms in response to the declaration.

Schedule 3, Part 5: Marketing standards and carcass classification

Part 5 will give Welsh Ministers the powers to make provisions relating to marketing standards for products marketed in Wales and carcass classification by slaughterhouses in Wales, through regulations. This will include the ability to amend or revoke the current marketing standards and carcass classification rules as set out in retained EU legislation and in domestic legislation, as well as the flexibility to introduce new standards and rules that will be tailored to suit the domestic agricultural sectors.

Conclusions on Clause 27 and Schedule 3 Consent

9. Consent is required for all of the provisions in Clause 27 and Schedule 3 because they fall within the legislative competence of the National Assembly for Wales and do not relate to reserved matters as they relate to agriculture and the observation and implementation of international obligations.

Final Provisions

10. Part 9 of the Bill provides for different types of ancillary provision which could be made in regulations made under the Bill.
11. Clause 29 (1), (3), (4), (5), (6)(b), (7)(b), (8) and (9) apply in relation to Wales and set out how the regulation making powers given to the Welsh Ministers under the Bill can be exercised.
12. Clause 30 makes provision about the interpretation of the Bill.
13. Clause 31 introduces Schedule 5 of the Bill which makes provision to amend Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products.
14. Clause 32 makes provision to give the Secretary of State powers by regulations to make amendments (which would be consequential, supplemental, transitional or transitory provision or savings in connection with any provision of the Bill) to primary legislation, retained direct EU

legislation or subordinate legislation.

15. Clause 34 makes provision about the extent of clauses in, and Schedules to, the Bill to include the clauses and Schedules which apply in relation to Wales.
16. Clause 35 makes provision about the commencement of clauses in, and Schedules to, the Bill to include the clauses and Schedules which apply in relation to Wales.
17. Clause 36 makes provision about the short title of the Bill by which it will be known and referred to in other legislation.
18. It is the Welsh Government's view that consent is required for the provisions of Clauses 29, 30, 31, 32, 34, 35 and 36 of, and Schedule 5 to, the Bill as they extend to, and apply in relation to, Wales because they fall within the legislative competence of the National Assembly for Wales as they relate to agriculture and the observation and implementation of international obligations.

Powers to create subordinate legislation

19. In Schedule 3, a number of subordinate legislation making powers are given to Welsh Ministers. These powers, together with the relevant legislative procedures, are set out in the Annex to this Memorandum. 'Affirmative resolution procedure' and 'negative resolution procedure' are defined in Clause 29(6)(b) and (7)(b) of the Bill respectively as those terms apply to subordinate legislation made by the Welsh Ministers under the Bill.

Reasons for making these provisions for Wales in the Agriculture Bill

20. The powers being taken for Welsh Ministers are intended to be transitional until primary legislation can be brought forward, to design a 'Made in Wales' system which works for Welsh agriculture, rural industries and our communities. Such powers are required in order to enable the Welsh Government to continue making payments to land managers, related supply chains and other rural businesses and organisations in Wales under the current CAP Pillar 1 and Pillar 2 schemes from 2020, to make changes to the current schemes and to enable transition. It is our intention to bring forward a Wales Agriculture Bill during this term.
21. The Bill provides a legal basis for future support to farmers after Brexit, as we transition away from the Common Agricultural Policy. The provisions sought for Welsh Ministers reflect the opportunities identified for future agricultural support which are the subject of consultation set out in the Green paper 'Brexit and our Land – securing the Future of Welsh Farming'. The consultation runs until 30 October. This consultation and ongoing stakeholder engagement will lead to a White Paper with specific detailed proposals for consultation during spring 2019. The detail of the new land management reform schemes will be dependent on the outcome

of policy and operational decisions which cannot be taken until after the analysis of results from both the Green and White Papers.

22. There is considerable uncertainty about the UK's future relationship with the EU and the rest of the world and how best to support business to compete globally. We need to put primary legislation in place now to enable us to react quickly once decisions are made. The Bill provides enabling powers to the Welsh Ministers. No decisions will be made on how these will be used until the UK's future relationship with the EU and rest of the world is known and the consultation has concluded. By including provisions in the UK Agriculture Bill now Wales will not be constrained in its design of new schemes and will be able to implement what is best for Wales.
23. Welsh Government is generally supportive of the Bill as drafted; there are two outstanding concerns which have not been resolved to our satisfaction relating to the World Trade Organisation (WTO) Agreement on Agriculture and the Red Meat Levy. Further work to resolve our outstanding concerns will continue during the Bill's passage through Parliament and a supplementary Legislative Consent Memorandum will be brought forward if required at the appropriate point.

Financial implications

24. There are no direct financial implications for the Welsh Government or the Assembly as a result of taking these powers in this bill.

Conclusion

25. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it is an important step forward that will enable the Welsh Government to support farmers in Wales post-Brexit. These powers will be used until a Wales Agriculture Bill is introduced in the Assembly.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs
October 2018

Annex

LEGISLATIVE CONSENT MEMORANDUM: AGRICULTURE BILL – PROVISIONS WHICH CONTAIN POWERS FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION

Paragraph of Schedule 3	Description of Power	Legislative procedure
2(7)	Power for Welsh Ministers by regulations to make provision for or in connection with requiring the Welsh Ministers or another person to publish specified information about financial assistance which has been given under Paragraph 1 of Schedule 3	Affirmative resolution procedure
3(1)	Powers for the Welsh Ministers by regulations to make provision for or in connection with checking, enforcing and monitoring compliance where financial assistance is to be or has been given under Paragraph 1 of Schedule 3	Affirmative resolution procedure
5(2)	Powers for the Welsh Ministers by regulations to extend the agricultural transition period for Wales set out in Paragraph 5(1) of Schedule 3	Affirmative resolution procedure
6(1)	Powers for the Welsh Ministers to modify legislation governing the basic payment scheme	Negative resolution procedure
7(1)	Powers for the Welsh Ministers by regulations to make provision for or in connection with either or both the phasing out of direct payments under the basic payment scheme in relation to Wales over the whole or part of the agricultural transition period for Wales, or the termination of direct payments under that scheme in relation to Wales and instead the making of delinked payments in relation to Wales in respect of the whole or part of the agricultural transition period for Wales.	Affirmative resolution procedure
9(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation.	Negative resolution procedure
10(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to support for rural development and	Negative resolution procedure

	subordinate legislation relating to that legislation	
11(2)	Powers for the Welsh Ministers by regulations to require persons 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 are in Wales.	Affirmative resolution procedure
15(1)	Powers for the Welsh Ministers by regulations to make provision for enforcement of a requirement imposed under paragraph 11(1) or (2) of Schedule 3 (agri-food supply chains: requirement to provide information)	Affirmative resolution procedure
18(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for the purposes of altering the operation of provisions of such legislation, so far as they have effect in relation to Wales in connection with exceptional market conditions which are the subject of a declaration under paragraph 16 of Schedule 3 (declaration relating to exceptional market conditions)	Negative resolution procedure
18(2)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for specified purposes	Negative resolution procedure
19(1)	Powers for the Welsh Ministers by regulations in relation to products which fall within a specified sector and are marketed in Wales, to make provisions about the standards with which those products must conform	Affirmative resolution procedure
19(3)	Powers for the Welsh Ministers to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales	Affirmative resolution procedure
20(2)	Powers for the Welsh Ministers by regulations to amend the list of agricultural sectors in paragraph 20(1) of Schedule 3 to add or remove a sector and to set out products that fall within each sector or otherwise give further detail on the sectors	Negative resolution procedure