

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change, Environment and Rural Affairs Committee

Ymateb gan : Undeb Amaethwyr Cymru

Response from : Farmers' Union of Wales

Context

1. On the 24th June 2016, the Farmers' Union of Wales (FUW) called for “...*the UK and EU to agree on a sensible timetable for Brexit after the UK electorate voted to leave the EU – or risk dire consequences for both the UK and the remaining 27 Member States*”, highlighting that “*There is a monumental amount of work to do in terms of changing domestic arrangements and legislation, including in terms of Welsh devolved legislation, not to mention unravelling us from the EU budget to which we were previously committed, negotiating trade deals and dealing with issues such as border controls.*”
2. The scale of the task currently underway in relation to almost all aspects of Government was highlighted in the House of Commons Library publication *Legislating for Brexit: the Great Repeal Bill* (2nd May 2017), which described the review of all EU-related legislation and the transposition of laws under the Great Repeal Bill as “...*potentially one of the largest legislative projects ever undertaken in the UK.*”
3. Defra is responsible for almost a fifth of all Brexit-related areas of work across the UK Government, and increased staff numbers by 1,307 in 2017 and 2018 to cope with such work. Yet in September 2018 the National Audit Office¹ concluded that Defra:
 - a. Had by April 2018 only succeeded in ensuring 6 of 43 workstream areas complied fully with Defra planning standards
 - b. Had missed a high proportion of its project milestones
 - c. Is not expecting to be able to complete negotiations with 139 of 154 non-EU countries with which the EU has trading arrangements over acceptance of UK versions of over 1,400 export health certificates
 - d. Is unlikely to deliver key elements of work under a no-deal scenario, including those relevant to key industry sectors such as the chemical industry
 - e. Is at high risk of being unable to deliver planned legislation by March 2019, because it does not have time to pass three bills and 93 statutory instruments
4. On 5th November 2018, a leaked Environment Agency memo revealed that EA managers were given 24 hours on 22nd October 2018 to name 75 staff to be seconded

¹ Department for Environment, Food and Rural Affairs: Progress in Implementing EU Exit. National Audit Office (12th September 2018)

to Defra to work on policy, project delivery and communication. This request came in addition to existing plans for a further 75 staff to be seconded from other UK agencies, including Natural England and the Animal and Plant Health Agency

5. Given such pressures, and as already highlighted to the Committee, while the FUW welcomes all parts of the Agriculture Bill necessary to smoothly transpose current EU legislation and powers, the decision to simultaneously legislate for radical changes and new workstreams at a time when Defra is unable to cope with necessary and critical work in relation to Brexit is a grave concern.
6. Whilst the Welsh Government does not share the breadth of responsibilities of Defra, Brexit nevertheless brings with it significant additional pressures for the Economy, Skills and Natural Resources directorate at a time when staff numbers and budgets have been cut significantly. As such, the Welsh Government's decision to also add unnecessarily to existing workloads by introducing radical policy changes raises the same concerns, and the motives for not pursuing a more cautious and manageable timetable, as is the case in Scotland, might well be questioned.
7. The FUW also has major concerns regarding the timing and prescriptive contents of Schedule 3 (*Provision relating to Wales*) of the Bill, given it was published and started to proceed through Parliament at a time when the Welsh Government's *Brexit and our Land* consultation was still open – thereby pre-empting the outcome of the consultation.
8. It is notable that significant differences exist between the proposals put forward in the *Brexit and our Land* consultation and Schedule 3, including in terms of the public goods the Welsh Government proposes supporting compared with those set out in the Bill, and the transition periods proposed in the consultation and the Bill, which differ by two years.

House of Lords Delegated Powers and Regulatory Reform Committee Comments

9. On the 17th October 2018, the House of Lords' Delegated Power and Regulatory Reform Committee published a report on the Agriculture Bill², highlighting major concerns which we believe are worth drawing Climate Change, Environment and Rural Affairs Committee Members' attention to.

For example:

“The Bill contains only 36 clauses and yet confers 26 powers on Ministers to make law. The comparatively large number of delegated powers in an otherwise small-to-medium-sized bill is ominous...”

“We are dismayed at the Government's approach to delegated powers in the Agriculture Bill...”

² House of Lords Delegated Powers and Regulatory Reform Committee 34th Report of Session 2017-2019. Agriculture Bill

“The Agriculture Bill represents a major transfer of powers from the EU to Ministers of the Crown, bypassing Parliament and the devolved legislatures in Wales and Northern Ireland...

“Parliament will not be able to debate the merits of the new agriculture regime because the Bill does not contain even an outline of the substantive law that will replace the CAP after the United Kingdom leaves the EU...

“The Government encourage departments to engage in clear, concise, purposeful, informative and targeted consultations before making new law. Apart from the one consultation requirement in clause 24(5),³ consultation is merely optional so far as concerns the considerable amount of subordinate legislation to be made under the Agriculture Bill...

“Extensive powers are conferred on Ministers with correspondingly few duties. The words “The Secretary of State may” occur 36 times in the Bill. The words “The Secretary of State must” occur three times...

“17 of the 26 delegated powers allow for regulations to be made by the affirmative procedure. This is a high proportion by the standards of most bills. However, the affirmative procedure offers nothing like the scrutiny given to a bill...

“It is true that the extensive powers in this Bill largely replace directly applicable EU regulations. But the practical effect of the Bill is that very considerable repatriated powers are momentarily returning to Parliament on exit day only to be immediately granted to Ministers of the Crown...

“Clause 20 is a very significant clause, allowing the Secretary of State to make affirmative regulations concerning marketing standards in relation to a wide range of agricultural products, including milk, beef, veal, poultrymeat, eggs, fruit, vegetables, hops, wine, olive oil and live plants. We would ordinarily expect a clause of this exceptional range to be a bill in its own right.

“The regulations allow Ministers to create a powerful enforcement regime against farmers, food processors and others, including: powers of entry, inspection, search and seizure; unlimited monetary penalties; criminal offences punishable by up to two years’ imprisonment; and the conferral of enforcement functions on third parties.

“The current EU legislation relating to marketing standards will become retained EU law under the European Union (Withdrawal) Act 2018. Changes to such law made by regulations under section 8 of that Act are limited by the need to show that changes are appropriate to correct deficiencies in that law arising from the UK’s withdrawal from the EU and by the provision that no regulations may be made under section 8 more than two years after exit day. By contrast, regulations made under clause 20 of the Agriculture Bill are subject to no such restrictions...

“Clause 20 contains an inappropriately wide delegation of power to Ministers. The Bill should contain more detail on the relevant principles, policies and criteria underlying marketing standards in the various agricultural sectors.”

10. We would draw the Committee's attention to the fact that many of the concerns highlighted by the House of Lords Delegated Powers and Regulatory Reform Committee relate not only to devolved matters *per se*, but also to the powers conferred by the Bill to the Welsh Ministers.
11. For example, the "*inappropriately wide delegation of power*" referred to by the Lords in relation to Clause 20 is also relevant to Schedule 3 (*Provision relating to Wales*) Clause 19, which effectively replicates Clause 20. Similar concerns exist in relation to other Clauses which increase the powers of Ministers in both Wales and England, with less opportunity for scrutiny than should be the case.
12. In this context, it should be noted that a large proportion of those who voted to leave the European Union did so due to objections to EU bureaucracy and legislation, and that, in the absence of proper scrutiny, checks and balances, Ministers may nevertheless use such powers to introduce draconian regimes which are far more burdensome and intrusive than those currently in force under EU Regulations.

Part 6 – Producer organisations and fairness in the supply chain

13. The FUW is generally supportive of the principles which underpin Part 6 (Producer Organisations and Fairness in the Supply Chain), which, if used appropriately, would significantly improve farmers' ability to receive a fairer share of the prices paid by consumers.
14. However, concerns do exist in relation to how such powers held by the Secretary of State might disadvantage producers in devolved regions, given that such powers are not extended to the Welsh Ministers, and the recent UK Government focus on branding produce as British.

Part 7 - World Trade Organisation (WTO) Agreement on Agriculture (AoA)

15. Whilst the FUW respects the need to ensure that the UK as a whole, or actions taken in any part of the UK, do not breach WTO rules, Part 7 of the Bill would appear to allow the UK Government to place additional restrictions on Welsh policies and payments, even if these do not risk breaching WTO rules.
16. Specifically, while Clause 26 Paragraphs (1) and (2) relate specifically to the WTO AoA, and decision making and dispute resolution in relation to that agreement, Paragraph (3) allows the Secretary of State to place a limit on the sum of all UK domestic support which is below AoA limits, and to set individual limits for what may be given in Wales (as well as in other devolved nations).
17. Clause 26 Paragraph 4 goes on to further specify how the Secretary of State may make regulations which set different limits for different appropriate authorities, different limits for different classes of domestic support, and other forms of limits on Welsh support.

18. While it is appreciated that regulations under Clause 26 are subject to affirmative resolution procedure, and that it is important that UK financial and other frameworks are put in place, the FUW is concerned that the Clause grants powers to the Secretary of State which could be used to prevent the Welsh Government and Assembly from introducing reasonable policies which are in Wales' national interest and have no impact on the Agreement on Agriculture – thereby exerting influence on Welsh policies, potentially in an unprecedented manner.
19. As such, the failure of Clause 26 to require consultation with and agreement from devolved authorities before such limits are set, or to ensure the creation of a neutral structure through which to set such limits, is a significant concern and potential threat to devolution.

Schedule 3 – Provision relating to Wales

20. It is notable that Schedule 3 extends mostly identical powers to the Welsh Ministers as those conferred on the Secretary of State in Parts 1 to 5 of the Bill, albeit with additional powers allowing financial support for, or in connection with
 - a. Supporting businesses or communities in rural areas, and
 - b. Supporting people who are involved in the production, processing, marketing or distribution of agricultural and forestry products.
21. Whilst such powers are superficially welcome, it must be noted that because the Bill provides a skeleton for legislation, rather than being more prescriptive (as is the case for EU Regulations) this opens up the possibility of significant divergence between Wales and England (and Northern Ireland), including in relation to issues such as the compulsory provision of information by producers, processors etc., enforcement regimes and fines, interventions in exceptional markets, marketing standards and classifications.
22. While some such divergence already exists, for example due to differences between how authorities implement EU Regulations, the scope for this to increase under the Bill is significant. As such, without a clear agreement between authorities, there is a risk that greater divergence would cause confusion or even market distortion, with additional levels of bureaucracy, especially for cross border farmers and traders.
23. Notwithstanding such concerns, it is notable that other powers included in the English section of the bill, such as those relating to the establishment of Producer Organisations, are not conferred to the Welsh Ministers under the bill.
24. As already highlighted to the Committee, the FUW is concerned that those sections of Schedule 3 relating to agricultural support were published and progressed part way through Parliament while the Welsh Government's consultation on future land management was still open, thereby pre-empting the outcome of the Welsh Government's *Brexit and our Land* consultation.

25. This, coupled with the fact that Parts 1 and 2 of Schedule 3 effectively duplicate the English section of the Bill by facilitating a move from direct payments to public goods scheme, raises significant questions about the independence of devolved decision making processes.
26. The Committee is already well aware of the FUW's concerns regarding the dangers of introducing radical changes, such as those the Bill would legislate for, without proper impact assessments and piloting.

Public Bill Committee Amendments as at 1st November 2018

27. For the reasons referred to in paragraph 25, above, the FUW is minded to support amendments 56 to 63, which would require organisations of agricultural producers, associations of recognised producer organisations, and organisations of agricultural businesses to apply for recognition to the appropriate authority in the country of the UK where the applicant is principally based.
28. The FUW is minded to support amendment 48, 93 and 94, which would require the Secretary of State to make regulations for fair dealing obligations in Clause 25
29. The FUW is minded to support amendment 86, which would provide for the confidentiality of persons who raise complaints under the fair dealing obligations provided by Clause 25
30. The FUW is minded to support amendment 87, which would provide for investigations to be undertaken under the fair dealing obligations provided by Clause 25 where there are reasonable suspicions, but no complaint has been made
31. The FUW is minded to support amendment 66, which would ensure that before making regulations the Secretary of State be required to consult with representatives of producers and first purchasers.
32. The FUW supports amendment 96, which ensures nothing in Clause 26 shall affect the devolution of any power under the Wales Act 1998, the Wales Act 2014 or the Wales Act 2017
33. The FUW is generally supportive of amendment 90, which would appear to tighten up the eligibility criteria for those receiving financial assistance under Schedule 3, subparagraphs 1 and 2, but is concerned that this does not go far enough in protecting the interests and economic benefits of active farmers.
34. The FUW supports amendment NC1 requiring the Secretary of State to monitor and report on food security.
35. The FUW supports amendment NC6 which makes provisions for the fairer distribution of red meat levies between devolved levy bodies

36. The FUW supports amendment NC11, which provides for the establishment of a UK-wide framework for agriculture established jointly by Ministers of the Crown, Scottish Ministers, Welsh Ministers and Northern Ireland Ministers.