

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 Cenedlaethol yr Amaethwyr Cymru

Response from : National Farmers' Union Cymru

## **Welsh Provisions within the UK Government's Agriculture Bill**

### **Introduction**

NFU Cymru very much welcomes the opportunity to provide the National Assembly's Climate Change, Environment and Rural Affairs Committee with a submission on the UK Government's Agriculture Bill.

The Union considers the Agriculture Bill to be a very significant piece of legislation, providing Welsh Ministers with substantial delegated powers, allowing them to legislate in areas which would previously have been occupied by EU law, and to make changes to retained EU law. The provisions contained in the Bill with respect to Wales will equip Welsh Ministers with the powers needed to deliver on the policy proposals which have just been consulted upon in the Brexit and Our Land Consultation, although we note that the Welsh Government have undertaken to consult further on these matters with the publication of a White Paper in Spring 2019.

It has been NFU Cymru's long-held view that because communities and landscapes vary considerably across the UK, matters such as agricultural support are best decided as close to home as possible. There is currently considerable uncertainty facing the agricultural sector, and despite our many concerns about the proposals contained within the Brexit and Our Land Consultation we continue to believe that there is now the opportunity to design, develop and implement a policy 'Made in Wales' for Welsh farming.

A policy which fits the unique needs and profile of Welsh agriculture is an attractive prospect arising from the UK's departure from the EU however such an outcome can only be delivered if Welsh Government pays the fullest possible regard to those who derive their living from Welsh agriculture. At NFU Cymru we want to work with Welsh Government and with everyone who cares for and has a passion for our food, our landscape, our environment, our communities and our culture. By working together we can realise our vision of a productive, progressive and profitable Welsh agricultural industry delivering jobs, growth and investment for Wales.

At the present time we do not know how Welsh agriculture might fare as a result of Brexit. NFU Cymru has therefore cautioned, and continues to caution against formulating and deciding upon a future agricultural policy, at a stage when there is no certainty at all about the sort of future relationship that we might have with the EU27. Whilst we are not averse to change, our view is that major policy decisions should not be taken until a much clearer picture of the post-Brexit economic landscape has emerged, with no policy options closed off.

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## **Welsh Provisions within the UK Government's Agriculture Bill**

The Agriculture Bill is essentially a scaffold upon which the legislative basis for a future Welsh agricultural policy can be built, with its operation effectively being a matter of preparing and passing subordinate legislation by Welsh Ministers. NFU Cymru does however have some concerns at the way the bill vests significant, regulation making powers in Welsh Ministers, with very little scope for the National Assembly to shape and influence the exercise of these powers.

NFU Cymru notes that the Welsh Government sees the Agriculture Bill as a transitional measure until indigenous, primary legislation in the form of a Wales Agriculture Bill can be brought forward. Although we recognise that inviting the UK Government to legislate with respect to Wales in this manner is expedient, it does unfortunately mean that the usual oversight and scrutiny of powers conferred on Welsh Ministers, via primary legislation, in what is an area of devolved competence, takes place not as might be expected at the Senedd, but at the Houses of Parliament.

Provisions relating to Wales are contained within Schedule 3 of the draft bill, and replicate more or less exactly those powers conferred on Ministers in England. The significant difference is found in Schedule 3, Part 1, Clause 1 (2) which confers upon Welsh Ministers powers to grant financial assistance in relation to supporting businesses and communities in rural areas, starting or improving productivity and supporting those involved in the production, processing, marketing or distribution of agricultural, horticultural and forestry products. NFU Cymru welcomes the fact that the Bill, as drafted, proposes these powers for Welsh Ministers, which currently extend beyond those proposed for Minister in England.

A quick examination of Schedule 3 reveals that the word 'may' occurs some 23 times in relation to the exercise of Welsh Ministers' powers, and so the exercise of these powers is discretionary as opposed to mandatory. This means for instance in Part 4 of Schedule 3, in relation to a making a declaration of exceptional market conditions, even where exceptional market conditions prevail, no obligation is conferred upon Welsh Ministers to do so.

During the course of our extensive consultation discussions with our membership, it came as no surprise that our members are deeply concerned about the loss of direct payments. We consider direct payments to be a vital force in providing stability in the face of regional and global events including market volatility, trade wars, adverse climatic events and disease outbreaks.

Welsh Ministers have, via the consultation, as well as public statements they have made expressed the view that direct payments in Wales are to end, with the Agriculture Bill also expressly providing that direct payments are to cease at the end of the agricultural transition period. This is very disappointing and NFU Cymru is firmly of the view that there needs to be an element of direct support in any future agricultural policy. We believe that by expressly providing for the termination of direct payments, (presumably at the request of Welsh Government) the Agriculture Bill in effect ties Welsh Government, in terms of its scope to act, to legislation enacted at a time when there is still no clear picture of the type of post-Brexit climate we will be facing.

Schedule 3 will confer delegated powers on Welsh Ministers to make regulations by a mixture of the affirmative and the negative procedure, and so provisions which should

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arguably be given effect via primary legislation (with the associated level of scrutiny) are instead given effect via regulation making powers, with a much reduced degree of scrutiny.

Despite the fact that the Bill confers far reaching powers on Welsh Ministers, with little in the way of scrutiny as to their exercise, the obligation to consult does not arise once in relation to the exercise of Welsh Ministers' powers. Although we note that Welsh Ministers have committed to further consultation with stakeholders, it is disappointing that the Agriculture Bill, as drafted does not give rise to an obligation for them to do so. Mandating consultation in relation to the exercise of a least some of the far-reaching powers, may have gone some way to mitigating the lack of real oversight of the exercise of these powers by the National Assembly.

Whilst the Welsh Government has consulted on the basis of completing the transition away from the current system, to the new arrangement within five years, Schedule 3 of the Agriculture Bill sets out a seven year transition period, with the option to extend. NFU Cymru favours a longer transition period to whatever new arrangements are put in place after Brexit, and so we welcome the longer transition that is provided for by the Bill, as well as the prospect, set out in the bill, of extending this transition period. We are therefore somewhat surprised that the Welsh Government chose to consult on the basis of a transition period that is not provided for in draft legislation. Fundamentally, NFU Cymru does not support the phasing out of the Basic Payment Scheme (direct payments) until there is clear evidence that replacement scheme(s) can deliver at least the same level of stability for farming businesses, the food supply chain and the rural communities that the BPS currently delivers.

### **Wider issues with the bill**

Outside of Schedule 3, Part 7, Clause 26 deals with the issue of ensuring that all schemes devised across the UK home nations after Brexit are compliant with the WTO's rules relating to the Agreement on Agriculture's Amber, Green and Blue boxes.

NFU Cymru accepts that, as the UK is signatory to the WTO, responsibility for ensuring that all domestic policies in relation to agriculture are WTO compliant therefore rests with the UK Government. We do however have some concerns relating to the powers in Clause 26, which in relation to compliance with the WTO Agreement on Agriculture

- i. Makes the Defra Secretary of State the final arbiter in any decision relating to the classification of domestic agriculture for the purposes of the WTO Agreement on Agriculture
  - ii. Allows the Defra Secretary of State to make regulations providing for total levels of domestic support allowable in the UK under the agreement on agriculture. This includes limiting the amount of domestic support that may be given by the competence authorities combined, and placing individual limits on the amount of domestic support that may be given by each competent authority.
  - iii. Permits the Defra Secretary of State to set different limits for domestic support for different competent authorities, and set different limits for different classes of domestic support
  - iv. Equips the Defra Secretary of State with powers requiring the devolved administration to provide the information needed for the purposes outlined above.
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NFU Cymru recognises that Clause 26 powers propose a centralisation of power, which will see an express reservation carved out for Defra Ministers with respect to something which relates to a devolved competence (agriculture), without engaging first of all with Cardiff, Edinburgh, and Belfast.

Whilst the UK Government as signatory at the WTO will bear ultimate responsibility for ensuring the UK's compliance with WTO obligations, the exercise of powers under Part 7 could well constrain future policy choices in Wales by placing limits on spending and precluding certain types of support. This could, at least in theory, introduce constraints on categories of expenditure, which are currently permissible under the CAP.

Although NFU Cymru fully accepts that it may indeed be necessary to place limits on spending and preclude certain types of support (in order to ensure compliance with international obligations and to preserve the UK's internal market) we are of the view that the powers in Part 7, Clause 26 should be exercised following discussion and agreement between Defra and the devolved administrations. We do not therefore support the way in which the bill proposes to confer the powers outlined above, on the Defra Secretary of State.

The Bill is silent on the issue of how domestic food standards and food safety will be protected in the face of new trade agreements. The UK Government has failed, and continues to fail to take a coherent position on this issue, and we would very much like an unequivocal declaration from UK Government Ministers, that food produced to lower environmental, animal welfare and food safety standards, than our own domestic standards will not be admitted to UK markets after Brexit. Given the fairly broad political support we believe such a declaration would have enjoyed, we consider it most regrettable that the opportunity to put a commitment to on a statutory footing has been missed.

The Bill is also an opportunity to provide for the establishment of a multi-annual financial framework for agriculture that matches the long term nature of farm investment. We are keen to avoid the politicisation of funding for agriculture, and setting out a multi-annual financial framework would help reduce the risk of this happening. It is regrettable that the opportunity of the bill has not been utilised for this purpose.

NFU Cymru had hoped that the Agriculture Bill would have been the vehicle to bring about a resolution to the long running issue of the repatriation of the red meat levy. For many years we have lobbied for a distribution of levy income that takes a fair account of the level of red meat production in Wales. The current system that sees levy money collected and used in the country that the animal was slaughtered has seen Wales lose out as a result of a net move of livestock, particularly cattle, out of the country to be slaughtered, this loss is currently estimated to be over £2 million per annum. NFU Cymru believes this system is flawed in that the basis of levy distribution is based solely on the location of abattoirs, a decision that is completely outside the control of primary producers. The Agriculture Bill should have been used to address this issue to ensure that we have the maximum resource available to support the development, marketing and promotion of the red meat sector in Wales.

Earlier this year, some 24 areas relating to agriculture were identified as needing 'common frameworks', based either in legislation, or less formally in intergovernmental memorandums of understanding. NFU Cymru had anticipated that the Agriculture Bill may have been the

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vehicle which would have moved the issue of Common Frameworks further forward, and we might have seen within the Bill, some of the arrangements relating to Common Frameworks which are deemed to require a legislative basis. The Bill does not however address the issue of legislative common frameworks. Given the importance they will hold to preserving the functioning of the UK internal market as well as compliance with international obligations, we believe that this issue needs to be progressed fairly quickly.

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