

# 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 by George Eustice MP in the House of Commons on 16 January 2020. The Bill can be found at:  
  
<https://services.parliament.uk/bills/2019-20/agriculture.html>
3. The Bill is similar in many respects to the Agriculture Bill introduced to Parliament on 12 September 2018, and which will make no further progress following the general election in December 2019. That Agriculture Bill was the subject of a legislative consent memorandum laid on 4 October 2018 and a supplementary legislative consent memorandum laid on 26 March 2019.

### Policy Objective(s)

4. The UK Government’s stated policy objectives are to provide, for England, a new system of paying farmers based on the principle of “public money for public goods” for the next generation of farmers and land managers.
5. The Bill also includes measures to enable the continuity of existing agricultural support and to ensure the effective functioning of the agricultural sector following the departure of the UK from the EU. In particular, the Bill includes provision to enable payments to continue to be made to farmers with powers to simplify and improve Direct Payments, for example, and to intervene in agricultural markets in the event of exceptional market conditions.

### Summary of the Bill

6. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.
7. The Bill provides the legal basis, in England, to transition away from the Common Agricultural Policy (CAP) and establish new financial assistance schemes based on the principle of public money for public goods.
8. The Bill also provides powers to enable the continuity of existing agricultural support and to intervene in agricultural markets in the event of exceptional market conditions, as noted above. At the request of the

Welsh Government, these powers will be available to the Welsh Ministers in relation to Wales.

9. The Bill also includes provisions on the collection and sharing of data; marketing standards and carcass classification; organic products; fair dealing and producer organisations; matters relating to farming and the countryside, including red meat levy redistribution and agricultural tenancy reforms; a requirement for the Secretary of State to report to the UK Parliament on food security; and regulation-making powers for the Secretary of State to secure the UK's compliance with WTO Agreement on Agriculture.

### **Provisions in the Bill for which consent is required**

10. Consent is required for the following provisions of the Bill because they make provision with regard to devolved matters.

#### Clause 17: Duty to report to Parliament on UK food security

11. This clause places a duty on the Secretary of State to report to Parliament at least once every five years on data relevant to UK food security. The clause includes five factors which are considered as a policy matter to cover the main aspects that inform the UK's food security.
12. It is the Welsh Government's view this clause requires consent because it makes provision with regard to a range of devolved matters insofar as it applies to Wales, including food, food production and availability, food safety and agriculture.

#### Clause 27: Fair dealing obligations of business purchasers of agricultural products

13. This clause is intended to counteract unfair trading practices, and to prevent market abuse by larger players in the market exploiting those in relatively weak market positions. The effect is to confer on the Secretary of State a power by regulations to impose obligations on business purchasers of agricultural products in relation to contracts they make for the purchase of such products from qualifying sellers, including mandatory terms.
14. Subsection (1) empowers the Secretary of State to make regulations, including enforcement, imposing obligations on operators who buy agricultural products in the course of a business ("business purchasers") from "qualifying sellers" (defined in subsection (3)).
15. Subsections (3) – (5) set out definitions for the purposes of the section. A "business purchaser" is defined at subsection (3)(a) as set out above, as a person who purchases an agricultural product in the course of business which includes the purchase of products of that kind. A "qualifying seller" is defined at subsection (3)(b). This includes a person carrying on an

agricultural activity for the production, or in connection with the production, of the product.

16. The other categories of “qualifying seller” are producer organisations and associations of producer organisations, recognised under clause 28 of the Bill, and produce aggregators, insofar as they are not themselves producer organisations or associations of producer organisations. Produce aggregators are further defined at subsections (4) and (5).
17. Subsection (6) sets out examples of the kinds of obligations that may be imposed on business purchasers under the clause. This includes obligations to use a written contract (subsection (6)(a)); to include, or not include, a term in the contract dealing with a particular matter (subsection (6)(b)); to include terms that make specific provision (subsection (6)(c)(i)); and to comply with a set of principles and practices that promote fair dealing (subsection (6)(c)(ii)). These are examples and the list is not exhaustive.
18. Subsection (7) provides examples of the types of matters that could be specified under subsection (6)(b) and (c).
19. Subsection (8) outlines the enforcement provisions which may be made under subsection (1)(b), such as investigating complaints and creating a robust appeals process.
20. Subsection (9) provides the Secretary of State with powers to delegate authority to another person.
21. It is the Welsh Government’s view that this clause requires consent because its purpose and effect are confined to the agricultural sector and it makes provision with regard to devolved matters insofar as it applies to Wales, including agriculture, and agricultural productivity and sustainability.

#### Clause 31: Fertilisers

22. This clause is intended to amend and significantly expand the scope of existing powers to make provision by regulations to regulate, in the public interest, the composition or content of fertilisers and of material intended for the feeding of animals. Those provisions apply across the UK and include powers to control the import, export, sale or use of fertilisers and to regulate the marketing, labelling and packaging of fertilisers. The amended powers will, in particular, confer new powers for the purposes of assessing, monitoring or enforcing compliance with regulations made under section 74(A)(1) of the Agriculture Act 1970 or otherwise mitigating risks to human, animal or plant health or the environment presented by fertilisers.

23. Clause 31(2) amends the definition of a fertiliser under section 66 of the Agriculture Act 1970 to enable a broader range of materials to be regulated as a fertiliser in the UK.
24. Clause 31(3) amends section 74A of the Agriculture Act 1970 to enable the regulation of fertilisers on the basis of their function (as well as their composition or content, as is currently the case). This will allow different requirements to be set, for example, for biostimulants, soil improvers and traditional mineral fertilisers to ensure the safety and quality of the various types of products marketed as a fertiliser in the UK.
25. Clause 31(4) amends section 74A of the Agriculture Act 1970 and allows for regulations made by the Welsh Ministers in relation to Wales (and the Secretary of State, Scottish Ministers and a Northern Ireland Department in respect of other parts of the UK) to set out an assessment, monitoring and enforcement regime for ensuring the compliance of fertilisers with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers.
26. New subsection (1A) inserted into section 74A of the Agriculture Act 1970 will enable regulations to put in place the infrastructure for conformity assessment procedures to be carried out on fertilisers and to confer market surveillance functions on a public authority. It will also enable requirements to be placed on manufacturers and others involved in the supply of fertilisers to keep and, where required, provide information relating to fertilisers to the market surveillance authority for traceability purposes and to assist the authority in its role.
27. New subsection (1B) sets out the matters relating to the conformity assessment process for fertilisers which may be provided for in regulations. These include recognition of a person or organisations to undertake assessments, the creation of an appeals system, charging regime or framework, and recognition and registration processes.
28. New subsection (1C) sets out enforcement powers which may be conferred on a public authority with market surveillance functions, including powers to undertake further assessment of fertilisers, to prohibit the sale of certain fertilisers, to impose monetary penalties on those who breach regulations, and conferring powers to enter and inspect, take samples or seize and destroy materials.
29. New subsection (1D) provides that fertiliser regulations must not impose or confer a power or duty requiring or authorising the disclosure or use of information that would contravene certain data protection legislation.
30. New subsection (1E) provides a power to make regulations that amend or repeal Regulation (EC) No. 2003/2003 relating to fertilisers and other retained direct EU legislation relating to fertilisers.

31. Clause 31(5) amends section 84 of the Agriculture Act 1970. It provides that the first regulations made by the Welsh Ministers, the Secretary of State, the Scottish Ministers and a Northern Ireland department under section 74A(1A) to (1E) of the Agriculture Act 1970 are subject to the affirmative resolution procedure. Subsequent regulations made by the Welsh Ministers, Secretary of State, the Scottish Ministers and a Northern Ireland department under section 74A(1A)(b) (conferring on a public authority functions relating to market surveillance and regulation) or (1E)(a)(i) or (ii) (amending and repealing retained EU law relating to fertilisers) are also subject to the affirmative resolution procedure.
32. It is the Welsh Government's view that this clause requires consent because it makes provision with regard to a range of devolved matters insofar as it applies to Wales, including agriculture, the protection of human health, animal welfare and protection of the environment.

### Clause 32: Identification and traceability of animals

33. Clause 32 amends the Natural Environment and Rural Communities Act 2006 (the "NERC Act 2006") so as to insert a new section 89A in respect of the identification and traceability of animals.
34. Clause 32(1) inserts a new section 89A into the NERC Act 2006. This sets out that the Secretary of State may make or have made an Order establishing a body, and provides that certain functions may be assigned to that body. These may include functions that are exercisable in relation to England, Wales, Northern Ireland or Scotland, and relate to collecting, managing and making available information regarding the identification, movement or health of animals, or the means of identifying animals. We understand the intention behind the provision is to approve the format of identification tags, and issue individual identification numbers to animals.
35. Clause 32(1) includes section 89A(2) which provides that when assigning functions to the body, the disclosure or use of information in contravention of data protection legislation is not permitted.
36. New section 89A(3) clarifies that "animals" has the same meaning as it has for the purposes of section 8 of the Animal Health Act 1981 (the "AHA 1981"). This ensures that the functions assigned to the body by the Secretary of State can be exercised in relation to animals that otherwise might not be covered, such as domestic pigs or equines, as the powers under the NERC Act 2006 are linked to agriculture.
37. It is the Welsh Government's view that clause 32(1) requires consent because it makes provision with regard to a range of devolved matters in so far as it applies to Wales, including agriculture, animal health and animal welfare.
38. Clause 32(2) amends the AHA 1981 such that in England the term "marking of animals" is replaced by "means of identifying animals", and

that provision made under subsection (1) of the AHA 1981 may bind the Crown. The provision extends to England, Wales and Scotland but the substantive amendment applies in relation to England and does not make provision in relation to devolved matters.

39. Clause 32(3) and (4) makes provision in relation to England and does not make provision with regard to devolved matters.

#### Clause 33: Red Meat Levy: payments between levy bodies in Great Britain

40. The Great Britain red meat levy boards (Agriculture and Horticulture Development Board (AHDB), Quality Meat Scotland, and Hybu Cig Cymru) each separately impose levies on red meat producers and processors in England, Scotland and Wales, respectively. Those levies can only be imposed to enable each body to meet its expenses in supporting the red meat industry in the country in which the levy is raised. Levies are therefore based on the geographical location of abattoirs rather than the origin of the livestock and do not take into account the trading patterns that exist across GB borders. As a result, the levy paid by producers who are operating in one part of Britain may be used to fund promotional and developmental activities in another.
41. Clause 33 enables Ministers to establish a scheme that requires agricultural boards within Great Britain to redistribute levy between themselves. It is intended that this will enable those who invest in breeding and rearing livestock to benefit from the levy collected in relation to their livestock, even if the levy is collected by a slaughter house in another jurisdiction.
42. It is the Welsh Government's view that this clause requires consent because it makes provision with regard to devolved matters insofar as it applies in relation to Wales, notably agriculture.

#### Clauses 36 and 37: organic products

43. These clauses are intended to regulate the organic sector. In particular, the clauses confer regulation making powers in respect of the certification of organic products and import and export controls. Regulations can be made by the Secretary of State in any case (clause 37(1)(a)). The Welsh Ministers may make regulations "if and to the extent that provision made by the regulations would be within the legislative competence of the National Assembly for Wales if contained in an Act of that Assembly (ignoring any requirement for the consent of any person)" (clause 37(1)(c)).
44. Clause 36(1) to (4) deals with the certification of organic products, activities relating to organic products and persons carrying out such activities. Provision is made for regulations to be made dealing with matters relating to certification, including the sale and marketing of organic

products; the objectives and principles of organic production; and the labelling of organic products.

45. Sub-clause (2) deals with matters relating to the certification process, including the application, issue and suspension of certificates, and the sale and marketing of organic products. Sub-clause (3) sets out (without limitation) the objectives, principles and standards of organic production that regulations about certification may cover. Sub-clause (4) confers powers by regulations to make provision about the labelling, marketing and sale of certified organic products.
46. Sub-clauses (5) to (7) confer power to make provision by regulations in respect of the import and export of organic products from the United Kingdom.
47. It is the Welsh Government's view that these clauses require consent because they make provision with regard to devolved matters (insofar as they apply to Wales), in particular agriculture, agricultural products and food.

#### Clauses 40 to 42: WTO Agreement on Agriculture

48. Clauses 40 to 42 provide the Secretary of State with the powers to ensure the UK's compliance with its obligations under the World Trade Organisation ("WTO") Agreement on Agriculture.
49. The "Agreement on Agriculture" is an international treaty that sets out a number of general rules and commitments on agricultural trade practices as agreed by WTO members. These measures fall under three pillars; disciplines on domestic support, market access and export subsidies. The EU is a WTO member and the UK is also a member of the WTO in its own right; as such they are both signatories to the Agreement on Agriculture and after EU exit the UK continues to be subject to any commitments and obligations under the Agreement on Agriculture. The UK Government will be responsible for ensuring that all UK policies on domestic support in relation to agriculture are WTO compliant.
50. The domestic support provisions relate to various forms of (direct and indirect) government financial support given to producers of certain agricultural products (as defined in Part I of the Agreement on Agriculture). Payments made to agricultural producers during the agricultural transition and through any future domestic support schemes will need to comply with the Agreement on Agriculture.
51. This clause intends to ensure that all support schemes are properly classified (as amber, green or blue box), and if they fall into the amber box, that they do not cause the UK to breach its Aggregate Measurement of Support commitment. This clause also intends to ensure that the UK is able to meet its obligations to make notifications required under the

Agreement on Agriculture and respond to any challenges from other WTO members.

52. Clause 40(2) links the three clauses (40, 41 and 42) which give the Secretary of State power to make regulations for securing compliance with obligations of the United Kingdom under the Agreement on Agriculture (the “purpose” specified in section 40(1)).
53. WTO agreements permit some forms of trade-distorting support (classified by the WTO as amber box support). Controls on amber box use provide for some WTO members, including the UK, to provide capped levels of (permitted) trade-distorting support. Clause 41 gives the Secretary of State powers to set limits on levels of domestic support (for the purpose of securing compliance with obligations of the United Kingdom under the Agreement on Agriculture).
54. WTO members including the United Kingdom are obliged to classify domestic support in accordance with the definitions set out in the Agreement on Agriculture. Clause 42 confers powers on the Secretary of State to make provision about the classification of support, for the purposes of the Agreement and clause 41. Sub-clauses (2) and (3) give the Secretary of State the power to set out in regulations a process designed to classify and to facilitate review of, the classification of domestic support in accordance with this obligation. Clause 42(3)(b) gives the Secretary of State powers to set out in regulations a process for resolving disputes between authorities regarding classification.
55. WTO members are required to make notifications in support of their Agreement on Agriculture obligations, including an annual notification on levels of domestic support to agricultural producers, and justification where support has been classified as green box or blue box. Sub-clauses (4) and (5) give the Secretary of State the powers to set out in regulations provisions for collecting information for the purposes of compliance with Agreement on Agriculture obligations, including from the Welsh Ministers.
56. It is the Welsh Government’s view that these provisions require consent because they make provision with regard to agriculture and concern the domestic implementation of international obligations.

#### Clause 44: Duration of provision in relation to Wales

57. Clause 44 ensures that the following provisions expire at the end of 2024; section 43 and Schedule 5, section 49(b) and, in Schedule 7, Part 2, section 52(1)(g), and in section 53(3), paragraph (b) and, so far as relating to Part 2 of Schedule 7, paragraph (c). Provision is also made to save the regulations described at sub-clauses (3) to (6). The clause also allows Welsh Ministers, by regulations, to make transitional, transitory or saving provisions in connection with this section.



58. The provisions that will expire under this provision are all considered to be devolved matters (for the reasons set out in this memorandum). It is the Welsh Government's view that this clause requires consent as it also makes provision with regard to those devolved matters.

#### Clause 46: Data protection

59. This clause makes clear that any duty or power to disclose information under Parts 1 to 6 of the Bill does not operate to require the disclosure of information which would contravene the data protection legislation. The "data protection legislation" is (from exit day) the GDPR Regulation 2016/679 as retained in domestic law (the "GDPR"), the Data Protection Act 2018, regulations made under that Act, and regulations made under section 2(2) of the European Communities Act 1972 as it relates to the EU GDPR or the Law Enforcement Directive 2016/680 (section 3 of the Data Protection Act 2018).

60. The GDPR and the Data Protection Act 2018 are concerned with the protection of individuals with regard to the processing of personal data (see, for example, section 2 of the 2018 Act). The "protection of personal data" is a reserved matter (paragraph 170 of Schedule 7A to GoWA). This provision is ancillary, however, to relevant provisions in Parts 1 to 6 as it restates the existing "data protection legislation" as it applies to those provisions. To the extent that the relevant provisions in Parts 1 to 6 are devolved (as considered above) then it is the Welsh Government's view that this clause requires consent because it makes ancillary provision with regard to devolved matters.

#### Clauses 47 to 54 (and Schedule 7)

61. These clauses makes general and final provision about regulations, including procedures and related matters; interpretation; consequential amendments to the CMO regulation (set out in Schedule 7); powers to make consequential etc. provision by regulation; financial provision; extent; commencement; and the short title of the Bill.

62. It is the Welsh Government's view that they each require consent to the extent that they each make provision with regard to provisions in the Bill that are considered to be devolved, as described in this memorandum (save for the short title which is a devolved matter insofar as it makes provision in relation to Wales).

#### Schedule 3 and clause 34: Agricultural tenancies

63. Clause 34 introduces Schedule 3 to the Bill. The provisions in Part 1 of Schedule 3 to the Bill make amendments to Parts 2 and 4 of, and Schedules 2, 3 and 6 to, the Agricultural Holdings Act 1986 (the "1986 Act") which include provisions about agricultural tenancies. The provisions in Part 2 of Schedule 3 to the Bill make corresponding amendments to the Agricultural Tenancies Act 1995.

64. The 1986 Act applies to agricultural tenancies entered into before 1 September 1995 and those tenancies commencing after 1 September 1995, and which are subject to the provisions of section 4(1) of the Agricultural Tenancies Act 1995 and remain governed by the 1986 Act. Agricultural tenancies are subject to regulated rent, have lifetime security of tenure and most granted before 12 July 1984 also carry statutory succession rights for up to two generations of eligible close relatives on death or retirement of the incumbent tenant (except for council farm AHA agreements which do not have statutory succession rights).
65. The provisions in Schedule 3 are intended to update and modify provision for agricultural tenancies in the 1986 Act to provide more flexibility, remove barriers to investment and improve the practical operation of the 1986 Act in relation to agricultural tenancies.
66. The suite of reforms to the 1986 Act include:
- i) Amendments to section 12 and Schedule 2 to the 1986 Act which make provision about arbitration or third party determination of rent. The amendments ensure that appointment of third party experts can happen at the same time as the appointment of arbitrators and make provision about consideration of factors relating to improvements to a holding in the arbitration or third party determination of rent;
  - ii) Inserting new section 19A in the 1986 Act which confers a regulation making power on the Welsh Ministers, in relation to Wales, and the Secretary of State, in relation to England, to make provision in regulations for a tenant of an agricultural holding to refer certain requests for landlord's consent or variation of contract terms for arbitration if no agreement has been reached. In relation to Wales, requests which can be referred are limited to those for the purposes of enabling tenants to access financial assistance in exceptional market circumstances and comply with statutory duties.;
  - iii) Amendments to Schedule 3, Case A, updating council farm retirement notice provisions to keep pace with changes to the state pension policy;
  - iv) Amendments to various provisions in the 1986 Act which make provision about succession of tenancies following the death or retirement of a tenant. The amending provisions repeal all provisions in the 1986 Act relating to the commercial unit test, confer power on the Welsh Ministers to make regulations setting criteria which must be considered when determining a person's suitability to become the tenant of a holding, and repeal provisions prescribing the minimum age of a retiring tenant.
  - v) Amendments to sections 12(b), 22(b) and 84(2) of the 1986 Act are updated so that the Central Association of Agricultural Valuers and Agricultural Law Association can offer arbitration appointments services alongside the Royal Institute of

Chartered Surveyors. Corresponding changes are made to the Agricultural Tenancies Act 1995 to extend the list of professional authorities that tenants and landlords may apply to for the appointment of an arbitrator to resolve disputes arising under the 1995 Act so that it is the same as those listed in section 84 of the 1986 Act.

67. It is the Welsh Government's view that all of the provisions in Schedule 3 require consent because they make provision with regard to devolved matters (insofar as they relate to Wales), in particular the promotion of agriculture. The purpose of the reforms is to provide more flexibility to the tenant farming sector.

#### Schedule 5 and clause 43

68. Clause 43 of the Bill introduces Schedule 5 of the Bill which makes provision in relation to Wales. The powers set out in that Schedule are time limited and will be replaced by an Agriculture (Wales) Bill to be introduced in the National Assembly for Wales. Schedule 5 covers those powers needed to enable continuity of financial support to farmers and ensure the effective operation of the agricultural sector following the UK's departure from the EU. Similar powers to those described below are conferred on the Secretary of State in respect of England under Parts 1 to 3 and 5 of the Bill. Schedule 5 does not, however, contain any provision to operate or transition to new financial assistance schemes (in the way that Part 1 of the Bill makes such provision in relation to England).

#### Schedule 5, Part 1: Financial support after exiting the EU

69. Paragraphs 1-3 of Part 1 of Schedule 5 provide for the payment of Direct Payments in Wales under the basic payment scheme.

70. Paragraph 2 provides powers for the Welsh Ministers to make regulations to modify, after exiting the EU, retained EU law relating to the basic payment scheme, and include powers to simplify or improve the basic payment scheme or to terminate greening payments.

71. Paragraph 3 provides for the Welsh Ministers to make regulations to continue the basic payments scheme after 2020. This will allow for the basic payment scheme to continue beyond 2020.

72. Paragraph 4 enables the Welsh Ministers to make regulations that modify, in relation to Wales, retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation. That includes Regulation 1306/2013 and retained direct legislation made under that Regulation.

73. Paragraph 5 provides the Welsh Ministers with power to make regulations that modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation. The

power can be used either to repeal that legislation or to simplify or improve the operation of such legislation.

#### Schedule 5, Part 2: Intervention in Agricultural Markets

74. Part 2 of Schedule 5 enables the Welsh Ministers to make a declaration if the Welsh Ministers consider there are exceptional market conditions (paragraph 6). The Welsh Ministers may then exercise the powers conferred under paragraph 7, during the period specified in the declaration (unless revoked sooner). Under those powers the Welsh Ministers may 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 (paragraph 7(2)). The Welsh Ministers may also 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 (paragraph 7(3)).

75. The Welsh Ministers may also modify retained direct EU legislation relating to public market intervention or aid for private storage so that the operation of such schemes may be tailored to prevailing domestic circumstances when they are used in a period of exceptional market conditions established under paragraph 6 (paragraph 8(1)).

76. The Welsh Ministers may also modify retained direct EU legislation relating to public market intervention or aid for private storage other than in connection with a declaration under paragraph 6, including altering the operation of that legislation and securing that it ceases to have effect in Wales (paragraph 8(2)).

#### Schedule 5, Part 3: Collection and sharing of data

77. Part 3 makes provision about the collection and sharing of data. In particular, these provisions confer powers on the Welsh Ministers to require a person in, or closely connected with, an agri-supply chain to provide information about any of the person's activities connected with the supply chain so far as the activities are in Wales. These include powers for the Welsh Ministers to require the provision of certain information (paragraph 9(1)), to make regulations to collect information (paragraph 9(2)) and to enforce a requirement to provide information (paragraph 14(1)).

78. The data collected and shared under these provisions can be used for certain purposes specified in paragraph 11 including, for example, to help farmers and producers increase productivity, to help producers to manage risk and market volatility and to support animal and plant health and traceability. The information must be processed in accordance with the requirements set out at paragraph 13.

79. A duty is placed on the Welsh Ministers to publish a draft requirement before a particular requirement for collection of data is imposed under paragraph 9(1) (paragraph 12(1)).

#### Schedule 5, Part 4: Marketing standards and carcass classification

80. Part 4 confers powers on the Welsh Ministers by regulations to make provision about the standards which apply to certain products marketed in Wales. This Part also enables the Welsh Ministers by regulations to make provision in respect of carcass classification by slaughterhouses in Wales.

81. Paragraph 16 contains the list of agricultural products for which marketing standards may be made. The Welsh Ministers may make regulations to amend the list of products for which marketing standards may be set or altering the description of the listed agricultural products (paragraph 16(3)).

#### Schedule 5, Part 5: Data Protection

82. Part 5, which is very similar to clause 46 of the Bill, makes clear that any duty or power to disclose information under Schedule 5 does not operate to require the disclosure of information which would contravene the data protection legislation (as defined in the Data Protection Act 2018, section 3).

#### Conclusions on Schedule 5 (and clause 43) consent

83. It is the Welsh Government's view that consent is required for all of the provisions in Schedule 5 (and clause 43), because they make provision with regard to agriculture, a devolved matter.

#### **Powers to create subordinate legislation**

84. The Annex describes a list of subordinate legislation making powers conferred on the Welsh Ministers. 'Affirmative resolution procedure' and 'negative resolution procedure' are defined in Clause 47(6)(c) and (7)(c) 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**

85. It remains this government's intention to publish an Agriculture White Paper before the end of this Assembly term which will build on the proposals set out in the Sustainable Farming and Our Land consultation and lay the groundwork for an Agriculture (Wales) Bill to be introduced in the next Assembly term. The detail of the new scheme is dependent on the outcome of policy and operational decisions which cannot be made until analysis of results from both the Green and White Papers have been completed.

86. Making these provisions for Wales in the UK Agriculture Bill will enable the continued provision of existing agricultural subsidies beyond 2020, and ensure the effective operation of agricultural markets following the UK's departure from the EU. The powers taken for the Welsh Ministers under Schedule 5 (provision relating to Wales) to this Bill are time limited and intended to be a transitory measure to give the agricultural sector much needed stability in this period of uncertainty.
87. The Welsh Government is generally supportive of the Bill as drafted. There remains disagreement between the UK Government and the Welsh Government on whether the WTO clause is wholly reserved. However, a bilateral agreement has been reached to require the UK Government to consult the devolved administrations before bringing forward regulations under this power. An explanation to the terms of the agreement was provided as part of the Supplementary LCM (March 2019) on the previous Agriculture Bill (introduced September 2018).
88. There are outstanding concerns regarding the provisions in the Bill for the identification and traceability of animals (clause 32), agricultural tenancies (clause 34 and Schedule 3), and the regulation of organic products (clause 36). Work to resolve these outstanding concerns will continue during the Bill's parliamentary passage and a supplementary Legislative Consent Memorandum will be brought forward at the appropriate time, if required.

### **Financial implications**

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

### **Conclusion**

90. The Welsh Government is of the view it is appropriate to utilise this UK Bill as a vehicle to enable the Welsh Government to continue providing financial support to farmers in Wales after 2020, and to ensure the effective operation of agricultural markets in Wales and across the UK following the UK's departure from the EU. Certain time-limited powers provided for by this Bill will be used until an Agriculture (Wales) Bill is introduced in the Assembly.

**Lesley Griffiths AM**  
**Minister for Energy, Environment and Rural Affairs**  
**February 2020**

## Annex

### LEGISLATIVE CONSENT MEMORANDUM: AGRICULTURE BILL 2020 – PROVISIONS WHICH CONTAIN POWERS FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION

<u>Bill provision</u>	<u>Description of Power</u>	<u>Legislative procedure</u>
31 (fertilisers)	Clause 31(4) amends section 74A of the Agriculture Act 1970 and allows for regulations made by the Welsh Ministers in relation to Wales (and the Secretary of State, Scottish Ministers and a Northern Ireland Department in respect of other parts of the UK) to set out an assessment, monitoring and enforcement regime for ensuring the compliance of fertilisers with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers.	The first regulations made by the Welsh Ministers under section 74A(1A) to (1E) of the Agriculture Act 1970 are subject to the affirmative resolution procedure. Subsequent regulations made by the Welsh Ministers, under section 74A(1A)(b) (conferring on a public authority functions relating to market surveillance and regulation) or (1E)(a)(i) or (ii) (amending and repealing retained EU law relating to fertilisers) are also subject to the affirmative resolution procedure (clause 31(5), amending section 84 of the Agriculture Act 1970). Otherwise the negative resolution procedure applies (see section 84(2), Agriculture Act 1970).
33 (red meat levy)	Powers for the Welsh Ministers (acting jointly with the Secretary of State and/or the Scottish Ministers) to make a scheme to make provision for amounts of red meat levy collected by the levy body for one country in Great Britain to be paid to the levy body for another such country.	No procedure
36 and 37 (organic products)	Powers for the Welsh Ministers in respect of the certification of organic products and import and export controls (if and to the extent that provision made by the regulations would be within the legislative competence of the National Assembly for Wales if contained in an Act of that Assembly (ignoring any requirement for the consent of any person) (clause 37(1)(c)).	Affirmative resolution procedure where— (a) the regulations are made under section 36(1) and contain provision referred to in section 36(3), or (b) the regulations are made under subsection (1), (5) or (7) of section 36 and they are the first regulations to be made under that subsection by the authority making them. Otherwise, regulations under clause 36 are subject to negative

		resolution procedure (unless section 47(5) applies, in which case affirmative resolution procedure).
44 (duration of provision in relation to Wales)	Powers for the Welsh Ministers to make transitional, transitory or saving provision in connection with this section.	Regulations under this clause which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure. Other regulations under this clause are subject to negative resolution procedure.
50(1) (consequential etc. provision)	The appropriate authority may by regulations make supplementary, incidental or consequential provision in connection with any provision of this Act. The Welsh Ministers are the appropriate authority, for provision in connection with— (i) clause 43 and Schedule 5, (ii) clause 44, and (iii) clause 49 and Schedule 7 so far as they apply in relation to Wales.	Regulations under section 50(1) which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure. Other regulations under subsection (1) are subject to negative resolution procedure.
50(5) (consequential etc. provision)	The appropriate authority may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of the Act. The Welsh Ministers are the appropriate authority, for provision in connection with— (i) clause 43 and Schedule 5, (ii) clause 44, and (iii) clause 49 and Schedule 7 so far as they apply in relation to Wales.	No procedure
53(3) (commencement)	Powers for the Welsh Ministers by regulations made by statutory instrument to appoint— (a) so far as relating to Wales— (i) paragraphs 10 to 18 of Schedule 3, and (ii) section 34 so far as relating to those paragraphs, (b) Parts 2 and 4 of Schedule 5, and section 43 so far as relating to those Parts, and (c) Parts 2 and 4 of Schedule 7, and section 49 so far as relating to those Parts.	No procedure
Schedule 3, para 6(7)	Powers for the Welsh Ministers by regulations made in a statutory instrument to amend section 84 of the Agricultural Holdings Act 1986 so as to- a) include a person in, or remove a person from, the definition of “professional authority”; b) reflect changes in the name or internal organisation of any body mentioned in that	Negative procedure



	definition.	
Schedule 3, para 7	Powers for the Welsh Ministers by regulations to make provision for the tenant of an agricultural holding to refer for arbitration requests made by the tenant for landlord's consent or variation of terms	Negative procedure
Schedule 3, para 17	Paragraph 17 amends section 39(8) of the Agricultural Holdings Act 1986 to confer a power on the Welsh Ministers, in relation to Wales, to make regulations specifying the criteria that must be considered when determining a person's suitability to become a tenant of the holding.	Negative procedure
Sch 5, para 2(1)	Powers for the Welsh Ministers to modify legislation governing the basic payment scheme	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 3(1)	Powers for the Welsh Ministers to provide for the continuation of the basic payment scheme beyond 2020, including power to provide for the direct payments ceiling for Wales to be made by Welsh Ministers	Affirmative resolution procedure
Sch 5, para 4(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 (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 5(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation.	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 8(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 6 of Schedule 5 (declaration relating to exceptional market conditions).	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 8(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 (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 9(2)	Powers for the Welsh Ministers to make regulations requiring 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
Sch 5, para 14(1)	Powers for the Welsh Ministers to make provision for enforcement of a requirement	Affirmative resolution procedure

	imposed under paragraph 9(1) or (2) of Schedule 5 (agri-food supply chains: requirement to provide information)	
Sch 5, para 15(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
Sch 5, para 16(3)	Powers for the Welsh Ministers to amend paragraphs 15 and 16 for or in connection with the purpose of— (a) adding or removing an agricultural product from paragraph 16(1); (b) altering the description of an agricultural product in paragraph 16(1).	Affirmative resolution procedure
Sch 5, para 17(1)	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