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Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru  
Welsh Government

Mick Antoniw MS  
Chair  
Legislation, Justice and Constitution Committee

11 September 2020

Dear Mick

**The Committee Report on the Welsh Government's Supplementary LCM (Memorandum No 2) on the Agriculture Bill**

Thank you and members of the Legislation, Justice and Constitution Committee for your report on the Supplementary LCM for the amendments made to provisions relating to Wales in the Agriculture Bill during the House of Commons' amending stages. I have considered the recommendations made, and my response is provided in Annex 1. As agreed in my response to Recommendation 2 of this Committee's first report on the Bill's LCM, a full summary of the Welsh Ministers' regulation-making powers can be found in Annex 2.

Introduced in the House of Commons, the Agriculture Bill completed Committee Stage in the House of Lords on 28 July. Report Stage is yet to be scheduled, however my officials have been working closely with the UK Government to monitor the progress of the Bill and latest indications suggest the Bill is expected to receive Royal Assent by the end of October.

I am pleased to inform the Committee that following many weeks of close working between officials from all four administrations, government amendments to clauses 32 (identification and traceability of animals) and 37 (regulation of organic products) were tabled and agreed at Committee Stage (Lords). These amendments add appropriate requirements for the Secretary of State to obtain the consent of the Devolved Administrations before exercising powers under these provisions. I consider this a satisfactory resolution to the outstanding concerns which I made clear, in my evidence session on 16 March, were red line issues which needed to be addressed before I could be in a position to recommend agreeing legislative consent to the Senedd.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

During Lords Committee Stage, amendments were also made to clauses 42 and 53. Clause 42(4) and (5), which would have specifically conferred powers on the Secretary of State to require the Welsh Ministers to provide information to the Secretary of State, was removed. Clause 53 was amended to allow for the early commencement of subordinate legislation making powers in the Bill. This is necessary to ensure powers are in place by the end of the implementation period (31 December 2020) to enable us, for example, to continue providing financial support to farmers in Wales in 2021. A further Supplementary LCM with detail of these amendments to clauses 32, 37, 42 and 53 will be laid shortly for your consideration.

Once again, I would like to reiterate the importance of this Bill as a vehicle to deliver stability and continuity to Welsh agriculture while we continue to develop the groundwork for our own Agriculture (Wales) Bill, to be introduced in the next Senedd term as set out in my oral statement on 8 July.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

**Lesley Griffiths AS/MS**

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

## ANNEX 1

### Response to the Legislation, Justice and Constitution Committee's Report on the Supplementary LCM for the Agriculture Bill (laid on 23 July 2020)

| Committee's Recommendation  | Welsh Government's Response   |
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| <p><b>Recommendation 1</b></p> <p>The Minister should revisit recommendation 1 in our first report on the LCM for the Bill and provide an appropriate and full response to the Committee.</p> <p>“The Minister should write to us explaining the extent to which the Bill relates to any common framework and, if appropriate, clearly identify the provisions that are necessary to achieve that framework.”</p> | <p><b>Accept</b></p> <p>The Agriculture Bill is a framework bill in the sense it provides Ministers powers to make provision, by subordinate legislation, to enable the continued provision of agricultural support beyond 2020 and ensure the effective operation of agricultural sectors in the UK following our departure from the EU. In the case of England, the Bill also provides the legal framework required to replace the CAP and create a new domestic system based on the principle of paying public money for the delivery of public goods.</p> <p>The Bill, however, does not make provision for, or give effect to, a UK Common Framework. As stated in my previous response, the governments of all four nations, following extensive discussions, have agreed that the UK Common Framework for Agricultural Support would be best managed through a Ministerial Concordat. This is being developed to ensure effective co-ordination and dialogue on agricultural support between the four governments. My officials are working closely with colleagues in the UK Government and the other Devolved Administrations to develop this non-legislative framework which is expected to cover areas such as market intervention, data collection and sharing arrangements alongside arrangements to reduce bureaucracy and provide clarity for cross border holdings.</p> |
| <p><b>Recommendation 2</b></p> <p>The Minister should confirm whether the amendments to clause 32 are as a result of changes in the Welsh Government's position on the identification and traceability of animals and whether this led the Minister to request that the clause be amended</p>   | <p><b>Accept</b></p> <p>Clause 32(2) amends section 8(1)(a) of the Animal Health Act 1981 to substitute 'the marking of animals' with 'the means of identifying animals'. Previously the substantive amendment had been restricted to England. The amendment removes any potential for ambiguity when secondary legislation relating to the identification of animals is made under section 8(1)(a), as it ensures that new developments in technology and methodology of identifying animals are captured by the</p>   |

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|   | <p>provision, such as the use of electronic identification. The Welsh Government is working closely with Defra and the other Devolved Administrations to develop our respective policies on identification and traceability of animals. The amendment of this clause, extending its application to Wales, is necessary to ensure we are aligned and using consistent legal powers to make changes which will support seamless cross border trading.</p> <p>Clause 32(3)-(4) was amended so as to dis-apply certain provisions of EU Regulations in relation to Wales. The dis-application had previously been restricted to England. These provisions come into force on such day as the Welsh Ministers may by regulations made by statutory instrument appoint and relate to systems for the identification and regulation of bovine, ovine and caprine animals. The amendment is considered necessary to protect Welsh interests, as EU legislation in this policy area stipulates that – by April 2024 - the provisions of EU law in question will cease to apply to member States.</p> <p>If the amendment to clause 32(3) and (4) had not been secured, England would be able to dis-apply that legislation and make secondary legislation under the 1981 Act in its place. If the EU provisions were dis-applied in England alone, either unilaterally or to mirror the EU position, problems could arise in relation to cross border trade as England and Wales would be operating under different rules, which could cause confusion for the industry and could jeopardise exporting regulations.</p> <p>The implementation of pre movement notification and electronic movement reporting of livestock which is central to the impending new multispecies system in Wales, and its ability to share information and data with other administrations could also be jeopardised.</p> |
| <p><b>Recommendation 3</b></p> <p>The Minister should provide the Committee with an update on the progress made in resolving the outstanding concerns in relation to clauses 32, 36 and 37, which should include detail of how the Minister’s concerns will be resolved, i.e. whether by means of legislative or non-legislative solutions.</p> | <p><b>Accept</b></p> <p>Following many weeks of close working between officials from all four UK administrations, government amendments to clauses 32 (identification and traceability of animals) and 37 (regulation of organic products) were tabled and agreed at Lords Committee Stage. These amendments add appropriate requirements for the Secretary of State to obtain the consent of the Devolved Administrations before exercising powers</p>  |

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|   | <p>under these provisions. Additional detail describing the amendments will be set out in the Supplementary LCM to be laid shortly. I consider this a satisfactory resolution to the outstanding concerns which I made clear, in my evidence session on 16 March, were red line issues which needed to be addressed before I could be in a position to recommend agreeing legislative consent to the Senedd.</p>  |
| <p><b>Recommendation 4</b></p> <p>The Minister should confirm whether the amendments to Schedule 5 were tabled at the request of the Minister.</p>  | <p><b>Accept</b></p> <p>Throughout the development of this Bill, and the previous Agriculture Bill, my officials have worked closely with the UK Government and the other Devolved Administrations to ensure the Bill contains the necessary powers for the Welsh Ministers. Amendments to Schedule 5, and other provisions relating to Wales, were tabled at my request.</p>   |
| <p><b>Recommendation 5</b></p> <p>The Minister should provide more detail on the effect of the amendments made to paragraphs 2 and 4 of Schedule 5, specifically as regards whether the changes amount to a broadening of the regulation-making powers in those paragraphs.</p> | <p><b>Accept</b></p> <p>The lack of clarity with the wording ‘simplifying and improving’ was a concern raised by members of this Committee during scrutiny of the previous Bill. Having reflected on this, I requested these amendments to paragraphs 2 and 4 of Schedule 5 to ensure the powers conferred on the Welsh Ministers under these provisions can be used for specified purposes.</p>  |
| <p><b>Recommendation 6</b></p> <p>The Minister should provide detailed information to the Committee on the UK Government’s revised position regarding the need for legislative consent for clauses 40 to 42 of the Bill.</p>  | <p><b>Accept</b></p> <p>The detail on the WTO clause was outlined in the original Legislative Consent Memorandum, paragraphs 55 and 56 where it stated Sub-clauses (42) (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. It is the Welsh Government’s view that these provisions required consent because they make provision with regard to agriculture and concern the domestic implementation of international obligations.</p> <p>Following representation from myself and Minister Ewing, the Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, wrote to me on 6 July confirming the removal of clause 42(4) and (5).</p> |

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| <p><b>Recommendation 7</b></p> <p>The Minister should provide the Committee with the detail of the agreement reached with the Secretary of State on the exercise of the regulation-making powers in clauses 40 to 42.</p> | <p><b>Accept</b></p> <p>The bilateral agreement between the Welsh and UK governments of March 2019 requires the Secretary of State to consult the Welsh Ministers before making regulations using powers conferred under clauses 40 to 42. This agreement also sets out a robust and transparent mechanism for involving Welsh Ministers in the operation of the regulations, including a mechanism for dispute resolution, reflecting extensive discussions with the UK Government (both Defra and Cabinet Office).</p> <p>In her letter to me dated 6 July, Minister Prentis also confirmed the UK Government's intention to enshrine the commitments set out in the bilateral agreement in a concordat to be developed between the governments of our four nations.</p> |
| <p><b>Recommendation 8</b></p> <p>The Minister should respond to all recommendations in this report as a matter of urgency and ahead of the Welsh Government tabling a legislative consent motion for the Bill.</p>       | <p><b>Accept</b></p> <p>I am committed to ensuring the Senedd has adequate time to consider those provisions within the Bill which require the Senedd's consent. I have responded to all recommendations made by the Committee to date and will respond to future recommendations in a timely manner.</p>  |

## **ANNEX 2: Powers of the Welsh Ministers to make subordinate legislation in the Agriculture Bill**

### **Introduction**

The Agriculture Bill (the Bill) was introduced in the House of Commons on 16 January 2020. At the request of the Minister for Environment, Energy and Rural Affairs, the Bill makes provision in relation to Wales in respect of devolved matters. The Welsh Government laid a Legislative Consent Memorandum (LCM) before the Senedd on 12 February. A supplementary LCM was laid on 11 June, setting out the amendments made to provisions relating to Wales during the House of Commons' amending stages.

Table 1 details the powers of the Welsh Ministers to make subordinate legislation in the Bill provisions. It provides justification as to why it is appropriate to seek these powers and outlines the Senedd procedure attached to each power. This document is to be provided to the Senedd's Legislation, Justice and Constitution (LJC) and Climate Change, Environment and Rural Affairs (CCERA) Committees in response to Recommendation 2 of the LJC Committee's report on the LCM in relation to the Agriculture Bill.

### **Overview**

#### **Powers being taken for the Welsh Ministers through the Bill**

The Agriculture Bill is an important legislative vehicle to give farmers and land managers in Wales much needed stability and continuity during this period of exceptional uncertainty. Powers being taken for the Welsh Ministers are necessary to enable the continued provision of existing agricultural support in Wales after 2020 and to ensure the effective operation of agricultural sectors following the UK's departure from the EU.

Powers for the Welsh Ministers to operate or transition towards new financial assistance, as previously provided for under paragraphs 1 to 3 of Schedule 3 to the Agriculture Bill introduced to the UK Parliament in September 2018, are not being taken in this Bill. It is the Welsh Government's intention that appropriate provision will be made by an Agriculture (Wales) Bill to be introduced in the next Senedd term. Schedule 5 ("provision relating to Wales"), and a small number of related provisions, are subject to a sunset clause (clause 44) and are due to expire at the end of 2024 in accordance with that provision.

#### **Senedd procedure for delegated powers in the Bill**

The Welsh Government has worked closely with the UK Government to ensure powers for the Welsh Ministers in this Bill with significant policy implication are subject to the affirmative resolution procedure. This will allow the Senedd the opportunity to duly scrutinise the subordinate legislation made under those provisions. For those regulation-making powers where the subject-matter is considered to be more technical in nature, where it may be appropriate to legislate swiftly and where the discretion of the Welsh Ministers over the subordinate legislation is more limited, the negative resolution procedure has been chosen in accordance with the Welsh Government's guidelines on subordinate legislation.

**Table 1: Justification for the Welsh Ministers’ powers to make subordinate legislation under provisions in the UK Agriculture Bill**

| Provision: Power Conferred  | Justification  | Legislative Procedure  |
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| <p><u>Clause 31 (fertilisers):</u><br/>Amendments to an existing delegated power in section 74A of the Agriculture Act 1970 to regulate fertilisers on the basis of their function and to specify additional matters for which provision may be made relating to the regulation of fertilisers.</p> | <p>A delegated power already exists in the Agriculture Act 1970 to regulate fertilisers based on their content and composition (section 74A). Clause 31(2) amends the definition of a “fertiliser”, provided for in section 66 of the Agriculture Act to enable a broader range of materials to be regulated as fertilisers. Clause 31(3) amends the existing delegated power (section 74A(1)) to enable regulations to be made setting out safety and quality requirements for fertilisers by reference to function, as well as content or composition. The functions to be regulated will be consulted on and may be subject to a staged roll out. The functions regulated will need to change to keep pace with scientific developments.</p> <p>Amendments are also required to enable regulations made pursuant to this clause to set out the conformity assessment procedures to be carried out on fertilisers according to their content, composition or function to assess their compliance with statutory requirements or otherwise mitigating risks to the health and safety of humans, plants, animals or the environment presented by fertilisers. Regulations may provide for functions to be conferred on a public authority to monitor or enforce compliance and may require the retention of information relating to the compliance of fertilisers with statutory requirements. The clause will also enable the amendment or repeal of retained EU law relating to fertilisers.</p> | <p>The first regulations made by the Welsh Ministers under section 74A(1) which contain provision under section 74A(1A) to (1E) of the Agriculture Act 1970 will be 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)(b), Agriculture Act 1970).</p> |
| <p><u>Clauses 36 and 37:</u><br/>Powers for the Welsh Ministers in respect of the certification of</p>  | <p>This power gives the Welsh Ministers the ability to make new organics regulations, including to modify retained EU legislation (if and to the extent that provision made by the regulations would be within the legislative competence of the</p>   | <p>Affirmative resolution procedure where—</p>   |



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| <p>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 Senedd if contained in an Act of the Senedd (ignoring any requirement for the consent of any person) (clause 37(1)(c)).</p> | <p>Senedd). This allows the Welsh Ministers to achieve domestic policy objectives and make changes negotiated with major trading partners to facilitate the requirements of trade agreements. This will ensure that the UK organics sector can continue to operate to world leading standards of organic production, to remain competitive, to adapt with the latest science, and to access global markets.</p> <p>Regulations made under clause 36 can make provision for and in relation to the certification of organic products (clause 36(1)), the import and export of organic products (clause 36(5) and (7)) and the enforcement of organic regulation (clause 36(8)). These powers are available to each of the devolved administrations in certain circumstances (see clause 37(1)(b) to (d)). 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 Senedd if contained in an Act of the Senedd (ignoring any requirement for the consent of any person) (clause 37(1)(c)). Regulations may also be made under clause 36 by the Secretary of State (clause 37(1)(a)). The consent of the Welsh Ministers is required before the Secretary of State makes regulations under clause 36 that could be made by the Welsh Ministers under that provision (clause 37(2)).</p> | <p>(a) the regulations are made under section 36(1) and contain provision referred to in section 36(3), or</p> <p>(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.</p> <p>Otherwise, regulations under clause 36 are subject to negative resolution procedure (unless section 47(5) applies, in which case affirmative resolution procedure).</p> |
| <p><u>Clause 44(7) (duration of provision in relation to Wales):</u></p> <p>Power for the Welsh Ministers to make transitional, transitory or saving provision in connection with this section.</p>   | <p>In response to recommendations made by the Senedd committees during their scrutiny of the previous Agriculture Bill, introduced in 2018, Schedule 5 (provision relating to Wales) and a number of related provisions are subject to a sunset provision (clause 44) and will expire at the end 2024 in accordance with that provision.</p> <p>The delegated power in clause 44(7) is required to ensure any necessary transitional, transitory and saving provision in connection with the sunset provision can be made by the Welsh Ministers.</p>   | <p>Regulations under this clause which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure.</p> <p>Other regulations under this clause are subject to negative resolution procedure.</p>   |

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| <p><u>Clause 50(1):</u><br/>Power for the Welsh Ministers to make by regulations supplementary, incidental or consequential provision in connection with—</p> <p>(i) section 32(3) and (4), so far as relating to Wales,<br/>(ii) section 43 and Schedule 5,<br/>(iii) section 44, and<br/>(iv) section 49 and Schedule 7 so far as they apply in relation to Wales.</p> | <p>It is not possible to establish in advance all consequential, supplemental, transitional, transitory and savings provisions that may be required, particularly given that we do not yet know the outcome of EU exit negotiations; a power is needed to avoid any legal uncertainty or legal gaps after the Bill comes into force. Regulations made using this power may modify primary legislation, retained direct EU legislation or subordinate legislation (clause 50(2)).</p> | <p>Regulations under section 50(1) which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure.</p> <p>Other regulations under subsection (1) are subject to negative resolution procedure.</p> |
| <p><u>Clause 50(5):</u><br/>Power for the Welsh Ministers to make by regulations transitional, transitory or saving provision in connection with—</p> <p>(i) section 32(3) and (4), so far as relating to Wales,<br/>(ii) section 43 and Schedule 5,<br/>(iii) section 44, and<br/>(iv) section 49 and Schedule 7 so far as they apply in relation to Wales.</p>         | <p>When a new provision comes into force, it is often necessary to make transitional, transitory or savings provision to ensure a smooth transition. It is not possible to establish in advance all transitional, transitory or saving provisions that may be required. As with clause 50(1), this power is needed to avoid any legal uncertainty or legal gaps after the Bill comes into force.</p>   | <p>No procedure</p>   |
| <p><u>Clause 53(3):</u><br/>Powers, so far as not brought into force by subsection (1)(a)</p>  | <p>This clause contains powers to bring certain provisions of the Bill into force by commencement regulations at the</p>   | <p>No procedure</p>   |

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| <p>or (b), for the Welsh Ministers by regulations made by statutory instrument to appoint—</p> <p>(a) so far as relating to Wales—</p> <p>(i) section 32(3) and (4),</p> <p>(ii) paragraphs 10 to 16 and 18 of Schedule 3, and</p> <p>(iii) section 34 so far as relating to those paragraphs,</p> <p>(b) Part 2 of Schedule 5, and section 43 so far as relating to that Part, and</p> <p>(c) Parts 2 and 4 of Schedule 7, and section 49 so far as relating to those Parts.</p> | <p>appropriate time. By virtue of subsection (5), different days may be appointed for different purposes.</p>  |                                      |
| <p><u>Schedule 3, para 6(7):</u></p> <p>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-</p> <p>a) include a person in, or remove a person from, the definition of “professional authority”;</p> <p>b) reflect changes in the name or internal organisation of any</p>  | <p>Under the Agricultural Holdings Act 1986 an arbitrator may be appointed by agreement between the parties to resolve a dispute, or if the parties cannot agree they can apply to the President of the Royal Institution of Chartered Surveyors (“RICS”) to appoint an arbitrator. Industry feedback has highlighted a lack of arbitrators in the sector to resolve tenancy disputes.</p> <p>This regulation-making power allows the Welsh Ministers in relation to Wales to amend the list of persons who may appoint arbitrators under the 1986 Act. This is necessary to widen the pool of arbitrators, therefore providing more choice and making the service more accessible for tenants and landlords. This will enable the list to be updated from time to time to keep it up to date with any changes or additions that</p> | <p>Negative resolution procedure</p> |

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| <p>body mentioned in that definition.</p>   | <p>may be needed (e.g. if the listed organisations change their name or new organisations need to be added).</p>   |                                      |
| <p><u>Schedule 3, para 7:</u><br/>Powers for the Welsh Ministers by regulations to make provision for the tenant of an agricultural holding to refer for arbitration or third party determination requests for landlord's consent to activities that are restricted under the terms of their tenancy agreement or requests for variation of terms where those requests relate to the tenant accessing financial assistance in exceptional market conditions or the tenant meeting a statutory obligation.</p> | <p>Most AHA leases were written over twenty years ago in a very different commercial and policy landscape. Many include standard landlord restrictive clauses to prevent the tenant from undertaking activities without the tenant first gaining the landlord's consent. Such restrictive clauses present a constraint on some tenants' ability to develop a productive and viable business and meet statutory requirements. The regulation-making powers, conferred on the Welsh Ministers in relation to Wales are needed to ensure that tenants under the Agricultural Holdings Act 1986 are not unfairly restricted in this way.</p> <p>Details of a dispute resolution process will be designed and implemented in consultation with industry, including representatives of both tenants and landlords, to ensure a balanced approach between the interests of both parties is taken.</p> | <p>Negative resolution procedure</p> |
| <p><u>Schedule 3, para 17:</u><br/>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.</p>   | <p>The current legislation is incompatible with current policy objectives of improving farming productivity by encouraging the transfer of land into the hands of skilled commercial farmers. This power to make regulations to update the criteria governing the suitability of a tenant to succeed to an Agricultural Holdings Act 1986 agreement is necessary to enable productive commercial farmers to succeed to AHA holdings in the future. Recent consultations in England and Wales on this issue show widespread support for the provisions to be updated.</p> <p>Details of the new 'Business Competence Test' will be developed in further consultation with industry ensuring representatives of both tenants and landlords are able to</p>   | <p>Negative resolution procedure</p> |

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|   | <p>contribute their views on the most appropriate criteria to include. In addition, it is important that the regulations can be reviewed and updated regularly to ensure they remain up to date with continued professional development in farming and business skills.</p>  |  |
| <p><u>Schedule 5, para 2(1):</u><br/>Powers for the Welsh Ministers by regulations to modify legislation governing the basic payment scheme (“BPS”)</p>   | <p>This power will allow the Welsh Ministers to adapt the legislation governing the BPS for one or more specified purposes in light of the experience of operating the scheme and feedback from stakeholders.</p> <p>A public consultation launched on 31 July 2020 is seeking views on proposals to amend the retained (EU) legislation governing BPS during any interim transition period, until powers are provided through an Agriculture (Wales) Bill, in the next Senedd term.</p> <p>Proposals include modifications to make the scheme operation more efficient and effective; remove spent provisions; remove or reduce burdens and ensure the sanctions applied are appropriate and proportionate.</p> | <p>Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)</p> |
| <p><u>Schedule 5, para 3(1):</u><br/>Powers for the Welsh Ministers by regulations to provide for the continuation of the BPS beyond 2020, including power to provide for the direct payments ceiling for Wales to be determined by Welsh Ministers</p> | <p>This power is necessary to enable the Welsh Ministers to continue operating the BPS beyond 2020. The Minister for Environment, Energy and Rural Affairs has committed to extending BPS in 2021.</p> <p>Under the terms of the Withdrawal Agreement, BPS 2020 is being delivered as an equivalent domestic scheme, pursuant to the Direct Payment to Farmers (Legislative Continuity) Act 2020.</p> <p>The public consultation launched on 31 July seeks views on proposals including continuing to provide agricultural support through an extended BPS scheme until new powers are provided through an Agriculture (Wales) Bill in the next Senedd term.</p>   | <p>Affirmative resolution procedure</p>  |

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| <p><u>Schedule 5, para 4(1):</u><br/>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.</p> | <p>This power is needed to allow the Welsh Ministers to make amendments to the horizontal EU legislation to remove complexities. The power may be exercised to make changes for one or more purposes specified at paragraph 4(2). The power allows modifications to be made to align the scheme rules with domestic circumstances, in light of continued experience of operating the schemes and in response to feedback from stakeholders.</p> <p>A public consultation launched on 31 July 2020 seeks views on proposals to make amendments to the monitoring and financing of domestic CAP schemes to align with Welsh Government procedures and Senedd scrutiny, until new powers are provided through an Agriculture (Wales) Bill, in the next Senedd term.</p> | <p>Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)</p> |
| <p><u>Schedule 5, para 5(1):</u><br/>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.</p>  | <p>This power is needed to allow the Welsh Ministers to operate a domestic equivalent to EU RDP in Wales.</p> <p>A public consultation launched on 31 July 2020 seeks views on proposals to align rural development with Welsh Government procedures, Senedd scrutiny and distinct Welsh legislation including the Environment (Wales) Act 2016 and the Well-Being of Future Generations (Wales) Act 2015, until new powers are provided through an Agriculture (Wales) Bill, in the next Senedd term.</p> <p>The proposals apply to any new domestic rural development support arrangements. The existing Welsh Rural Development Programme 2014-2020 will continue to be governed by EU Law pursuant to the terms of the Withdrawal Agreement.</p>                 | <p>Affirmative resolution procedure</p>  |
| <p><u>Schedule 5, para 8(1):</u><br/>Powers for the Welsh Ministers by regulations to modify</p>   | <p>This regulation-making power will allow the Welsh Ministers to use public intervention and private storage aid powers more effectively in exceptional circumstances. The nature of</p>  | <p>Negative resolution procedure (unless clause 47(5) applies, in</p>  |

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| <p>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).</p> | <p>exceptional market conditions is that they cannot be forecast, so we cannot know, for example, what products might require intervention and when. This clause allows the Welsh Ministers to tailor these types of aid to specific exceptional conditions.</p>  | <p>which case affirmative resolution procedure)</p>  |
| <p><u>Schedule 5, para 8(2):</u><br/>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.</p>  | <p>The Common Agricultural Policy currently provides powers to remove surplus products from the market and stabilise market prices by purchasing, storing and reselling certain goods once prices have risen (Public Intervention) or by paying producers to store products for an agreed period to remove them from the market (Private Storage Aid). These domestic powers will enable the Welsh Ministers to alter the operation of these provisions -in ways not currently provided for in the existing legislation, to ensure these schemes are tailored to the domestic market. This could include, for example, changing the products which are eligible for specific aid schemes, to tailor them to domestic market conditions. There is also a specific power to phase out these schemes as the sector becomes self-reliant.</p> | <p>Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)</p> |
| <p><u>Schedule 5, para 9(2):</u><br/>Powers for the Welsh Ministers to make regulations requiring persons in or closely connected with an agri-food</p>  | <p>This power is intended to improve transparency of data collection throughout the agri-food supply chain and to improve dissemination of this information. The power will enable the Welsh Ministers to make regulations to collect and</p>   | <p>Affirmative resolution procedure</p>  |

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| <p>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.</p>  | <p>share data relevant to the agri-food supply chain. A requirement to provide information must serve certain purposes. Each purpose must be in, or covered by, the list in paragraph 11(4), including productivity, supply-chain fairness and transparency, animal health and welfare, and risk management.</p>   |   |
| <p><u>Schedule 5, para 14(1):</u><br/>Powers for the Welsh Ministers to make provision for enforcement of a requirement imposed under paragraph 9(1) or (2) of Schedule 5 (agri-food supply chains: requirement to provide information)</p>                    | <p>A power to enforce requirements to provide data is needed to ensure powers to collect data are effective and to tailor penalties for failing to provide information so they are proportionate, and to allow for evolving technology and policy objectives.</p>  | <p>Affirmative resolution procedure</p> |
| <p><u>Schedule 5, para 15(1):</u><br/>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</p> | <p>This power will enable the tailoring and modernisation of the existing marketing standards in retained EU law for agricultural products marketed in Wales. Marketing standards are technical in nature, and this power will enable their modification to keep in line with modernisation and to reflect the domestic agricultural market. In relation to products for which EU marketing standards do not exist (including new products which may be added to paragraph 16 using the power under paragraph 16(3)), the power in paragraph 15(1) gives the Welsh Ministers the flexibility to introduce new standards that will be tailored to suit the domestic agricultural sectors.</p> <p>Regulations made under paragraph 15(1) may also provide for the enforcement of marketing standards. In accordance with paragraph 15(3) provision may be made in respect of a range of enforcement matters including (amongst other</p> | <p>Affirmative resolution procedure</p> |



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|   | things) conferring powers of entry, imposing monetary penalties, creating offences punishable by a fine and appeals.  |                                  |
| <p><u>Schedule 5, para 16(3):</u><br/>Powers for the Welsh Ministers to amend paragraphs 15 and 16 for or in connection with the purpose of—</p> <p>(a) adding or removing an agricultural product from paragraph 16(1);</p> <p>(b) altering the description of an agricultural product in paragraph 16(1).</p> | <p>The products listed in paragraph 16(1) largely reflect the products covered by current marketing standards law. This is subject to change as new sectors develop and become increasingly important. Therefore, a regulation-making power is needed to enable amendments to paragraphs 15 and 16 of Schedule 5 so that the list of products and their description may be updated over time, and any necessary amendments may be made to paragraph 15 consequential on those amendments to paragraph 16(1).</p>  | Affirmative resolution procedure |
| <p><u>Schedule 5, para 17(1):</u><br/>Powers for the Welsh Ministers to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales</p>   | <p>This power is needed to enable the updating of carcass classification provisions for slaughterhouses in Wales. It will allow carcass classification rules to be tailored to suit the domestic sector, to ensure that these rules do not place an excessive burden on farmers and others in the food supply chain and to continue to match modifications made to the rules at international level to ensure domestic farmers and slaughterhouses are not disadvantaged.</p> <p>Paragraph 17(2) sets out the enforcement matters that regulations under paragraph 17(1) may cover including, for example, the provision of information, conferring powers of entry, imposing penalties, creating offences and providing for appeals. This provides powers for an effective enforcement regime and will help to ensure a consistent and fair approach with existing penalties as and when new rules are introduced.</p> | Affirmative resolution procedure |