

Farmers' Union of Wales Response to an Environment, Trade and Rural Affairs Committee (ETRA) Inquiry into the Agriculture (Wales) Bill.

9th November 2022

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Introduction

The Farmers' Union of Wales was established in 1955 to protect and advance the interests of Welsh families who derive an income from agriculture.

In addition to its Head Office, which has thirty full-time members of staff, the FUW Group has around 80 members of staff based in twelve regional offices around Wales providing a broad range of services for members.

The FUW is a democratic organisation, with policies being formulated following consultation with its twelve County Executive Committees and eleven Standing Committees.

Since the publication of *Brexit and our Land* on 10th July 2018, the FUW has repeatedly discussed the future of agricultural support in Wales with members and interested parties from across Wales; at agricultural shows and open meetings.

Future farm support proposals have also been discussed at more than 50 FUW County and Branch meetings, and the FUW's eleven policy Standing Committees have also met to discuss the proposals.

PART 1: Sustainable Land Management (SLM)

i. The SLM Objectives

Part 1 (section 1) of the Bill makes provisions about SLM for, and in connection with, future agricultural support. Under the Bill, there are 4 SLM Objectives which can be broadly outlined as follows:

1. To produce food and other goods in a sustainable manner
2. To mitigate and adapt to climate change
3. To maintain and enhance the resilience of ecosystems and their benefits
4. To conserve and enhance the countryside and cultural resources, to promote public access to (and engagement with) the countryside, to promote public access, to promote and sustain the Welsh language.

As part of the FUW's response to successive consultations on the future of agricultural support in Wales^{1,2,3}, the union has repeatedly highlighted the importance of food production and farming families to the Welsh economy, culture, communities and landscapes and we continue to highlight that support, which underpins safe, quality food production, must be maintained in order to avoid irreparable damage to Wales.

¹ Farmers' Union of Wales response to the Welsh Government's Brexit and Our Land Consultation. 30th October 2018

² Farmers' Union of Wales response to the Welsh Government's Sustainable Farming and Our Land Consultation. 30th October 2019

³ Farmers' Union of Wales response to the Welsh Government's Agriculture (Wales) White Paper. 25th March 2021

Such assertions were outlined in the FUW's response to the 2018 Brexit and Our Land consultation and were reiterated in the union's 2021 response to the Welsh Government's Agriculture (Wales) White Paper. These principles remain both fundamental and central to future agricultural support in Wales and were previously summarised in a joint FUW-NFU vision paper⁴ on the future of agricultural support in Wales:

- i. **Stability:** The priority for Welsh Government must be to provide stability in a world of uncertainty.
- ii. **Family Farms:** Wales' future rural policies must keep food producing families on the land.
- iii. **Supporting Rural Communities and Welsh Jobs:** Direct support which underpins safe top quality food production must be maintained to avoid causing irreparable damage to Wales
- iv. **Sustainable Agriculture:** Wales must continue to invest in measures that drive productivity, improve efficiencies and support farmers to increase market potential whilst meeting environmental and climate change obligations
- v. **Rewarding Environmental Outcomes:** Welsh farmers have delivered positive public outcomes for the nation for centuries, and must be fairly rewarded for what they have already delivered, continue to deliver and will deliver in the future.

Given the above, the FUW therefore welcomes the inclusion of food production as part of the first SLM Objective. A previous lack of focus on food production in the 2018 Brexit and Our Land consultation was of significant concern to the FUW's membership and, since the Brexit referendum, the FUW has consistently argued for SLM principles to include (1) the economic sustainability of our family farms and (2) the sustainable production of safe traceable food. However, whilst the inclusion of food production in the SLM Objectives is welcomed, the FUW remains concerned that the economic well-being of farming businesses continues to be excluded from the SLM Objectives.

The SLM Objectives contained within the Bill were directly developed from the definition of SLM mooted by the United Nations (UN). This narrow definition classifies SLM as '*The use of land resources, including soils, water, animals and plants, for the production of goods to meet changing human needs, while simultaneously ensuring the long-term potential of these resources and the maintenance of their environmental benefits*'.

The plan to focus future support scheme and policy direction on one definition of Sustainable Land Management (SLM) has not changed since the rhetoric surrounding Sustainable Farming and our Land. Although not defined within the Bill, the definition of SLM is contained within the explanatory memorandum and the FUW does not believe that the present SLM definition addresses or recognises the wider context farming both operates in, and contributes to.

Indeed other, broader definitions of SLM exist which are more comprehensive and which recognise the interconnectivity and interdependency of land management and livelihoods. For example, definitions, such as that outlined by the World Bank⁵, recognise the need to integrate land, water, biodiversity and the environment with rising food and fibre demands whilst, crucially, sustaining livelihoods. As such, the United Nations' SLM definition is too narrow

⁴ A Welsh Way Forward: FUW-NFU Joint Vision Paper. 24th October, 2018

⁵ <https://openknowledge.worldbank.org/handle/10986/7132>

and the delivery of Public Goods and environmental outcomes should form part of a future scheme or schemes, but not be the sole focus.

The narrow definition of SLM – and resultant SLM Objectives - are clearly a significant departure from the original aspirations of agricultural subsidies. The EU's Common Agricultural Policy (CAP) was launched in 1962 and its genesis was largely and predominantly designed to ensure an adequate and secure food supply. Recognition of the need for viable agricultural sectors and stable supplies of affordable food led the UK Government to pass Labour's 1947 Agriculture Act, described by Tom Williams, the Secretary of State responsible for its introduction, as intended "*...to promote a healthy and efficient agriculture capable of producing that part of the nation's food which is required from home sources at the lowest price consistent with the provision of adequate remuneration and decent living conditions for farmers and workers, with a reasonable return on capital invested.*" Such principles were also encapsulated in the 1957 Treaty of Rome, and remain in place in the EU under the European Union's Lisbon Treaty.

Thus, whilst the FUW is not opposed to the SLM Objectives per se, we believe that it would be appropriate to lengthen the list to create a 5th Objective which explicitly seeks to ensure the economic stability of farming families. At present, whilst there is a narrative around sustainable food production within the Bill, there are currently no direct rewards for it; nor are there direct rewards for the provision of safe, traceable food or for the protection of global food security.

Under the Wellbeing of Future Generations (Wales) Act 2015 ("The Wellbeing Act"), "sustainable development" means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle. It must be noted that the Wellbeing Act encompasses a far broader set of principles⁶ which are defined by the seven Wellbeing Goals and forty-six National Wellbeing Indicators. These include principles which relate to language, prosperity, equality, employment and renewable energy production – principles which are neither defined nor necessarily implied in the UN's Sustainable Land Management definition.

As such, it is clear that positive outcomes which fall directly within the scope of the Wellbeing Act, such as jobs, prosperity, language and education, would be inadvertent or coincidental under the current Objectives, as opposed to being the result of a policy designed with such Objectives clearly in mind.

It is therefore believed that a far broader set of principles which take full account of the Wellbeing Goals and other Welsh objectives, including the current and future economic challenges and competition faced by farm businesses and rural communities, should form the basis of a future policy framework, and that focussing objectives on the sustainable use of resources and basing a framework only on the UN's Sustainable Land Management principle fails to comply with the Wellbeing Act.

Covid-19, the war in the Ukraine and the rising costs of imports continue to demonstrate that the CAP's core principle of safe and secure food supplies remains valid. Those living and working in Wales continue to require policies which protect food security and food production

⁶ <https://www.futuregenerations.wales/about-us/future-generations-act/>

whilst recognising the role of agriculture in helping meet Welsh climate change, wellbeing and diversity goals.

A more concrete approach is needed to ensure proper remuneration and living conditions for farmers and workers in agriculture and an adequate return on capital investment in the industry. The FUW's call to future proof the regulations are pertinent given that other SLM Objectives can only be achieved where farms are financially viable. The lack of reference to farmer livelihoods means that the Bill does not address the financial cost of being a low carbon footprint, enhanced ecosystem and increased biodiversity farm. Costs include changes in management practices, capital investment in new infrastructure and/or habitat creation, training and time involved in data collection, as well as reduced production from taking land out of production. The rewards within the SFS must therefore be proportionate to these losses and should aim to ensure the continuing competitiveness of farms in Wales.

It should also be noted that the Objectives in the Bill will set out Welsh agricultural policy direction for the next 15 to 20 years and it is therefore essential that economic resilience is embedded in the Objectives of the Bill or future policies could meet current Bill Objectives at the expense of farmer livelihoods. Where the economic viability of farming families is not included within the Objectives of the SLM then farming families in Wales will be vulnerable to future changes in policy which operate under the same SLM framework but which have no obligation to look after their financial well-being.

As per the 4th Objective, the FUW welcomes recognition of the role that food producers play in maintaining and protecting cultural heritage and the historic environment. However, it is essential that sufficient support is provided to allow farmers to deliver such Objectives.

ii. Monitoring and reporting

Part 1 (section 3) of the Bill places duties on Welsh Ministers in relation to monitoring and reporting on progress towards the SLM Objectives.

The FUW welcomes provisions in the Bill to improve scrutiny and transparency in relation to scheme monitoring and we have previously welcomed the goal for domestic funded schemes to have a clear focus on value for money and the delivery of outcomes in accordance with the framework and principles set out in Managing Welsh Public Money.

The provisions in the Bill to strengthen scrutiny are significant given the long standing concerns of the FUW in regard to the effectiveness of the Programme Monitoring Committee (PMC). Indeed in June 2020, the Wales Audit Office identified that the Welsh Government had awarded £53 million of Rural Development Programme (RDP) funds without ensuring that the projects or grants would deliver value for money. Prior to this, in 2018, the Wales Audit Office had called on the Welsh Government to strengthen its scrutiny and risk management of the RDP.

Effective monitoring and reporting is essential to assess policy effectiveness and to provide a developing evidence base for ongoing policy development. It is therefore of note that 5 yearly Impact Report Assessments will be utilised to determine policy effectiveness and to identify remedial actions where appropriate. Given the longer-term nature of some of the scheme elements, such as tree planting, carbon storage and habitat creation, the FUW would seek to ensure that the monitoring of longer-term policy objectives is appropriate and that there are no overly reactive and detrimental responses to progress which is behind expectation in regards to such measures. Moreover, it is essential that the targets are chosen in consultation with industry and are realistic, achievable and within sensible and pragmatic timelines.

The FUW notes Part 1 Section 2 (a and b) of the Bill which outlines that the statement must contain -

- (a) at least **one** distinct indicator for each sustainable land management objective, and
- (b) at least **one** distinct target relating to at least one distinct indicator for each sustainable land management objective.

The FUW believes that the provision to allow the use of just one indicator represents an extremely low baseline in relation to the monitoring duties reported under this section of the Bill. Whilst the union believes that there is a balance between reporting methods which are too complex to be useful and too crude to be useable, it is of concern that the Bill allows for the use of just one indicator in this regard. Indeed, the use of one indicator risks the results being skewed by a flawed or inaccurate measure or being fragile and heavily influenced by extraneous factors. It is essential that the indicators chosen are done so in conjunction with the industry and are borne out of sound science and with a sound knowledge of relevant local factors which could influence the results obtained.

This is particularly pertinent given that the results of the annual and 5 yearly reporting mechanisms will be utilised to determine the effectiveness of the actions – and thus corresponding scheme payments – with scheme ‘adjustments’ where necessary (Part 1, Section 6 (5b)). It is imperative that these indicators are meaningful, proportionate, recognise the influence of extraneous factors, have realistic timelines and do not facilitate large mid-scheme policy direction changes which are borne out of poor science and which could severely impact upon a farmer’s ability to enter or remain in the Sustainable Farming Scheme (SFS).

In addition to the above, the FUW notes that Part 1 Section 5(2c) of the Bill pertaining to reporting mechanisms makes reference to the use of the State of Natural Resources (SoNaRR) for Wales report. SoNaRR assesses Wales’s sustainable management of natural resources and sets out a range of opportunities for action. The FUW believes that it should be incumbent on Government to give equal credence to reports pertaining to food production and security, such as the UK Food Security Report. Failure to do so could lead to an imbalance in reporting mechanisms which favour adjustments on environmental and climate measures without recognition of the direct effects on food production and farm economics. This in turn could dictate the progression of future policy and farm support in a manner which is not holistic and which does not protect the viability and sustainability of farming families.

PART 2, CHAPTER 1: Support for Agriculture

i. The List of Purposes

Part 2 SECTION 8 (2a to k) lists the purposes by which support for agriculture in Wales may be provided.

As mentioned previously, the union believes that Public Goods and Environmental Outcomes should form **part** of a future support scheme but should not be the sole focus. Whilst outside the scope of this written evidence, it should be noted that the FUW's response to the Welsh Government's Agriculture (Wales) White Paper detailed the mechanisms by which support could be properly directed towards active / genuine farmers and the FUW remains resolute in ensuring that support is provided in a way that protects and enhances family farm businesses.

As with the four Objectives contained in the Bill, the FUW does not oppose the list of purposes *per se*. However, again, whilst there is a narrative around sustainable food production, there are currently no direct rewards for it, nor are there direct rewards for the supply of safe, traceable, high standard food or the protection of domestic food security in its own right.

Indeed, food production is directly mentioned just once within the 11 listed purposes whereby support may be provided where the purpose (Section 8 (2b)) '*encourages the production of food in an environmentally sustainable manner*'. Within this context, the FUW firmly believes that 'sustainability' must encompass financial sustainability alongside environmental, social and cultural outcomes. Thus there is an imminent need to lengthen purpose 2b to explicitly and clearly encourage the production of food in a manner which also enhances these wider benefits of farming.

There is also no mention of the Welsh language in the list of purposes, although we believe that this is likely to be added at the amendment stage.

The Amaeth Cymru Data and Evidence Group's 2016 report⁷ found that a far higher proportion of those in the ONS Agriculture, Forestry and Fishing employment category speak Welsh (29.5%) than in any other category. Further analysis by the Welsh Government allowed this figure to be further refined, revealing that 43% of those in this category are able to speak Welsh. Agriculture is by far the most dominant employer in this category.

The 43% figure compares with 27% of workers in education, the sector with the second largest percentage share after agriculture, forestry and fishing, and 17% for all Welsh workers. This means that the prevalence of Welsh speakers in the agricultural industry is 153% higher than for Wales as a whole.

The Amaeth Cymru report referred to above also found that, in communities where between 30% and 80% of the community speak Welsh, the proportion who do so within the agriculture category is significantly higher than the overall average, and higher than for all other work types; for example, in communities where the proportion who speak Welsh is between 40% and 50%, the proportion who do so within the agriculture category is 64%.

⁷ Amaeth Cymru. Farming in Wales and the Welsh Language, 2016

In addition to the above, it is worthy of note that the 2020 Farming Connect Iaith y Pridd / The Language of the Land report⁸, recognised 2 key themes, directly relevant to the Bill, which were identified as being able to contribute to the aim of a million Welsh speakers by 2050⁹. These included (1) ensuring that payments supported family farms, enabling them to stay in rural areas and (2) supporting active agricultural land management to protect activity in the wider rural economy.

Given the above, the FUW believes that both the Objectives and Purposes contained within the Bill must be amended to protect and enhance Welsh farm businesses, farming communities and Welsh agriculture in general in order to protect such wider societal and cultural benefits. .

Part 2, Section 8 (2h) outlines that support may be provided where the purpose is to maintain and ‘*enhance public access to and engagement with the countryside and the historic environment*’. The FUW welcomes the recognition of the contribution of farmers to maintaining rights of way and maintenance of the countryside to the benefit of the mental well-being of others. Farmers currently manage around 88% of the land in Wales. This includes the hedgerows, dry stone walls and other landscape features the public value whilst visiting the 16,000 miles of footpaths, 3,000 miles of bridleways, 1,200 miles of cycle network and 460,000 hectares of open access land. Whilst the FUW welcomes this recognition, there is concern that access reforms are likely to restrict what farmers can be rewarded for under the new support scheme and the FUW will be providing more detail on this and other related issues in its response to the SFS consultation. It is imperative that any higher demands on farmers are properly resourced and supported.

ii. Further Provision about Support

Part 2, Section 9 details the further support that can be provided under Third Party (Section 9 (5)) Schemes. Section 9 (6) states that a “third party scheme” for this purpose is a ‘*scheme for the provision of support (whether financially or otherwise) for or in connection with agriculture or ancillary activities (or both), but which is not made by the Welsh Ministers*’.

The FUW remains concerned about the lack of clarity on this issue and an overall dearth of information detailing the types of schemes which may be considered under the definition of ‘third party’.

In general, FUW members do not view Third Party schemes favourably and there are several examples of such schemes using a large and disproportionate amount of the funding provided for staffing costs and administration rather than for the provision of on the ground support. Given the union’s concerns in this regard, special reference to Third Party expenditure, and the progress of such schemes towards the Objectives in the Bill, must form an open and transparent part of the monitoring and reporting mechanisms outlined in the Bill.

In addition to the above, there is the real potential that the very nature of such schemes – for example those involving specific water catchment areas - would prohibit a pan-Wales approach

⁸ <https://businesswales.gov.wales/farmingconnect/news-and-events/reports/iaith-y-pridd-report-22092020>

⁹ Welsh Government Cymraeg 2050 Strategy: A Million Welsh Speakers

and the ability of a food producer to enter such schemes would thus be provenance dependent. This represents a ‘postcode lottery’ situation which is in direct opposition to the ‘open to all’ FUW-NFU joint vision paper described previously.

Food producers may also be reticent to supply sensitive business information to the operators of Third Party schemes and there is a need for further clarity on this issue.

iii. Publication of Support

Part 2, Chapter 1 outlines the regulations relating to the publication of information about the support that has been provided.

Section 3 (a-c) details that such information may include:

- (a) the recipient of any support provided;
- (b) the amount of any support provided;
- (c) the purposes of any support provided.

In addition to the above, the FUW strongly believes that there should be full transparency relating to the financial support provided by Government under the new scheme(s) and the associated proportional splits pertaining to factors such as bureaucracy, administration and direct support.

At present, the Bill makes provisions for financial disclosure relating to the recipients of support but makes no reference to the administration costs; which may or may not be proportionate and appropriate under the new scheme(s). This is especially pertinent given that, by their very design, Pillar 1 (Direct Payment) schemes generally tend to be administered and run more efficiently and more cost effectively than Pillar 2 (Rural Development) schemes. Indeed, the Agriculture (Wales) Bill Explanatory Memorandum (incorporating the Regulatory Impact Assessment (RIA) and explanatory notes) details that 38% and 62% of current scheme administration costs relate to the administration of the BPS and RDP land-based projects respectively (RIA Section 7.186, pg 158).

At present, direct support under the Basic Payment Scheme represents about 75% of scheme expenditure and makes up about 80% of Welsh farm income on average. This demonstrates farmers’ reliance on this provision and thus the need to ensure such support is protected in the future.

At present, the approach being mooted in relation to the Sustainable Farming Scheme involves the use of bespoke Farm Sustainability Reviews which are posited as being akin to the Glastir ‘outreach’ and application processes. FUW members have repeatedly expressed concern relating to the time and resources needed for this type of scheme on a pan-Wales basis and the FUW will be highlighting these concerns in detail in our response to the SFS consultation.

Whilst many farmers found the Tir Gofal approach of having an assigned advisor or contact much more beneficial than the current prescriptive Glastir approach, this was a ‘top up’ environmental scheme to BPS, and as such allowed for a larger proportion of the budget to be spent on advisors. Given the uncertainty surrounding the future agricultural budget for Wales,

the FUW maintains that a substantial increase in bureaucracy and administration costs should not be subtracted from the budget allocated for farm support.

In relation to the above, the FUW strongly asserts that funds for future agricultural support must be equal to, or above, current scheme expenditure. At present, the administration costs for Pillar 1 direct support are outside scheme costs and it is therefore of concern to the FUW that the RIA associated with this Bill brings scheme administration and delivery costs within the scheme budget.

Given the likely requirement for increased administration costs, the FUW is concerned that this will lead to a reduction in direct support for producers under the SFS Universal Options and will occur at a time of overall diminished budgets. The FUW continues to stress that the monies made available for the ‘open to all’ Universal Options must be protected and must provide an equivalent income for the 16,500 food producers currently reliant on Pillar 1 support that decide to enter the SFS.

In addition to the above, the FUW believes that the Bill should make provisions for Ministers to prepare a multi-annual financial plan in order to provide stability and certainty to the industry. Provisions for the publication of a multi-annual financial plan are contained within the UK Agriculture Act 2020 and it is therefore surprising that this provision was not included in the Agriculture (Wales) Bill. Whilst the FUW recognises the challenges inherent in such an approach, the union believes that such a plan would be of benefit in outlining delivery against Welsh strategic objectives and would provide the evidence base for funding from the UK Treasury at a time of diminishing resources. While the majority of agricultural and Rural Development funding previously came from the EU, and is now decided by the UK Treasury, a significant proportion of co-funding must come from the Welsh Government. Any cuts to co-funding must be viewed as unacceptable as cuts made by the UK Treasury.

iv. Eligibility for Support

Part 2, Chapter 1 (Section 11) makes reference to those provisions under the Bill relating to checking eligibility for support.

The FUW fully recognises that the spending of public monies requires such powers. However, the FUW maintains that such checks must be administered as efficiently as possible and believes that the penalties must be appropriate and pragmatic to avoid unnecessary appeals and additional red tape. Furthermore, moves to rectify breaches (Section 2h), apply monetary penalties (Section 2i) and prohibit future support (Section 2j) must account for circumstances out with the control of the farmer and should not, under any circumstance, be the result of higher level policy changes which are imposed on the farmer after the onset of the scheme and which have been borne out of evidence resulting from the monitoring and reporting discussed previously.

v. Annual Reporting

Part 2, Chapter 1 (Section 12) makes provisions for Welsh Ministers to prepare an annual report on the support provided during the period.

The FUW notes that the provisions pertaining to the annual report make reference to the amount of financial support provided over the reporting year (section 2a). As mentioned previously, the FUW would argue that the administration costs of the scheme should also be provided via this reporting mechanism in order to improve transparency, scrutiny and to promote value for money.

CHAPTER 3: Intervention in Agricultural Markets

i. Exceptional Market Conditions

Chapter 3 Section 20 makes provisions for Welsh Ministers to intervene in ‘*exceptional market conditions*’.

The powers contained within the Bill allow for “exceptional market conditions” if –

- (a) there is a severe disturbance in agricultural markets or a serious threat of a severe disturbance in agricultural markets, and
- (b) the disturbance or threatened disturbance has, or is likely to have, a significant adverse effect on agricultural producers in Wales in terms of the prices achievable for one or more agricultural products.

The FUW notes the reference to ‘severe disruption’ (Section 2a) and the need for the disturbance to have a ‘significant adverse effect’ on agricultural producers in terms of the prices achieved for agricultural products (2b). Whilst the FUW is not opposed to these definitions *per se*, we believe that this section should also recognise the degree to which rising input costs can adversely impact upon the agricultural sector.

The need to recognise input costs is evidenced by the recent, and significant, rises in process for both agricultural fertiliser and concentrate animal feed. Figures from the Agricultural and Horticultural Development Board (AHDB)¹⁰ demonstrated that in May 2022, the price of both feed and fertilisers had risen by 15.6% and up to 165% in the last 12 months respectively. The price received at the farm gate is therefore a function of the cost of producing the product and it is imperative that the final price received is not viewed in isolation but instead accounts for spikes in the costs of inputs.

ii. Exceptional Market Conditions Declaration

Chapter 3, Section 20 also makes provisions for Welsh Ministers to make and publish a declaration of ‘*exceptional conditions*’.

¹⁰ <https://ahdb.org.uk/GB-fertiliser-prices>

An exceptional market conditions declaration must -

- (a) state that the Welsh Ministers consider that there are exceptional market conditions;
- (b) describe the exceptional market conditions in question by specifying
 - (i) the disturbance or threatened disturbance in agricultural markets;
 - (ii) the grounds for considering that the disturbance is severe, or that there is a serious threat of a severe disturbance

The FUW agrees that Welsh Ministers should be able to provide this intervention during a crisis, as previously delivered through the EU Common Market Organisation regulations. Such provisions should allow for a more tailored approach to exceptional market conditions. However, it must be emphasised that neither Intervention nor Private Storage Aid are likely to provide the stability or protection from volatility afforded by direct support. Furthermore, it is worthy of note that these powers are discretionary and thus their usefulness will ultimately be dependent on the willingness of Welsh Ministers to utilise them during a period of market crisis. The FUW would argue that the Welsh Government have, in the past, been too reluctant to use these powers and there is the potential for a distortion in the UK market if disparate approaches are used amongst the different administrations.

Thus, whilst respecting devolved powers and needs, the FUW believes that the degree of trade between England and Wales necessitates an obligation within the Bill for collaboration and coordination across the UK to avoid any adverse impacts caused by divergence. Indeed the FUW is concerned about potential asymmetry between the devolved administrations in factors such as the definition of 'exceptional', the level of support provided and the speed at which such support is offered and retracted. Without equivalent support and intervention packages across the UK administrations there is a risk that those mechanisms designed to combat market turmoil could themselves create internal market distortion. This is also relevant when considering the type, level and timing of intervention support being offered to our counterparts within the EU.

At present, the UK Agriculture Market Monitoring Group reviews and analyses market information from government and industry for the main agricultural sectors in the UK and provides advice to senior officials and ministers on market developments. In addition, the group also provides a forum for the discussion of market impacts across the UK.

It is currently unclear how Welsh market data will now be collected and analysed and the FUW would have concerns if the provisions within the Bill led to reduced information sharing between the devolved administrations. Market information, as an indicator of market condition, is generally lagging behind ground level conditions and it is therefore imperative that the Welsh Government maintains its collaborative duties in this regard.

Chapter 4: Agricultural Tenancies

Chapter 4, Section 23 provides for dispute resolution relating to financial support by amending the Agricultural Holdings Act 1986.

The powers contained within the Bill provide tenants with a route to dispute resolution where a restrictive clause in the tenancy agreement may prevent the tenants from diversifying into non-agricultural activities, such as environmental land management. Whilst the FUW cautiously welcomes extending the dispute resolution procedure to Farm Business Tenancies

(FBT), such changes do not represent a ‘silver bullet’ for the problems facing tenants and their potential exclusion from the Sustainable Farming Scheme.

Where the Objectives - and subsequent Purposes - function to sever the link between farming/food production and support payments, there will be an increased risk that landlords will take land back in hand or increase control in order to maximise income.

The degree to which tenant farmers are particularly vulnerable to changes in payment systems, particularly those linked to environmental public goods and multi-annual contracts, cannot be emphasised enough. Mitigation measures such as changes to tenancy law, shorter contract terms, potential changes to tenancy law, contracts which do not run for prohibitively long time periods and outcomes achieved through agricultural activity and the provision of advisory services for tenants and landlords would mark a step towards reducing adverse impacts and increasing inclusion. However, the degree to which these would truly negate the problems inherent to moving from annual direct support to one based on Sustainable Land Management Objectives under multiannual contracts is negligible.

As such, the introduction of a scheme focussed only on the provision of Public Goods and environmental outcomes would exclude large numbers of tenants, thereby compromising their businesses and placing them at a competitive disadvantage. The result is likely to be large pockets of land outside the scheme and could result in land being taken in hand by landowners, thereby disenfranchising tenants.

Indeed, the prevalence of annual FBTs, the limited control a tenant has over land, restrictions in farm tenancy agreements, the need to seek a landlord’s consent for work and the length of tenancy agreements compared with agri-environmental scheme contract durations remain significant barriers to the inclusion of tenants. It should also be noted that in many cases, the reluctance of landlords to provide consent for work – including in relation to investments - may be wholly rational, given the long term adverse impacts work or actions may have on the agricultural value of land, or the affordability of compensating existing tenants for work and structures.

The Welsh Government must ensure that the universal and higher level options contained within the new scheme do not disadvantage tenant farmers and this is especially pertinent for young or new entrants who tend to start out with less secure tenures. The scheme payments must be management and data oriented in order to ensure the active tenant farmer benefits. Any schemes or regulation which favour significant or long term investment from the landlord, such as slurry stores from the new water pollution regulations, or tree planting under the new Sustainable Farming Scheme, are likely to put tenants in a weaker position. Joint landlord/tenant Sustainable Land Management scheme agreements could potentially offer a compromise, as long as tenants are not left with the majority of the risk.

It should also be noted that the proportion of tenanted farms located in intermediate or lowland areas (as opposed to upland areas) is generally believed to be higher than for the industry as a whole, and that this is particularly the case for Local Authority holdings.

Given that agri-environment scheme requirements have generally been less attractive or practical for such farm types, the barriers presented by a move to Public Goods and environmental outcome based payments for tenants are likely to be exacerbated by the nature and location of tenanted farms.

It is therefore believed that the proposals in their current form would represent a particular and acute problem for tenants which the Welsh Government fails to address in the proposals, and that such adverse impacts would disenfranchise tenants in a way which would breach the Wellbeing Act.

In addition to the above, FUW members believed that the powers for dispute resolution could potentially cause aggravation between tenant and landlord. A far better and more economical approach to dispute resolution is to avoid the need for such arbitration altogether by ensuring the support scheme is fit for purpose.

As highlighted in the Welsh Government's 2019 Agriculture in Wales¹¹ publication, 9% of businesses applying for Basic Payment Scheme and/or Glastir in 2018 did so for farms comprised entirely of tenanted land, whilst a further 39% comprised both owned and rented land. Of the total amount of land in Wales for which BPS and/or Glastir claims were made, over a quarter was for land that was rented.

Whilst figures which distinguish between the numbers of tenants and owner-occupiers applying for Glastir and BPS payments have not been published, given that the Farm Business Survey (FBS) estimates that 35% of rental agreements in 2017-18 were for less than 1 year, and that Glastir contracts are multi-annual, it must be concluded that the majority of the 48% of farm businesses which rely on tenanted land are not in the Glastir scheme due to the legal and practical barriers inherent to agri-environment/Public Goods type contracts on tenanted land.

Although not covered within the provisions contained in the Bill, the FUW would use this opportunity to express concern about the dearth of information relating to common land and how such land may be able enter future support scheme(s). Common land represents about 8.5% of the total land area of Wales; with about 40% designated as Sites of Special Scientific Interest (SSSI) and 50% falling within the protected landscape of Wales.

Many commoners have only a small amount of land that could be used to enter the proposed Universal element of the SFS and, given that several farms will be entitled to graze the same common, management systems and the SFS will need to co-ordinate land use for this purpose. Further work is required to ensure that future schemes are fit for purpose in this regard and the FUW will be providing more detail on this issue in its response to the Welsh Government SFS consultation.

PART 3, Chapter 1: Collection and Sharing of Data

Part 3, Chapter 1 (Section 24) pertains to the requirement to provide information related to the agri-food supply chain. The numerous purposes for which information can be provided are varied (Section 28) and include increasing productivity, managing risks (including climate and disease), promoting transparency and market monitoring.

¹¹ <https://gov.wales/agriculture-wales>

Improved data collection and use, done well, should be an aspiration under any future policy. The FUW welcomes any aims to reduce the duplication of data provision for farmers, who often need to provide similar information to various different regulatory bodies and organisations. Furthermore, a simplified system has the multiple benefits of reducing the administrative burden for farmers and increasing value for money from a scheme perspective through reduced Government administration costs.

Whilst the powers in the Bill make no reference to the mechanisms by which data should be collected, the FUW would use this opportunity to highlight that the most valuable source of land use information - the annually collected IACS/SAF data covering around 90% of Wales land area and the overwhelming majority of Welsh farm businesses - has rarely been used to its full potential.

The current RPW Online system efficiently and accurately collects annual data relating to 170 types of land use on hundreds of thousands of field parcels and areas, at a resolution of 0.01 hectares, while also collecting many other types of data relevant to Wales' wellbeing, business practices, carbon sequestration and other environmental goods.

Data delivery through the current RPW online system mirrors the aspirations in the Welsh Government's White Paper for streamlined data collection, a reduction in duplication of data provision, and using data to evidence SLM. Given the valuable resource presented by such data in meeting the overarching SLM Objectives, the FUW believes that farmers should be fairly rewarded for this provision.

Such a scheme creates a system which provides a baseline payment for the annual provision of data and compliance with universal scheme obligations, while also using such data to dynamically drive improvements both nationally and at a farm level by identifying actions which deliver against a range of objectives, including those relating to Public Goods

Notwithstanding the above, whilst the FUW welcomes the aspiration for a better use of technology in order to automate some of the data collection for compliance, major concerns exist regarding the quality of information gathered through satellite imagery and other mapping. The scheme must recognise that mistakes with satellite imagery should not result in an instant penalty against the claimant. Numerous union members have had the all clear from an on-site visit by a farm only for a retrospective penalty to be applied without discussion. This is especially pertinent in light of those powers contained within the Bill relating to scheme enforcement.

Furthermore, inaccurate or difficult to decipher data can lead to inadvertent mistakes such as those identified with Glastir small grant maps for capital works where there are boundary differences between the aerial imagery and on the ground reality. Map layers based on specific species will also need to be updated or communicated if they are causing restrictions to scheme eligibility. Complicated mapping which does not reflect the farm reality is to be avoided at all costs.

The FUW would also emphasise that any data collected by Welsh Government must work with other databases used in the UK.

Where positive in-roads are made, the data captured should be used to promote sales of Welsh produce - both domestically and internationally - by highlighting green credentials, reductions in antibiotic use and the like. This is not explicitly included in the Bill or the Objectives of the SLM and the promotion of Welsh produce following successful outcomes is imperative. The ability to easily and readily access this data in order to promote Wales' agricultural industry could help create aspirations to achieve more.

Data on the agri-food chain could help producers better respond to market signals (such as market fluctuations) and identify market trends if this data is provided in an easily understood format and in a timely manner.

However, whilst the FUW supports the proposals to identify and overcome barriers in supply chains, we would emphasise the need to drive change from the top: Welsh Government and other public body procurement policies must genuinely support local supply chains, as they do in other countries which are subject to the same or similar procurement rules.

We would also draw attention to the need to strengthen the position of farmers within the food supply chain by enhancing market transparency and taking other proactive actions such as those being enacted in the European Union. These include requiring crucial information on how prices are determined as agri-food products move along the supply chain; thereby providing information about intermediary costs between seller and buyer in a manner that enhances market transparency.

In addition to the above, given that supply chains extend across the UK, we would once again raise the issue of possible divergence between data collection and sharing requirements in different parts of the UK, and the need therefore for the UK Government to work closely with devolved administrations to ensure relative uniformity.

Moreover, supply chains will also extend to countries outside the EU, and there is therefore a danger that limiting data collection requirements to activities in the UK will disadvantage UK producers and processors or even encourage them to source food from outside the UK. It is therefore believed that the Bill should take account of how transparency may be extended to include imported produce.

Part 3, Chapter 1 Section 30 relates to the provision of required information and the limitations on its processing. Specifically, Section 30 (9a,b) and Section 30 (10a,b) detail the consideration that should be taken in relation to the disclosure of information.

Under the provisions in the Bill (Section 9a,b) Welsh Ministers must consider whether disclosure of the information would, or might, prejudice the commercial interests of any person, and if so, the information (if disclosed) must, instead, be disclosed in an anonymised form. However, under the provisions, if the Welsh Ministers consider that it is in the public interest for the information to be disclosed it may be publicised otherwise than in an anonymised form (where permitted by subsection 7). The release of commercially sensitive information – whether at national or farm level – is of great concern to both the FUW and its farmer membership.

The data protection in the current Bill is based upon GDPR principles. In terms of GDPR, the UK Agriculture Act 2020 makes a similar provision for UK Ministers. However, this UK Act (section 49) contains a safeguard surrounding data collection and the circumstances in which

it can be disclosed. Moreover, and of greater concern, the FUW has been made aware that the UK Government put forward an intention to abolish GDPR (7th October) in order to make data transfer cheaper and easier. This may include the international transfer of data to countries with lower data protection standards and this is of significant concern to the FUW. Indeed, to maintain domestic competitiveness, it is essential that sensitive data is not shared with those countries, such as New Zealand and Australia which are part of current trade agreements.

In order to protect our membership from the disclosure of commercially or otherwise sensitive information, the union believes that proper and thorough safeguards relating to data disclosure must be adopted in the current Bill. This would provide an appropriate safety net for producers who will be offering a tremendous amount of personal farm information.

CHAPTER 2 : Marketing Standards and;

CHAPTER 3: Classification of Certain Carcasses

Under Chapter 2, Section 32 Welsh Ministers may make provision about the standards with which agricultural products must conform when they are marketed. This includes technical definitions, classification criteria, labelling and production methods.

Chapter 3, Section 33 makes provision about the classification, identification and presentation of livestock carcasses by slaughterhouses in Wales.

The FUW understands that the Welsh Government has no plans to make secondary legislation on marketing standards or carcase classification for agricultural produce. However, should such changes occur, the FUW believes that Welsh Ministers should provide full justification for any alterations in order to ensure that the industry understands the need for a particular course of action.

Changes to either marketing or carcase classification standards cannot be undertaken in isolation and the Welsh Government must be mindful of developments and standards elsewhere. Within this context, the FUW would use this opportunity to stress that any proposals within the new support scheme(s) to raise the regulatory baseline to a level far higher than those farmers in other nations - including Scotland, Northern Ireland and EU countries – represents both unfair competition and the very real potential for market distortion.

It is therefore essential that Welsh farmers benefit from a level playing field within the UK due to the volume of inter-UK processing and trade. Farm businesses straddling the border will be particularly affected by unfair competition. As evidence by current trade deals, the UK Government is following a trade liberalisation route and it is imperative that Welsh farmers are protected against this competition in the global and home marketplace. Moves to ‘differentiate’ Welsh products will not provide protection and may inadvertently create an uneven playing field.

Indeed, this is particularly the case given that the AHDB International Consumer Buying Behaviour report¹² has demonstrated that quality and price are by far the dominant factors in

¹² <https://ahdb.org.uk/knowledge-library/international-consumer-buying-behaviour>

international consumer buying behaviour, and that animal welfare is consistently amongst the lowest considerations.

While this may be disappointing for a country such as the UK, it is important to recognise such realities, particularly given the overall negative implications of pricing Welsh produce out of markets and thereby exporting production to countries with lower environmental and animal health and welfare standards.

The FUW therefore believes it is imperative that current regulatory frameworks are maintained in order to minimise potential market distortion and discrimination. Moreover, given the degree of trade between England and Wales, the union would suggest that the Bill should include an obligation for the Secretary of State and Welsh Ministers to avoid any adverse impacts caused by divergence while respecting devolved powers and needs.

The UK Internal Market Act 2020 effectively means being forced to accept goods regardless of the standards set by devolved legislation and, without collaboration and cooperation, this could lead to asymmetric competition due to the mutual recognition and non-discrimination principles outlined in this Act. Both the Internal Market Act and the Agriculture (Wales) Bill are relatively silent on how devolved government's should work together to mitigate issues relating to divergence and this is an inherent weakness.

The mutual recognition principle for goods means that goods made, or imported into, one part of the United Kingdom that comply with relevant legislative requirements in that part, can be sold in the other parts of the United Kingdom, without having to comply with any relevant legislative requirements in those other parts. This is especially pertinent given plans in Wales to create a set of National Minimum Standards which could go over and above the current regulatory baseline and which may not be mirrored by other devolved administrations. In this regard it is therefore worthy of note that England has a larger population and higher GDP and will thus likely dominate the UK internal market; this has implications where lower standards – and thus lower production costs – in England could undercut producers in Wales.

In addition to the above, the FUW has repeatedly expressed frustration that the Agriculture (Wales) Bill lacks any powers to stop imports of competitive products that do not meet the high standards and environmental credentials of Welsh agriculture. As it stands, the Objectives and purposes contained in the Bill represent only half the equation and demonstrate a level of hypocrisy.

International trade is not devolved to Wales and the rules surrounding and governing export are therefore settled at a UK level. Where, the public goods / environmental requirements of the next Welsh agricultural support scheme go above and beyond those in other administrations there are no mechanisms to use this for the benefit of Welsh producers in trade negotiations. It could well be the case that our high standards increase the cost of production at a time when our markets are flooded with lower standard, cheaper produce.

PART 4: Forestry

Part 4 (section 34) provides the powers to amend Part 2 of the Forestry Act 1967 to amend, suspend or revoke felling licences .

The FUW believes that this should allow a higher degree of flexibility, as farmers are facing increased calls to:

- (a) manage woodlands more proactively to create a diverse age structure (better for carbon and biodiversity)
- (b) fell Ash trees suffering from Ash dieback, particularly on roadsides, rail side or adjacent to public rights of way for public safety.
- (c) fell non native trees which could pave the way for a different habitat creation in its place.

However it should be noted that currently, under cross compliance rules, tree felling and maintenance is prohibited for much of the year for forestry companies whilst Natural Resources Wales can work relatively unfettered all year round.

The changes as proposed should also allow for a greater degree of flexibility where an area of woodland changes ownership and there is a resultant change in management objectives.

The powers conferred to NRW in the Bill (Section 24D (1a,b)) aim to allow for conditions to be added to ensure the integrity of protected sites, protected species or other environmental elements. However, tree felling is part of sustainable woodland management (e.g improving woodland habitat by providing gaps in the tree canopy). Felling licences are currently assessed by the UK Forestry Standard (UKFS) which highlights a number of legal requirements, good practice and the management of trees in relation to soil, water, biodiversity, people, historic environments, landscape and climate change. This has worked effectively and the UKFS has evolved to cope with wider environment issues.

Section 38 of the Bill makes provisions for compensation for any expenses reasonably incurred (Section 39, 24E (3)) and for any depreciation in the value of the trees attributable to deterioration in timber quality as a result of giving the notice (Section 39, 24E (4)). Where a licence is amended or revoked due to environmental harm that arises through no fault of the licence holder, there must be the provision of appropriate compensation which accounts for both direct and consequential losses. This is also pertinent where steps have been carried out as an immediate requirement of a breach of a licence and this is later cancelled at appeal.

There are significant commercial implications where a licence is suspended once granted. Costs that arise as a result of adding conditions to new licences have not been quantified in the associated Regulatory Impact Assessment and are expected where the new licences lead to delays in felling or the retention of woodland.

Section 39 of the Bill makes provisions for an appeal process to counter any 'overuse' of these new powers by NRW. However, this is time consuming, potentially costly and does not correct resultant commercial damages. It is therefore essential that NRW are provided with clear guidelines on the mechanisms by which licences can be amended or revoked. Indeed, there is concern that providing NRW with a general power to add conditions to felling licences will result in 'mission creep' over time, with increasing numbers of conditions added to licences and overuse of powers to amend/suspend/revoke licences already granted.

In addition to the above, the scope of the conditions may be too broad resulting in excessive requirements for licence holders. Moreover there is concern that NRW will be unable to fulfil their responsibilities in this regard due to under resourcing. Adding environmental conditions to felling licences will result in more consultation and liaison with NRW Environment Teams;

both from the forestry sector through pre-application advice and from NRW Forestry Permitting as part of NRW's internal consultation.

The FUW has previously highlighted the barriers to tree planting experienced by members. These include bureaucratic and administration barriers and tight profit margins on smaller farms where there are concerns about taking land out of production. The provisions in the Bill to amend the Forestry Act risk creating additional barriers to tree planting where felling licences become more complex and bureaucratic and where profits are altered due to retrospective changes.

The Forestry Act currently allows for exemptions which include felling for disease prevention, danger, electricity or water services and small amounts for private use. The FUW notes that such derogations will continue under the Bill.

PART 5: Wildlife

Part 5, Section 42 provides the powers to amend the Wildlife and Countryside Act 1981 to prohibit the use of both a snare (or any other cable restraint) (Section 42(2a)) and glue traps (Section 42 (2b)) for the purpose of trapping or killing an animal.

FUW members believe that the use of snares has an essential place in the toolkit of farmers and land managers in terms of the need to control vermin. Indeed, their use is important for both wildlife and livestock protection and the union therefore opposes the amendments proposed in this section of the Bill. Moreover, it is already illegal to set a trap or snare calculated to cause bodily injury to any wild animal included in schedule 6 of the Wildlife and Countryside Act 1981 (including badger, polecat, otter, red squirrel, hedgehog and pine marten). The use of humane cable restraints continues to be appropriate where other methods of fox control would be unsafe or impractical; such as in places of high cover. Furthermore, other methods of fox control, such as shooting, can be more expensive and come with additional concerns relating to health and safety.

During 2015, the FUW worked on a Welsh Government led task and finish group, alongside a wide range of stakeholders, to develop a Code of Best Practise on the use of snares in fox control. The Code, published by Welsh Government in September 2015, is a statutory code issued under Section 14 of the Animal Welfare Act 2006 and summarises the current legal obligations for those using snares and sets out best practice guidelines that should be followed. The FUW promotes the Code of practise amongst its membership.

The FUW would not oppose moves to make compliance with the provisions in the current Code a legal requirement and for every operator to be trained before legally setting a humane cable restraint. The provision of operator records on each device set and the number of foxes caught would allow Welsh Government access to data and would ensure that any non-compliance can be identified.

The proposed amendments to the Wildlife and Countryside Act 1981 represents a blanket ban on the use of snares which fails to account for scientific and welfare advances in this area; such

as the development of ‘humane cable restraints’. These newer designs exceed the Agreement on International Humane Trapping Standards (AIHTS) requirements for restraining devices and such traps have previously been supported by the Welsh Government in its own Code of Best Practise on the use of snares for fox control.

Humane cable restraints are ‘free running’ - which allows them to relax rather than continually tighten - and these restraints contain several design features to improve the welfare of trapped foxes. Furthermore, these restraints allow the self-release of non-target species such as badgers, hares and deer. The FUW would support moves to prohibit older designs whilst retaining the use of more modern alternatives under the 1981 Act.

It is worthy of note that the blanket ban on fox control as proposed under the Bill will inevitably lead to a greater number of production losses as farmers lose an important method of predator control. In addition, the ban will work against the wider SLM Objectives pertaining to biodiversity as a lack of predator control will lead to concomitant declines in biodiversity¹³¹⁴. It is essential that the wider consequences of such broad sweeping changes to the Wildlife Act are recognised and that a more pragmatic approach is taken which continues to allow the use of higher welfare restraints.

Given the above FUW members opposed the introduction of a blanket ban, and the FUW would use this opportunity to highlight that this issue has repeatedly been consulted upon over recent years and agreements on the use of such traps reached.

PART 6: General

Part 6, Section 48 (1a-g) provides the activities and products that are contained under the definition of ‘agriculture’.

Part 6, Section 49, provides the activities that are considered under the definition of ‘ancillary activities’.

Part 6, Section 50, provides Welsh Minister the powers to amend the definitions listed under Sections 48 and 49.

The definition of ‘agriculture’ – as per the 1947 Agriculture Act – makes clear the activities which may be considered as agricultural in nature. The FUW would have significant concerns if this definition could be easily amended under secondary legislation. Given that the definition of agriculture is pivotal to the provision and direction of support under future farming schemes, any amendment to the definition of agriculture must be subject to intense scrutiny in order to ensure that genuine active farmers are not excluded and that peripheral activities are not encompassed in a manner which would reduce the funding available for grass roots farming activities and food production.

¹³ Roos, S., Smart, J., Gibbons, D.W., Wilson, J.D. (2018) A review of predation as a limiting factor for bird populations in mesopredator-rich landscapes: A case study of the UK. *Biological Reviews*.

¹⁴ Saunders, G.R., Gentle, M.N., Dickman, C.R. (2010) The impacts and management of foxes *Vulpes vulpes* in Australia. *Mammal Review*.

It is crucial that future support is directed at those defined to be actively farming the land and, under current and future support schemes, this likely includes activities such as active health planning, soil management and the provision of key performance indicators.

At present, the definition of ancillary activities under the Bill remains extremely broad and, if encompassed under future schemes, could potentially lead to widespread land use changes and the potential purchase of vast amounts of land by sources outside of Wales.

As above, the FUW would have significant concerns if the definition of ancillary activities could be easily amended under secondary legislation. The union believes that there is the real risk that the definition of 'ancillary' could widen in the future to include activities that do not add value to farm businesses and are further removed from direct food production. The provision of funds for such activities would directly reduce funds available for those food producers genuinely farming land in Wales. Any amendment to the definition of ancillary activities must be subject to intense scrutiny in order to ensure that genuine active farmers are not excluded and that peripheral activities are not encompassed in a manner which would reduce the funding available for grass roots farming activities and direct food production.

As per Section 49 of the Act, Ancillary Activities are defined as:

- (a) taking action, on land used for agriculture—
 - (i) to create and manage habitats, or for other purposes relating to nature conservation,
 - (ii) to mitigate and adapt to climate change, or
 - (iii) to maintain and enhance the resilience of ecosystems;

- (b) selling, marketing, preparing, packaging, processing or distributing products deriving from agriculture.

Section 49 (a(i) – a(iii)) is of particular concern to the FUW and the union believes that this definition should be narrowed in a manner which ensures that the activities must be performed by those undertaking farming activities on agricultural land in Wales.

The Union continues to stress that the majority of financial support should be directed at farmers', especially due to the multitude of benefits farming families provide and their direct contribution to the wider SLM Objectives. Ancillary activities should be of direct economic benefit to farmers to be included in future schemes in order to ensure that monies are not wasted on peripheral activities which provide little or no net economic gain to the industry.

However, notwithstanding the above, the appropriateness of any funding for ancillary activities will largely depend on the total budget available and the proportional splits between the funding for ancillary activities and those activities conducted by food producers under the Universal, optional and Collaborative actions.

Under the current system, monies for ancillary activities is provided under Pillar 2 Rural Development Fund schemes. The Welsh Government Regulatory Impact Assessment bases the future support package (BPS and land-management schemes) at around 278 million pounds (RIA Section 7.190, pg 159). This cost is indicative under model scenario 2 – the 'status quo'. However, current scheme expenditure, including the current Pillar 2 Budget and Welsh Government match funding, is around 370 million pounds and the FUW is concerned at the

reduced budget presented under this option in the RIA. No explanation has been offered for the reduction in the overall budget presented in this section of the RIA and the FUW would use this opportunity to stress that it is only on the basis of current funding levels that the FUW believes that support for appropriate ancillary activities would be acceptable.

Section 49 (b) includes the selling, marketing, preparing, packaging, processing or distributing products deriving from agriculture as ancillary activities. Whilst the FUW supports the proposals to identify and overcome barriers in supply chains, the need to drive change from the top must be emphasised: Welsh Government and other public body procurement policies must genuinely support local supply chains, as they do in other countries which are subject to the same or similar procurement rules.

The FUW would also draw attention to the need to strengthen the position of farmers within the food supply chain by enhancing market transparency and taking other proactive actions such as those being enacted in the European Union. These include requiring crucial information on how prices are determined as agri-food products move along the supply chain, thereby providing information about intermediary costs between seller and buyer in a manner that enhances market transparency.

The FUW also supports efforts to shorten supply chains in a way which allows farms to receive a fairer proportion of profits, while ensuring that main markets and supply chains are not compromised.

In this context, the union would emphasise the need to support and encourage Welsh processing, and in particular protect and assist Welsh slaughterhouses of all sizes. The numbers of slaughterhouses have fallen by 75% or more since the 1980s due to economic pressures; including those brought about by regulations introduced by the EU, UK and Welsh administrations. In 2019, there were 19 abattoirs in Wales and any continuing downward trend in slaughterhouse numbers – and thus capacity – will inevitably pose risks for the supply of local sustainable meat. A network of local abattoirs is vital to rural Wales for employment and reduced transport times for animals¹⁵ and is part of those wider benefits contained within both the Wellbeing Act and the SLM Objectives.

The FUW would also emphasise the need to ensure that scheme changes do not undermine Wales' aspirations, including those relating to shortening supply chains, by directly or inadvertently reducing Welsh agricultural production, thereby undermining critical mass which is a key factor for Welsh processors and food operators¹⁵.

SUPPLEMENTARY INFORMATION: [Additional Comments](#)

i. National Minimum Standards

The Welsh Government White Paper placed an emphasis on the use of both National Minimum Standards (NMS) and Civil Sanctions. However, as it stands, the Bill is silent in relation to

¹⁵ The Red Meat Sector. National Assembly for Wales Research Briefing. December 2018.

both of these issues. Given that NMS will be a regulatory requirement of all food producers - irrespective of whether they enter the SFS or not – the FUW believes that these elements of the new scheme should be afforded the scrutiny and transparency present in primary legislation and that any moves to amend either of these elements under secondary legislation should be wholly avoided.

The proposed ‘minimum’ standards will set the regulatory floor to determine the actions farmers will get paid for doing **over and above** the proposed baseline. The ‘minimum standards’ are therefore inextricably tied into the direction of policy, the level of funding farmers will be able to access and thus their future profitability and resilience.

Currently, the receipt of EU subsidy payments are justified by the extensive regulatory standards farmers need to adhere to in return, such as keeping land in Good Agricultural and Environmental Conditions (GAECs) or various animal health and welfare requirements. However, current proposals for the NMS will make such standards a legal requirement without any form of financial return. The FUW appreciates that all industries are regulated, however as a critical industry for food security with market prices for food far lower than the cost of production (as price-takers), it cannot be considered in the same sphere as other highly regulated industries. The FUW would also use this opportunity to highlight that consideration should be given to the structure of most farm businesses in regards to regulatory demands; with one main labourer being expected to both farm and also undertake the paperwork and regulatory burden.

Members expressed concern that these ‘minimum’ standards would reduce the suite of options for contributing to the Public Goods scheme, and preclude environmental outcomes which could be supported through future policy. This has proven to be a justified concern as the new Water Resources ‘NVZ’ regulations stipulate completing, for example, nutrient management plans and soil risk maps by law. These were initially proposed as options to receive payments for as part of the Sustainable Farming Scheme. Similarly, access reforms are likely to restrict what farmers can be rewarded for under the new scheme by increasing the ‘baseline’ for what farmers are expected to deliver for free. The FUW maintains that some GAECs which already deliver on the desired Public Good outcomes could be incorporated into the Sustainable Farming Scheme (SFS) for incentivisation as opposed to being ‘minimum’ regulation to be penalised on.

While consolidating regulations can be classed as a sensible approach, what is proposed in the context of the SFS is to raise the regulatory baseline to a level far higher than those farmers in other nations - including Scotland, Northern Ireland and EU countries - have to comply with and those in countries with whom the UK may wish to trade in future. The UK Government is following a trade liberalisation route, therefore Welsh farmers will need to be protected against this competition in the global and home marketplace. Simply increasing restrictions and regulations to ‘differentiate’ our products will not provide this protection and inadvertently create an asymmetric playing field.

It is therefore essential that Welsh farmers benefit from a level playing field within the UK due to the volume of inter-UK processing and trade. Farm businesses straddling the border will be particularly affected by unfair competition. The FUW therefore believe it is imperative that these regulatory frameworks are drawn up in cooperation with the other UK nations in order to

minimise potential market distortion and discrimination, and this has been previously highlighted by the FUW¹⁶.

It is important to recognise that consumers' choices are mainly based on price. Whilst factors such as brand trust, provenance and the environment all have a part to play in food purchase decisions, with the recessionary buying behaviours threatening to return following the Covid-19 pandemic, these factors will be seen as less relevant as consumer purchase drivers. Current inflationary pressures mean that consumers will become ever more price conscious and are likely to 'trade down' during periods of economic instability. However, British and Welsh consumers would not endorse a race to the bottom in their food production standards. Safe, traceable food with high welfare credentials is expected as a standard - 85% of people in Wales support strengthening or keeping food safety standards. Therefore to address (sometimes conflicting) consumer demands, Welsh food producers must be protected and supported accordingly.

ii. Civil Sanctions

The previous Welsh Government White Paper discussed risk-based inspection and enforcement actions to ensure compliance with NMS for all farmers. It is worthy of note that the powers relating to civil sanctions are considered to be separate from any sanctions for future support schemes. Careful consideration will need to be given to the interaction between civil sanctions and financial penalties under the Sustainable Farming Scheme in order to ensure that farmers are not penalised twice for the same breach.

Given the above, the FUW would highlight that only those classified to be actively farming, regardless of whether or not they are a financial beneficiary of a support scheme, would have to comply with the plethora of regulations proposed under national minimum standards. As such, regulations and criminal sanctions would only apply to the farming sector, and would exclude gardeners who may interfere with nesting seasons through inappropriate hedge maintenance, forestry operations causing severe soil erosion or caravan park owners spraying unimproved grassland with glyphosate.

Over-complicated and draconian regulations are well recognised as being a key contributor to stress and anxiety¹⁷. Family farms often operate without formal staff and therefore the requirement to comply with ever increasing, complex and changing regulations creates an additional burden. The fear of a simple mistake resulting in a severe financial penalty in a low profit making business is a regular occurrence. As such, powers to administer civil and criminal sanctions are of concern to the union's members, as there is a perception that the system could lead to an unnecessary criminalisation of farmers, with the potential for significant legal costs and a deleterious impact on mental health.

¹⁶ Filling the Void – Steps towards a post Brexit UK Policy Framework

¹⁷ 'Supporting farming communities at times of uncertainty – An action framework to support the mental health and well-being of farmers and their families' Mental Health Foundation Report

iii. Payment Capping

The FUW is disappointed that there are, as yet, no firm ambitions to set a payment cap and redistributive payments in order to favour family farms as opposed to absent landlords. Retaining the payment cap would maintain scheme integrity in the eyes of the public and underpin the rural economy.

The lack of ambition for payment capping is especially pertinent given the propensity for Public Goods payments to redirect vast sums of money away from the family farms which make the greatest contribution to Wales' economy and rural communities. The FUW has supported the capping of payments to recipients of public funding since 2007 in order to maximise the amount of support to typical family farms and those who make the greatest contribution to rural communities and the economy. The EU has further recognised the importance of capping payments and supporting family farms, with the new CAP set to lower capping levels after farm labour costs are taken into account and increase levels of support for small and medium sized family farms.

The FUW has concerns regarding the degree to which the Bill would, in future, allow far greater divergence between regulations, budgets, minimum and maximum spending thresholds and other policies and approaches implemented in the four UK nations than would have been allowed under EU regulatory frameworks.

The scale of such divergence could potentially be unprecedented in recent history and have the effect of distorting markets and effecting unfair competition between businesses in different parts of the UK.

As an organisation which fully supports Welsh devolution, the FUW recognises that divergence is an inherent part of devolution. However, this has previously happened within the boundaries set by EU frameworks, and the Bill and related legislation effectively removes or fails to replace the vast majority of such boundaries, either immediately or over time.

As such, the FUW has argued for the UK administrations to agree on a number of frameworks which ensure proportionate rules and spending limits are in place to protect businesses from market distortion and unfair competition, ensure the UK's internal markets and supply chains continue to function properly and meet agreed common objectives which are in all our interests.

iv. Protecting UK markets, consumers and farmers

The FUW is extremely concerned that the Bill does not introduce means by which to prevent the importation of food produced to environmental, animal welfare and other production standards which fall short of those legally required of UK farmers.

Failure to prevent the importation of food produced to lower standards would not only compromise UK businesses required to operate under more costly regimes, but also result in a net fall in environmental and animal welfare standards, as countries with lower standards would be favoured. Such adverse environmental impacts would include those relating to greenhouse

gas emissions and this is in direct opposition to the Sustainable Land Management Objectives outlined in the Bill.

It must also be noted that if products which do not meet standards which are at least equivalent to EU standards are allowed to enter the UK, this will undermine the UK's ability to reach an acceptable trade deal with the prosperous EU market which is on our doorstep.

v. Young and New Entrants

The Bill lacks any mention of support aimed at young farmers or new entrants in order to help address the barriers for those coming into the industry. In Wales, between 2010 and 2017, the average farmer age rose from 56 to 59 years. The proportion of farmers under the age of 45 in Wales also fell from 14% to 10% over the same period demonstrating the need for policies which encourage succession.

The FUW has supported the principle of an extra direct payment for young farmers since 2008, and believes a more targeted scheme needs to be developed to better support young farmers. The union believes that the rule pertaining to 'in control' - which require more than 50% of the shares and votes in business - is often a major obstacle to the current young farmer scheme criteria.

vi. Renewable Energy

The FUW is disappointed that a focus on farmers' contribution towards renewable energy generation is lacking. This is despite the fact that increasing renewable energy is one of the 'National Priorities' in the Natural Resources Policy (NRP) alongside Wales' goal to be net zero by 2050. Feed in Tariffs (FITs) - which played a central role in more than doubling renewable energy production in Wales from 2014 to 2017 by posing as an incentive for farmers to invest - closed to new applicants in 2019. Therefore the Welsh Government must find a way to regain the momentum to reach its 2030 target of 70% of Wales' electricity demand from Welsh renewable electricity sources as a national priority.

The FUW believes that future support schemes should examine the potential for renewables on areas of unproductive, rooftops of industrial buildings, farm sheds or every new building development.

The production of renewable energy must be balanced with sustainable food production. This is especially important when considered alongside the Welsh Government's proposals that suggest every farm in Wales should have 10 percent of tree cover. The FUW would like to see a holistic approach taken towards both renewable energy and tree planting that allows agriculture to become part of the solution to Climate change, without threatening our ability to produce food here in Wales.