



## Agriculture (Wales) Bill 2022

November 2022

### Overview

WEL members strongly welcome the laying of the Agriculture (Wales) Bill 2022: we believe it is the single most significant asset the Sixth Senedd will have to respond to the climate and nature emergency. As Senedd Members will be aware, the effects of climate change and biodiversity loss are beyond question. Agricultural change has been identified as the most important driver of nature's decline across the UK<sup>1</sup> and the sector's greenhouse gas emissions have increased over the last decade, moving slowly back towards the original 1990 baseline<sup>2</sup>. Furthermore, based on the most recent 2020 data, agriculture is the third largest emitting sector behind energy supply and business.

Alongside this environmental decline, the status-quo of area-based support for food production has shown itself to not be economically or cultural resilient with traditional family farms continually under threat and declining in number. Finally, we know that the Welsh agricultural system currently provides poorly for the nation's needs and is instead export orientated with as little as 5% of the lamb and beef we produce being consumed in Wales.<sup>3</sup>

It is hard to overstate the need for urgent reform for the sake of the rural economy, Welsh culture, and our environment. We believe that this Bill can be the positive driver of that reform so long as we get it right for people, nature and climate.

As an eNGO network, our tests of the Bill and Sustainable Farming Scheme (SFS) will include whether they enable sustainable food and farming that:

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<sup>1</sup> [State of Nature 2019](#), p.19

<sup>2</sup> <https://statswales.gov.wales/Catalogue/Environment-and-Countryside/Greenhouse-Gas/emissionsofgreenhousegases-by-year>

<sup>3</sup> [SMEs in the Welsh Food System](#), Foundational Economy Research, June 2021

1. restores and maintains farmland wildlife and the environment: this includes positive impacts on wildlife and the environment beyond the farm gate from good environmental management on farms;
2. significantly reduces harmful emissions that are contributing to climate change and also to reduce emissions of other pollutants that are impacting our air, soils and water quality;
3. ends use of imported animal feeds and other products linked to destroying the natural world overseas;
4. develops opportunities to diversify food production, and other farm products, such as timber, wool or carbon sequestration for local markets;
5. supports opportunities for community ownership, new entrants, better public access and engagement in land use decisions; and
6. sets an effective regulatory baseline, backed by fair and clear civil and legal sanctions, that all farmers, land managers and landowners must comply with.

Whilst WEL members are commissioning legal advice to assist our recommendations for Bill amendment at Stage 2, this evidence is provided in advance of formal legal advice being provided.

### **Part 1: Sustainable Land Management**

WEL strongly recommends that a clear definition of Sustainable Land Management should be included on the face of the Bill to ensure that there is no difficulty in future interpretation of this term.

Throughout the development of the Bill Welsh Government have been using the pre-eminent United Nations definition. This has enjoyed majority support among Welsh stakeholders throughout the co-production process so there was some surprise that it was not included on the face of the Bill and left to the Explanatory Memorandum.

WEL is aware of a view in circulation that more use should be made of the World Bank definition. WEL would oppose this because it is now significantly outdated and deficient compared to that of the UN. We also argue that the UN definition is one in active usage globally: it's more authoritative, more encompassing, and, much simpler to understand than the World Bank definition.

While adding the UN definition is a simple fix, we would like to draw the Committee's attention to the fact that Welsh law has already tried to define elements of sustainable land management within the Environment (Wales) Act 2016 (EWA). This takes the form of the definition of the Sustainable Management of Natural Resources (SMNR) in Part 1 of that Act.

In our early evidence we recommended that this is used to supplement any definition of SLM given by the Agriculture Bill. Doing so would enable greater coherence across Welsh legislation, especially given the fact that, by the time the SFS begins in 2025, there will already be almost a decade of experience in applying SMNR by Welsh Government and bodies such as Natural Resources Wales (NRW). Given that components of land are a type of natural resource defined in EWA Section 2 (soil, physiographical features etc), they should be directly linked to on the face of the Bill in the same manner the DECCA framework of the EWA is already referenced in clause 6 of section 1.

Taken together, providing a clear definition of SLM on the face of the Bill that is both globally appropriate (via the United Nations Definition) and consistent with existing Welsh law (via explicit linkages to the EWA) will ensure that a common and robust understanding of the Bill's objectives are delivered. It will also constrain future governments from misinterpreting them or using them for a different purpose than has been intended by the Senedd through this scrutiny process.

Moving on to the objectives, WEL wishes to state its broad support for the four included in the Bill as drafted. To enable better interpretation in future the Bill would benefit from tighter definitions to better guide further policy development. An obvious example of this is what it means to produce food 'in a sustainable manner/sustainable food production'. We would like to see clarification on the face of the Bill that this means producing food in a manner that is environmentally, socially and economically sustainable, and suggest a way of doing this in the following paragraphs.

Other examples include the need for clarification on the inclusion of landscape, along with countryside and cultural resources as part of objective four and the need for

clearer emphasis that restoration, maintenance and enhancement of biodiversity is an important part of the Bill's objectives.

While there are frequent references to goals of the Well-being of Future Generations (Wales) Act 2015 (WFGA), direct linkages to the EWA are limited and passive. It is critical for legislative coherence that this Bill builds on both the WFGA and EWA with regards to natural resources management and decarbonisation. Clearer links would assist with clearer interpretation of the objectives, which we feel are missing obvious links to some of the policy architecture which has already resulted from both Acts. For example, neither the climate change objective, nor Section 5 (2), references the need to have regard to the Low Carbon Plan in addition to the National Resources Policy and SoNaRR.

A key concern for WEL is that it remains unclear how the objectives and outcomes work together, and how that interaction will guide the development of supported actions in the SFS. As drafted, the Bill places a duty on ministers to take action which best contributes towards achieving all four objectives (emphasis on the plural). However, we note from the Minister's comments to Committee that it will be possible 'to make a significant contribution to one [objective] whilst making, perhaps, little or indeed no contribution to the others'. This position is concerning as it opens the door to a level of flexibility which has the potential to undermine the objectives in future and contradicts the text of the Bill as currently drafted.

To improve this, we recommend the Committee looks to existing legislative language within the WFGA, which already deals with this approach. The WFGA requires ministers to 'maximise' their contribution (in that case to the Well-being Goals) and to take 'all reasonable steps' to do so. This wording supports the development of solutions which maximise their contribution to all the objectives, rather than trading off objectives against one another.

Using the same language as the WFGA would also reflect the Act's guidance, which states that the objectives of sustainable development must be delivered in a balanced way, and one cannot be traded-off against another. The commitment to the co-delivery of multiple objectives and explicit support for the principle of land sharing

(using land to deliver multiple objectives) needs to be an essential foundation of policy.

Sections 4-7 on monitoring and reporting are welcome. The Bill should be amended so that governments are required to undertake wider involvement (see WFGA “Ways of Working”) when developing indicators and targets for the objectives. Currently they are mostly required to consult themselves and the Future Generations Commissioner. They may consult anyone they deem relevant but this places the power in their hands to pick and choose the level of consultation, and with whom this is undertaken. This is democratically weak and should be strengthened by including reference to wider groups. This does not need to be exhaustive but could be edited to include reference to Farming Unions, eNGOs and land worker representatives, for example.

We are pleased to see the inclusion of indicators and targets for the objectives of the Bill, so that progress can be measured. The Bill should be amended so that each indicator is required to have at least one target. The Bill should also allow for the inclusion of composite indicators and targets, where this provides a clearer or more effective way of monitoring impact. The Bill should specify what some of these indicators should be. These should include, but not be limited to, sectoral greenhouse gas emissions, species condition and extent and/or other nature targets (as per Welsh Government’s commitment to statutory nature targets), global responsibility, carbon sequestration. We suggest that SoNaRR should inform the indicators and target setting used for SLM monitoring and reporting.

We also note, in Section 5 (3), that in preparing or revising indicators and targets Welsh Ministers are required to consult the Future Generations Commissioner but not Natural Resources Wales. Given the environmental nature of the objectives we consider that Natural Resources Wales should be a statutory consultee in relation to these indicators and targets, particularly as they will have a role in monitoring progress.

## **Part 2: Support for agriculture etc.**

### **Purposes for providing support**

WEL members support the purposes for providing support in Section 8 (2) and are pleased to note that this section states that support is available for “encouraging the production of food in an environmentally sustainable manner.” We support the ability to update this list as evidence requires but would recommend that regulations laid to amend this list receive full scrutiny by the Senedd to ensure the purposes are not weakened in future. We strongly recommend that the power to provide support should be linked to the principle of Sustainable Land Management, which should provide a guiding principle for the purposes for providing support and any future changes to this list.

The Bill provides the Welsh Ministers with powers to enable the continued operation of existing farming support and to ensure the effective operation of the agricultural sector and agriculture markets following our departure from the EU. While this is necessary, these powers should be time limited to prevent their being used indefinitely and allowing Ministers to run two schemes in parallel beyond the planned transition period of 2025-2029. If the intention is to end stability/transitional payments by the end of 2029, then this should be included transparently on the face of the bill.

### **Compliance checking and enforcement**

Section 11 of the Bill gives Minister powers relating to compliance checking and enforcement, but there is no obligation to use the powers. The necessary regulations to enact these powers should be introduced alongside the launch of the Sustainable Farming Scheme in January 2025). If these are not in place by January 2025, there will be no way to check eligibility for support or take action against ineligible claims.

### **Common land**

Common land is land owned by one person, but which is subject to the rights of others (‘commoners’) to take some product of the land—typically grazing with animals but also wood, peat, bracken or fish. It is a survival from the mediaeval era and is of immense historic, cultural, biological and landscape importance as well as being valuable for informal recreation. Common land occupies around 8.5% of the total land area in Wales but is key to the viability of many upland farms.

The Bill makes no specific provision for the structure under which financial support is given in relation to common land. The Welsh Ministers might wish to take express powers to specify or vary the terms of any scheme for financial support given in relation to common land (or any land subject to shared grazing rights), and to structure support to make allowance for the special circumstances inherent in managing common land. In particular, powers might be contemplated to address the particular balance of rights, interests and responsibilities which are widespread in commoning. Where financial support is to be given in relation to the management of common land, the Bill makes no specific provision for the structure under which it is given. The Bill ought to enable provision to be made for support payments to be shared among several persons, whether the commoners, the landowner or others, and for enforcement action to be taken against one or more of those persons.

### **Succession, new entrants and alternative community ownership models**

The Bill currently lacks clauses or to support succession, new entrants and alternative community ownership models. The list of purposes for support also does not include anything to support these aspects. These are vital measures to secure future sector stability. The Bill should place a duty on government to include these in scheme design.

### **Part 3: Matters relating to agriculture and agricultural products**

Senedd Members should consider the proportionality of the exceptional market conditions clauses. The Senedd should be given the power to check these if necessary.

### **Part 4: Forestry**

WEL broadly supports the new powers proposed. In particular, the power to add conditions to felling licences could be helpful for ancient woodland conservation, especially in relation to limiting the scale of felling, preventing damage to ancient woodland features such as veteran trees and facilitating the removal of invasive non-native tree species. It is not clear whether or how NRW will use the proposed new powers to achieve this, or that recording and reporting mechanisms will reveal the impact on ancient woodland condition.

The public information on felling licence applications that is provided by NRW does not currently include information on whether woods are ancient or have protected status and does not include the outcome of the licence applications or any information on felling licence conditions. It is not possible to assess the impact of felling from information on this register.

We feel the Bill has missed opportunities to include:

- measures to protect ancient and veteran trees and small areas of ancient woodland, which can be felled without any felling licence;
- requirements for the protection of ancient woodland features in line with the minimum requirement of UKFS to be included as part of felling licences; and
- better monitoring and reporting on the impact of felling consents.

## **Part 6: General**

We have some questions about the definition of “ancillary activity” in the bill. We support the inclusion of “Taking action on land used for agriculture that maintains and enhances ecosystem resilience, mitigates and adapts to climate change and creates and manages habitats.” Many of these actions are necessary to maintain the sustainability of agricultural production. We are also pleased to see specific inclusion of agroforestry in Section 48 “Meaning of “agriculture” and related references”. However, we are in the process of consulting legal advice on whether the structure of the definition may actually result in the exclusion of some activities that we would see as key to delivering the bill’s objectives.

For example, the power to support covers ‘agriculture and ancillary activities’ and public access is listed as a purpose for support under s8 (2(h)). However, the definition of ancillary activities (s49) does not include reference to public access. As physical creation of new public access points, or new dedicated open access land, or the management and installation of new/enhanced public paths across agricultural land will be one means by which the fourth SLM objective is delivered, it is vital that the definitions linked to the power to support are robust.

Therefore, we would welcome the Committee seeking clarification from Welsh Government on whether the omission of public access from the ‘Ancillary activities’ definition is intentional and appropriate. We would like to know how, it has reached



the view that the Bill as drafted will facilitate the public access aspirations of the fourth objective.

**The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum);**

Future secondary regulations should require affirmative motions by the Senedd in all circumstances to ensure democratic participation. We also believe that decision-making around further regulations needs to be democratic, with the opportunity for scrutiny and debate.

**Whether there are any unintended consequences arising from the Bill**

The Bill currently lacks reference to new National Minimum Standards. While we appreciate the intent to bring these forwards in a future Bill, we are concerned that waiting for further primary legislation to be introduced before work can start on the regulations, runs the risk that the full set of standards will not be in place in time for the Sustainable Farming Scheme launch. We recommend placing a duty in this Bill to require government to bring forward new National Minimum Standards that will be in place by the launch of the SFS in January 2025.

We note the impact that future trade deals could have on the objectives of this Bill and suggest that it would be appropriate for the Bill to commit ministers to undertake impact assessments of future trade deals on Welsh agriculture, including environmental impact.

**The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum).**

We note the difficulty of effectively valuing the benefits of this Bill using traditional cost benefit methods. However, the opportunity cost of not introducing a framework for sustainable land management during a time of crisis for nature and our climate must be given due consideration.

We also note that the Regulatory Impact Assessment (RIA) suggests additional costs to Welsh Government and NRW (compared with current system) of £38K and £5k respectively. These seem very low given the monitoring and reporting requirements in the Bill, which we regard as essential to achieve the objectives, so we hope that this does not reflect a lack of appropriate investment in these aspects.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector. Our vision is a thriving Welsh environment for future generations.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.



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