



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Proposed Welsh Red Meat Industry LCO Committee

National Assembly for Wales
(Legislative Competence) (Agriculture and Rural Development) Order 2008

Committee Report
December 2008

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Committee Members

Mick Bates (Chair)	Liberal Democrats	Montgomeryshire
Nerys Evans	Plaid Cymru	Mid and West Wales
Ann Jones	Labour	Vale of Clwyd
Val Lloyd	Labour	Swansea East
Brynle Williams	Welsh Conservative Party	North Wales

Summary

The conclusions of the Proposed Welsh Red Meat Industry LCO Committee are as follows:

- We agree, in principle, that legislative competence in the areas identified within the proposed Order should be conferred on the Assembly.
- We are content with the scope of the proposed Order.
- We are content with the wording of Matter 1.1 of the proposed Order.
- We are content that an interpretation section is provided for on the face of the proposed Order and we are content with the interpretation of the terms 'the red meat industry', 'cattle' and 'pigs'.
- We note the evidence received in relation to the promotion and marketing of red meat in Wales and agree with respondents that the role of an independent body, currently occupied by Hybu Cig Cymru, is of continuing importance not only to support the red meat industry in Wales, but also to be accountable to the industry and Welsh Ministers.
- Further to this, we welcome the Minister's confirmation that she does not intend to absorb Hybu Cig Cymru into the Assembly Government.
- We consider the question of levy setting and the consequences of this for cross border issues, to be a matter for future Measures and any regulations made as a consequence of those Measures, but we would hope that, in light of the evidence we have received on this matter, due consideration be given to it at the appropriate point in the future.

1. Introduction

Background

1. On 22 September 2008, Elin Jones AM, the Minister for Rural Affairs, laid the proposed *National Assembly for Wales (Legislative Competence) Agriculture and Rural Development) Order 2008* ('the proposed Order') and Explanatory Memorandum, in accordance with Standing Orders 22.13 - 22.14. Copies of these documents are attached at Annex 1 and Annex 2 respectively.
2. On 22 September 2008, the Business Committee agreed to refer the proposed Order to a committee for detailed consideration, in accordance with Standing Order 22.16.
3. Following a resolution in plenary on 14 October 2008, the Proposed Welsh Red Meat Industry Legislative Competence Order Committee ('the Committee') was established, in accordance with Standing Order 21, to consider and report on the proposed Order no later than 5 December 2008.¹ This reporting deadline was subsequently extended to 12 December following a request from the Committee.

Scope of the Committee's Scrutiny

4. At our first meeting on 21 October 2008, we agreed the scope of our scrutiny, as set out below:
 - i. to decide whether the general principles of the proposed Order, i.e. that legislative competence as specified in Matter 1.1, should be conferred on the Assembly; and
 - ii. to decide whether the proposed Order provides an appropriate framework for the delivery of the policy agenda on the red meat industry in Wales. In particular, whether the terms of the proposed Order were too broadly or too narrowly defined.

Evidence

5. We issued a general call for evidence and invited key organisations within the red meat industry to submit written evidence to inform our work. A copy of our consultation letter is attached at Annex 3. A list of consultation responses is attached at Annex 4.
6. We took oral evidence from a number of witnesses, details of which are attached at Annex 5.

¹ Reporting deadline set by the Business Committee.

7. Under Standing Order 22.21, in preparing our report we must, so far as is reasonably practicable, take into account any recommendations made on the proposed Order by:

- (i) any other committee of the National Assembly for Wales; and
- (ii) any committee of the House of Commons, the House of Lords or any Joint Committee of both Houses of Parliament.

No such recommendations have been made in respect of the proposed Order.

8. The following report represents the conclusions we have reached based on the evidence received during the course of our work.

2. Principle of the Proposed Order

Background

9. The purpose of the proposed Order is to amend Part 1 of Schedule 5 to the *Government of Wales Act 2006* ('the 2006 Act') to confer legislative competence on the Assembly in relation to the red meat industry in Wales, by inserting a new matter into Field 1 (Agriculture, fisheries, forestry and rural development) of that Schedule:

Matter 1.1

The red meat industry, in relation to—

- (a) increasing efficiency or productivity in the industry;
- (b) improving marketing in the industry;
- (c) improving or developing services that the industry provides or could provide to the community;
- (d) improving the ways in which the industry contributes to sustainable development.

Interpretation of this field

In this field "the red meat industry" means all of the activities comprised in—

- (i) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and
- (ii) producing, processing, marketing, manufacturing and distributing products derived to any substantial extent from those animals (apart from milk and milk products, fleece wool and hides).

For the purposes of this definition—

"cattle" means bovine animals, including bison and buffalo;

"pigs" means porcine animals, including wild boar and other feral pigs."

10. The conferral of legislative competence on the Assembly by the proposed Order will enable the Assembly Government, Assembly committees or individual Members to bring forward proposals for legislation, in the form of Assembly Measures, within the scope of Matter 1.1.

Explanatory Memorandum²

11. The Explanatory Memorandum accompanying the proposed Order states:

“The proposed LCO is intended, primarily, as a means of addressing the policy issues that could not be addressed during the progress of the NERC [Natural Environment and Rural Communities] Bill through Parliament.”³

12. It provides some background information in relation to the issue of agricultural levy raising, setting out that, prior to 2008, there were several UK wide bodies responsible for the collection and distribution of levies in the agricultural and horticultural sectors.⁴

13. Following a review of these levy boards in 2005 (the ‘Radcliffe Review’) the UK administrations agreed in principle to replace the existing levy boards with one UK levy board, which would be a non-departmental public body acting as a holding company for six sectoral companies encompassing beef and lamb, pigs, horticulture, cereal, dairies and potatoes. The Radcliffe Review envisaged the purposes of the UK levy board and the six companies as including increasing efficiency, productivity, marketing, development and sustainability in the UK agriculture sector, with these purposes being funded from industrial levies.⁵

14. In relation to demands from the devolved nations, the Radcliffe Review suggested these administrations be given the ability to create levy boards to operate within their respective areas.⁶

15. The Explanatory Memorandum goes on to explain that, during the passage of the Natural Environment and Rural Communities Bill through Parliament, the Welsh Assembly Government consulted on the Radcliffe Review and on how the provisions of the Bill, which would become the Natural Environment and Rural Communities Act of 2006 (the “NERC Act”) would be implemented in Wales. The result of the consultation, subsequently accepted by the Assembly Government, was that the agricultural sector in Wales wanted a separate red meat levy and promotion board but wished to remain part of the UK levy board in all other respects.

16. Further to this, the Assembly Government concluded that the power to raise the levy and promote the red meat sector in Wales should be vested in Welsh Ministers, rather than in a separate statutory levy board.⁷

² GPO-08-EM, Memorandum from the Minister for Rural Affairs; Proposal for a Government Legislative Competence Order relating to the Welsh Red Meat Industry

³ GPO-08-EM, paragraph 37

⁴ GPO-08-EM, paragraph 8

⁵ *Ibid.*

⁶ *Ibid.*

⁷ GPO-08-EM, paragraph 9

17. The timing of the consultation, however, meant that the Assembly Government's requirements could not be included as part of the NERC Act. The result of this was that, rather than conferring levy raising powers directly on Welsh Ministers, the NERC Act conferred powers on the Welsh Ministers to create a statutory levy board responsible for promoting the marketing, development and sustainability of the red meat industry in Wales. This body, the 'Welsh Levy Board', was established under the Welsh Levy Board Order 2008. The Assembly Government considers this arrangement to be unsatisfactory.⁸

18. Consequently, as stated in the Explanatory Memorandum:

"... the Welsh Ministers are seeking conferral of legislative competence in this area (...) with a view to bringing forward a Measure on the development, marketing and promotion of the red meat industry in Wales. The National Assembly, with these powers, would be able to confer promotional/development functions directly upon the Welsh Ministers or delegate functions to other bodies in this area. At present, this would not be possible using powers under the NERC Act."⁹

Evidence from consultees

19. All respondents, in both written and oral evidence, expressed support in principle that legislative competence in relation to the red meat industry in Wales be conferred on the Assembly.

20. Both the Farmers' Union of Wales (FUW) and the National Farmers Union Cymru (NFU Cymru) fully supported the general principals of the proposed Order, with NFU Cymru stating:

"We believe that the Welsh Assembly Government has identified a genuine need to legislate in this area (...)."¹⁰

21. In expressing their support for the principle of the proposed Order, Hybu Cig Cymru stated:

"This LCO will enable Welsh Ministers to oversee the development, promotion and marketing of the Welsh red meat industry in order to better ensure the specific needs of the Welsh industry are addressed appropriately, while maintaining full accountability and control at a Welsh level."¹¹

⁸ GPO-08-EM, paragraph 10

⁹ GPO-08-EM, paragraph 12

¹⁰ Written evidence, WRMI 2

¹¹ Written evidence, WRMI 4

22. They reiterated their support as part of their oral evidence and suggested:

“A Measure that could come out of the Order, ultimately, could allow the Assembly to correct a failing in the Natural Environment and Rural Communities Act 2006, which does not allow the Assembly to do what it wants to do, namely to streamline the accountability of Hybu Cig Cymru directly to Ministers, as opposed to through the Welsh Levy Board.”¹²

23. They went on:

“(…) there is no other route to achieve this other than the legislative route of changing the Natural Environment and Rural Communities Act 2006, which has proved to be prohibitive in terms of giving the flexibility that is needed for the Assembly to achieve what it wants to achieve on behalf of the industry.”¹³

24. The Welsh Lamb and Beef Producers Ltd were also supportive of the general principles of the proposed Order, believing it to be advantageous for the Minister to be responsible for Welsh levy setting as [the red meat sector] is such an important sector, particularly to rural Wales.¹⁴ However, they did qualify this support on the basis that they would expect consultation by the Minister with the industry prior to any changes to the levy.¹⁵

Evidence from the Minister

25. In her legislative statement to plenary, the Minister informed the Assembly that:

“The Order will provide the National Assembly for Wales with wide-ranging legislative powers in relation to the following: increasing efficiency or productivity in the industry; improving marketing in the industry; improving or developing services that the industry provides or could provide to the community; and improving the ways in which the industry contributes to sustainable development.”¹⁶

26. She stated that it was the view of the Assembly Government that it would be more appropriate for the Assembly to have the powers to provide a Measure so that Welsh Ministers could be the levy-raising body and could delegate directly to Hybu Cig Cymru, without there being a need for the Welsh Levy Board.¹⁷

¹² RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraph 21

¹³ RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraph 24

¹⁴ RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraph 34

¹⁵ RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraphs 42-55

¹⁶ RoP (plenary), 23.09.08, page 87

¹⁷ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 4

27. Further to this and in response to the question of what could be achieved through the transfer of competence provided for in the proposed Order that could not be achieved via existing legislation, the Minister said that the proposed LCO recognised the important role that the red meat sector, in particular, plays in Wales. She went on:

“Currently, we have a complex arrangement, in that Welsh Ministers have an interest, but, by means of the powers in the NERC Act, a non-departmental public body had to be created for the purposes of raising the levy. (...) We can rationalise that complexity by means of a Measure following the passing of this legislative competence Order.”¹⁸

Our view

28. We note the broad support that exists for the proposed Order and, in particular, that no organisation has opposed in principle the conferral of legislative competence in the areas identified within the proposed Order.

29. We also note the reasons put forward by the Minister for seeking this legislative competence and we agree with the Minister and witnesses that it would be more appropriate for levy-raising powers to be vested in Welsh Ministers rather than a separate, statutory body created for this purpose. Related to this, we note the point raised by the Welsh Lamb and Beef Producers Ltd about Ministerial consultation with the red meat industry prior to any changes to the levy, but consider this to be a matter for future Measures. Therefore, we agree, in principle, that legislative competence in the areas identified within the proposed Order should be conferred on the Assembly.

¹⁸ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 7

3. Scope of the Proposed Order

Background

30. The Explanatory Memorandum states that the scope of the proposed Order is aligned closely to the relevant provisions of the NERC Act and reproduces the wording of section 88(1) of that Act in relation to the red meat industry.¹⁹

31. We asked consultees for their views on the scope of the proposed Order and, in particular, whether it was too narrowly or too broadly drawn, and for their views on the wording of Matter 1.1.

Scope

Evidence from consultees

32. All respondents stated they were content with the scope of the proposed Order as currently provided for.

33. In particular, both FUW and NFU Cymru noted that the provisions of the proposed Order mirror those available to the relevant sectors in England²⁰ and the National Sheep Association Cymru were of the view that the proposed Order needs to cover as broad a base as possible in order to achieve the greatest flexibility for the industry.²¹

34. Hybu Cig Cymru expressed their support for the scope of the proposed Order in their written evidence, stating:

“We are of the view that the terms of the proposed LCO allow for the practical exercise of powers. It is specific enough to justify the transfer of powers to the Assembly.”²²

35. The Welsh Lamb and Beef Producers Ltd were also content with the scope, noting their support for “the greater flexibility that the Order gives the Assembly to deliver legislative powers in this area.”²³

36. During oral evidence, we questioned both Hybu Cig Cymru and the Welsh Lamb and Beef Producers Ltd as to the need to extend the scope of the proposed Order to provide for red meats other than cattle, pigs and sheep, such as venison or goat.

¹⁹ GPO-08-EM, paragraph 29

²⁰ Written evidence, WRMI 2 and written evidence, WRMI 3

²¹ Written evidence, WRMI 7

²² Written evidence, WRMI 4

²³ Written evidence, WRMI 5

37. There was no support for this from either organisation, as it was felt that the venison sector, in particular, in Wales was not of a sufficient size to warrant collecting a levy to undertake marketing and promotion activities. It was argued that the current red meat levy is collected from sectors structured in a way that warrant strategic joint marketing activities, as the large number of small businesses comprising the red meat sector and the length of the supply chain made it difficult for these businesses to effectively undertake large scale promotional and marketing activities themselves.

38. Further to this, the Welsh Lamb and Beef Producers Ltd expressed concerns that attempting to amend the scope of the proposed Order in such a way could unnecessarily delay the process of acquiring legislative competence in this area:

“There are significant problems with going through the work necessary to add goat meat or venison, which would delay the legislation inordinately. I am also concerned that the cost of developing some provision for venison and goat meat would far outweigh the benefits, and would hinder the position of other red meats, such as lamb, beef and possible pork, which is also on the margins.”²⁴

Evidence from the Minister

39. In setting out the scope of the proposed Order, the Explanatory Memorandum states:

“(…) The LCO would give the National Assembly the flexibility to organise the structure of the promotion, marketing and development of the red meat sector in Wales in several possible ways, including conferring such powers directly upon the Welsh Ministers.”²⁵

40. Further to this and responding to the question as to whether there were any matters outside the scope of the proposed Order that could have been provided for, the Minister said:

“As it stands, the red meat industry Order includes Hybu Cig Cymru’s current responsibilities for cattle, sheep and pigs. The Radcliffe review, which preceded the new levy-making arrangements, and the consultation that we had in Wales were quite clear about wanting to see levy-making responsibilities and functions and the promotion and marketing of red meaty undertaken by a Welsh company along the lines of Hybu Cig Cymru, but other aspects of Welsh agriculture, such as dairy and cereals, retained at a UK level.”²⁶

²⁴ RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraphs 121-122

²⁵ GPO-08-EM, paragraph 30

²⁶ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 15

41. We asked the Minister whether she had considered extending the scope of the proposed Order to provide for other red meats such as venison or goat. She said she felt it more appropriate that the proposed Order remain within the confines of the NERC Act.²⁷ She also thought that any extension to the current red meat sector definition of cattle, sheep and pigs would require further consultation.²⁸

42. Supporting this, her policy official suggested that the Assembly Government's existing powers in relation to economic development could be used to support and develop the venison sector in Wales in the future, should this be considered important.²⁹ Both Hybu Cig Cymru and the Welsh Lamb and Beef Producers Ltd agreed with this point.

Our view

43. We note the support of all respondents for the scope of the proposed Order as currently drafted and we agree with the Minister and witnesses that it provides the necessary powers and flexibilities for Welsh Ministers in relation to the red meat industry in Wales.

44. We also note that no support exists for extending the scope of the proposed Order to provide for red meats other than cattle, pigs or sheep and we acknowledge the Assembly Government's point that existing economic development powers could be utilised in the future to provide support for other red meat sectors, such as venison. On this basis, we are **content with the scope of the proposed Order.**

Matter 1.1

Background

45. Matter 1.1 provides:

"The red meat industry, in relation to—

(a) increasing efficiency or productivity in the industry;

(b) improving marketing in the industry;

(c) improving or developing services that the industry provides or could provide to the community;

(d) improving the ways in which the industry contributes to sustainable development."

46. We asked consultees for their views on the wording of Matter 1.1.

²⁷ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 71

²⁸ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 74

²⁹ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraphs 77 and 81

Evidence from consultees

47. The majority of respondents said they considered the Matter to be appropriately drafted.

48. Hybu Cig Cymru said they were relatively happy with the proposed Order as regards the functions under Matter 1.1, which they considered to be “relatively broad and could include everything that the industry wants to do.”³⁰

49. NFU Cymru also stated they were content with Matter 1.1 as drafted, commenting:

“The proposed LCO strikes a sensible balance between allowing for the practical exercise of powers, whilst being specific enough so as not to result in the unjustified transfer of power.”³¹

50. Only one organisation, the National Beef Association, proposed a change to the wording of Matter 1.1. They put forward the following amendment:

“Bullet point a)
Increasing efficiency or productivity and economic return in the red meat industry.

(...)

Bullet point c)
Improving or developing services and technology that the red meat industry provides or could provide in the community.”

51. During their oral evidence, we asked Hybu Cig Cymru and the Welsh Lamb and Beef Producers Ltd for their views on the suggested amendment. Hybu Cig Cymru considered the wording of Matter 1.1, unamended, to be broad enough to encompass the National Beef Association’s suggested amendments.³² The Welsh Lamb and Beef Producers Ltd were of the opinion that the existing four sub-points of the Matter were very clear and that any change to these could further complicate matters.³³

Evidence from the Minister

52. We questioned the Minister as to the appropriateness of the wording of Matter 1.1 and whether it was necessary for points (a) to (d) within the Matter to include the words ‘increasing’, ‘improving’ and ‘improving or developing’.

³⁰ RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraph 97

³¹ Written evidence, WRMI 2

³² RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraphs 98 and 100

³³ RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraph 102

53. She argued that the Matter is worded in such a way as to replicate, word for word, the definitions contained within the NERC Act and that the words 'increasing', 'improving' and 'developing' serve to emphasise the Assembly Government's aspiration to increase, improve and develop the industry.³⁴

54. Supporting this, the Minister's legal adviser informed us that the wording was intended to be all-encompassing, showing "a progressive, forward-looking view of the powers under the LCO."³⁵

55. He went on:

"(...) if we had not put in the words 'increasing', 'improving' and so on (...), it could be interpreted as though we were expressly excluding [these] words from the LCO and, therefore, it could be seen to be more restricted than the powers under the [NERC] Act."³⁶

56. Further to this, we wrote to the Minister to take her view on the amendments to Matter 1.1 proposed by the National Beef Association. She informed us that, in her opinion, no amendments were necessary because:

"It is our intention that the LCO be as clear as possible and the proposed wording is not sufficiently specific in legislative terms so as not to create unnecessary ambiguity or confusion about the scope of the LCO. The LCO as proposed is sufficiently broad in its scope to permit a wide range of actions to be undertaken without a need to define these within the LCO itself."³⁷

57. She went on to say that there would be an opportunity to discuss the benefits that could be delivered as a result of a future Measure once the proposed Order has been passed and gave a commitment that she would ensure the evidence provided by the National Beef Association would be considered as part of that process.³⁸

Our view

58. We note that the majority of respondents agreed with the wording of Matter 1.1 as provided for in the proposed Order. We also acknowledge the Minister's explanation for drafting Matter 1.1 so as to mirror the provisions of the NERC Act.

59. We note the suggested amendment from the National Beef Association but agree with the points made by the witnesses and the Minister that the amendment would not provide any further clarity in

³⁴ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 106

³⁵ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 107

³⁶ *Ibid.*

³⁷ Letter from Minister for Rural Affairs, 24 November 2008

³⁸ *Ibid.*

relation to Matter 1.1 and that the Matter is sufficiently broad, as drafted, to enable the policy objectives in this area to be achieved. However, we welcome the Minister's commitment to consider the points raised by the National Beef Association as part of future discussions. On this basis, we are content with the wording of Matter 1.1 of the proposed Order.

4. Interpretation Provisions in the Proposed Order

Interpretation provisions - general

Background

60. The proposed Order includes interpretation provisions for the terms 'the red meat industry', 'cattle', and 'pigs', which appear in Matter 1.1.

61. Our consideration of this matter was in two parts. Firstly, we considered the general issue of whether interpretation provisions should be provided for on the face of the proposed Order and secondly, if so, whether the interpretation provisions included in the proposed Order are appropriate. Our views on both matters are detailed at the end of this section.

Evidence from consultees

62. All respondents supported the inclusion of interpretation provisions on the face of the proposed Order.

63. In particular, NFU Cymru believed it reasonable to include the interpretation provisions:

"(...) particularly as less conventional varieties and breeds [of pigs and cattle] are being increasingly kept on Wales farms in order to supply niche markets, and we would not want them to fall outside of the scope of this order."³⁹

Evidence from the Minister

64. We questioned the Minister as to why she had felt it necessary to provide for an interpretation section on the face of the proposed Order, rather than leaving this as a matter to be addressed by future Measures. In response, her legal adviser stated:

"There is an interpretation section in this LCO because we wanted the wording in the LCO to be very clear about what it related to and for it to be as all-encompassing and expansive as possible."⁴⁰

65. He also suggested this was "not an uncommon practice and it is the way (...) to make it exactly clear what [the LCO] relates to..."⁴¹

³⁹ Written evidence, WRMI 2

⁴⁰ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 119

⁴¹ *Ibid.*

Interpretation provisions - "the red meat industry"

Background

66. In relation to Matter 1.1, the term 'red meat industry' means all of the activities comprised in—

"(i) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and

(ii) producing, processing, marketing, manufacturing and distributing products derived to any substantial extent from those animals (apart from milk and milk products, fleece wool and hides)."

Evidence from consultees

67. All respondents were content with the interpretation of 'the red meat industry' as provided for in the proposed Order.

68. Both Hybu Cig Cymru and the Welsh Lamb and Beef Producers Ltd reiterated this support as part of their oral evidence, stating that the interpretation section within the proposed Order "is comprehensive in the activities that it lists"⁴² and "as expansive as possible" [with] enough scope for any future Measures to fit into the legislative powers contained in it. [It] will more than suffice in helping the industry to achieve its goals.⁴³

69. Further to this, the Explanatory Memorandum states that the proposed Order makes it clear that fleece wool and hides are excluded from the scope of the LCO, as the British Wool Marketing Board administers a separate marketing scheme for fleece wool.⁴⁴

70. We received evidence from a number of witnesses suggesting that this exclusion of 'milk and milk products, fleece wool and hides' from the interpretation provisions was acceptable⁴⁵ and "an important point of clarification which should remain in the LCO."⁴⁶

Evidence from the Minister

71. Responding to the question as to whether any activities to do with the red meat industry had been excluded from the interpretation section, the Minister's legal adviser stated:

"The interpretation field of the LCO was as extensive as we could make it. We discussed this with the office of the Welsh legislative

⁴² RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraph 130

⁴³ RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraph 131

⁴⁴ GPO-08-EM, paragraph 36

⁴⁵ Written evidence, WRMI 2 and written evidence, WRMI 7

⁴⁶ Written evidence, WRMI 2

counsel, which drafted the Order, and our wish was to make the wording as expansive as possible.”⁴⁷

72. Further to this, her legal adviser went on to say:

“We are not aware of any other type of activity that we have left out, and nothing was left out deliberately.”⁴⁸

Interpretation provisions - definitions of “cattle” and “pigs”

Background

73. In relation to Matter 1.1, and for the purposes of the term ‘red meat industry’—

“cattle” means bovine animals, including bison and buffalo;

“pigs” means porcine animals, including wild boar and other feral pigs.”

74. The Explanatory Memorandum notes that:

“In the LCO, “cattle” and “pigs” are precisely defined in order to provide clarity... These definitions seek to capture the Welsh Assembly Government’s red meat policy, to enable the National Assembly to have the necessary scope to deal fully with the substance in a future Measure.”⁴⁹

Evidence from consultees

75. In their written evidence, NFU Cymru stated that they considered it “reasonable that both cattle and pigs are defined in the proposed Order”.⁵⁰

76. Related to this, we received evidence from a number of witnesses who believed that there should not be any additions or deletions to the interpretation provisions currently set out in the proposed Order.⁵¹

Evidence from the Minister

77. When asked why it was felt necessary to include interpretation provisions and definitions of cattle and pigs in the Order rather than leaving them as a matter for future Measures, the Minister’s legal adviser said:

⁴⁷ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 84

⁴⁸ *Ibid.*

⁴⁹ GPO-08-EM, paragraphs 31 and 32

⁵⁰ Written evidence, WRMI 2

⁵¹ Written evidence, WRMI 3 and written evidence, WRMI 4

“It is important for us to make it clear to the National Assembly what the LCO includes. For example, if we had left ‘the red meat industry’ or ‘cattle’, ‘sheep’ or ‘pigs’ undefined, it may have been unclear to the National Assembly whether processing, marketing, or bison and buffalo and so on were within the Assembly’s competence. So, we wanted to make that clear upfront, in a way that was consistent with other matters that have been inserted into Schedule 5, to give as much information as possible.”⁵²

78. Responding to the question as to why the proposed Order defines cattle and pigs but not sheep, the Minister confirmed that they were not aware of any animal that could be defined within the sheep category, other than sheep and, as such, it was not necessary to provide any further definition.⁵³

79. Related to this, Assembly Government legal advice to the Proposed Environmental Protection and Waste Management LCO Committee stated that, as a rule of statutory construction, the use of the word ‘including’ in a definition limits that definition to the words that follow it. We questioned the Minister as to whether this rule applied to the interpretation section of the proposed Order, i.e. that the definition of ‘cattle’ and ‘pigs’ is exclusive and that nothing more can be added to the list appearing after the word ‘including’. In response, she stated:

“My understanding is that [‘bison and buffalo’; ‘wild boar and other wild pigs’] are not examples. The reason why they are included here is because there might otherwise be some ambiguity as to whether they are included or not.”⁵⁴

Our view

80. On the general question as to whether the proposed Order should include interpretation provisions, we acknowledge the Minister’s intention of including these provisions on the face of the proposed Order as a means of being open and transparent about its aims and objectives.

81. We also note the argument advanced by her legal adviser that the inclusion of an interpretation section clearly outlines the scope of the proposed Order and is consistent with the way in which matters have been inserted into Schedule 5 of the 2006 Act by other Legislative Competence Orders.

82. In relation to the wording of the interpretation provisions and the inclusion of definitions of ‘cattle’ and ‘pigs’, we acknowledge the evidence received from the Minister and other witnesses and consider the interpretation provisions to be appropriate.

⁵² RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 119

⁵³ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 129

⁵⁴ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 123

83. Therefore, we are content that an interpretation section is provided for on the face of the proposed Order and we are content with the interpretation of the terms 'the red meat industry', 'cattle' and 'pigs'.

5. Other Issues

The Promotion and Marketing of Red Meat in Wales

Background

84. We received evidence from a number of organisations referring to the important role that Hybu Cig Cymru plays in relation to the promotion and marketing of red meat in Wales.

Evidence from consultees

85. Most respondents were of the view that, given that a significant proportion of the funding for Hybu Cig Cymru's work is collected from red meat producers via levies, the current structure of Hybu Cig Cymru and its status as a company limited by guarantee provided sufficient accountability to both industry and Ministers.

86. In their written evidence, the FUW said:

"(...) we would take this opportunity to highlight our concern that the current independence and board structure of Hybu cig Cymru should be maintained. Under no circumstances would our membership support HCC being absorbed into the Welsh Assembly Government."⁵⁵

87. This point was supported by NFU Cymru, the National Beef Association, National Sheep Association and Hybu Cig Cymru themselves, who drew attention to the importance of retaining a separate red meat body in Wales to support the industry in development, marketing and promotion. They argued that,

"Apart from Welsh Ministers, Hybu Cig Cymru is also accountable to the industry, both producers and processors, who pay the levy which enables HCC to carry out its duties."⁵⁶

Evidence from the Minister

88. As part of her legislative statement to the Assembly on the proposed Order, the Minister said that the Order would clarify the relationship between Hybu Cig Cymru, farmers, producers and Government.⁵⁷

89. She expanded on this point during her oral evidence, explaining that the proposed Order would make the relationship between Hybu Cig Cymru and the Welsh Assembly Government a direct one, rather than the Government being required to establish the Welsh Levy Board as a quango to

⁵⁵ Written evidence, WRMI 3

⁵⁶ Written evidence, WRMI 4

⁵⁷ RoP (plenary), 23.09.08, page 89

fulfil the requirements of the NERC Act. She stated that she “[did] not foresee the day-to-day work of Hybu Cig Cymru needing to change as a result of a Measure that would allow Welsh Ministers to raise the levy.”⁵⁸

90. Further to this, we questioned the Minister about the evidence we had received from witnesses concerned that the functions of Hybu Cig Cymru could be absorbed into the Assembly Government.

91. She responded that the work undertaken by Hybu Cig Cymru, which has a membership of farmers and direct levy payers, “was an appropriate way of ensuring that the industry feels that it owns the plans for the future support for the industry”.⁵⁹ She confirmed:

“I have no intention of absorbing Hybu Cig Cymru into the Assembly Government. Its role as a company limited by guarantee, as has been explained, is appropriate, and it commands, I hope, the respect of levy payers and gives them ownership over the future of the red meat sector.”⁶⁰

Our view

92. We note the evidence received in relation to the promotion and marketing of red meat in Wales and agree with respondents that the role of an independent body, currently occupied by Hybu Cig Cymru, is of continuing importance not only to support the red meat industry in Wales, but also to be accountable to the industry and Welsh Ministers.

93. Further to this, we welcome the Minister’s confirmation that she does not intend to absorb Hybu Cig Cymru into the Assembly Government.

Cross-border issues

Background

94. We questioned the Minister and witnesses about the potential for issues of a cross-border nature to arise as a consequence of the proposed Order.

Evidence from consultees

95. The Welsh Lamb and Beef Producers Ltd were of the view that the fragility of the red meat industry within Wales and the significant cross border trade that occurs is such that it would be preferable for the levy in Wales to be based on production rather than slaughter, as the current system of collecting the levy at the point of slaughter does not allow for the significant cross border trading that takes place:

⁵⁸ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 43

⁵⁹ *Ibid.*

⁶⁰ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 45

"If we had a problem with the slaughtering industry in Wales, and we had a major casualty for what ever reason, be it financial, economic or demographic, Wales' ability to have a reasonable pot of levy under the existing collecting system would be severely compromised." ⁶¹

96. They went on:

"(...) the current levy collection method leaves HCC in a very vulnerable position. If we were to see the collapse of an organisation such as Vion ⁶², we could be looking at a collapse of 70 per cent of our income. ⁶³

97. They suggested that a change to the way the levy was collected would not only bring additional money into Wales, but also additional financial security that they do not feel exists at the moment. ⁶⁴

98. Hybu Cig Cymru were also of the view that, because of industry fragility in Wales, it would be more beneficial for the levy to be collected on the basis that the animals had been born and reared in Wales, rather than on the basis of the site of their slaughter. They estimated that Wales would gain up to £1 million if that mechanism were to be adopted. ⁶⁵

99. However, they informed us they did not have any specific concerns about cross border issues. As part of their evidence on this point, they referred to the Agriculture and Horticulture Development Board, the levy collecting body for red meat in England and for other UK-wide products, stating that it operates within the remit of the NERC Act and that the Assembly Government would do so in its relationship with Hybu Cig Cymru. As such, they felt "there is much common ground and no leeway for anything other than minor differences." ⁶⁶

100. No other consultees expressed concerns about cross-border issues.

Evidence from the Minister

101. In her evidence, the Minister acknowledged that there is a 'great deal of cross-border trade', but considered it to be well established that the levy is paid where the animal is slaughtered. ⁶⁷

102. Further to this, the Minister's policy official said:

⁶¹ RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraph 68

⁶² Vion Food Group, a Dutch farming cooperative which owns a large percentage of animals slaughtered in Wales

⁶³ RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraph 69

⁶⁴ *Ibid.*

⁶⁵ RoP, Proposed Welsh Red Meat Industry LCO Committee, 18.11.08, paragraph 39

⁶⁶ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.18.08, paragraph 64

⁶⁷ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 91

"(...) we do not believe that the LCO will create cross-border difficulties. If a Measure following from the LCO were passed by the Assembly, it would confer on Welsh Ministers the legal power to determine the rate of the levy, in the way that the Welsh Levy Board currently does."⁶⁸

103. He went on:

"If there was any question of setting a different rate of levy in Wales from that in England, there would be cross-border issues and people would need to ponder long and hard before going down that road. We certainly have no intention at the moment of going down that road. The LCO does not raise any cross-border issues per se."⁶⁹

Our view

104. We note the points raised by the Welsh Lamb and Beef Producers Ltd and Hybu Cig Cymru about the fragility of the red meat industry in Wales and we acknowledge the concerns expressed by the Welsh Lamb and Beef Producers Ltd about possible cross-border issues resulting from this fragility.

105. However, we also note the Minister's argument that the proposed Order does not currently present any cross border issues, but that these could arise in the future as a result of setting different levy rates in Wales to those in other parts of the UK. We are reassured there is no current intention on the part of the Assembly Government to do this.

106. We consider the question of levy setting generally, and the consequences of this for cross border issues, to be a matter for future Measures and any regulations made as a consequence of those Measures, but we would hope that, in light of the evidence we have received on this matter, due consideration be given to it at the appropriate point in the future.

⁶⁸ RoP, Proposed Welsh Red Meat Industry LCO Committee, 11.11.08, paragraph 92

⁶⁹ *Ibid.*



Proposed Order for pre-legislative scrutiny.

DRAFT STATUTORY INSTRUMENTS

2008 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Legislative Competence)
(Agriculture and Rural Development) Order 2008**

Made - - - - []

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the day of

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(1), a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of section 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:-

Citation and commencement

1. This Order may be cited as the National Assembly for Wales (Legislative Competence)(Agriculture and Rural Development) Order 2008 and it comes into force on the day after the day on which it is made.

Amendments to Schedule 5 to the Government of Wales Act 2006

2.— (1) Part 1 of Schedule 5 to the Government of Wales Act 2006 is amended in accordance with this article.

(2) In field 1 (agriculture, fisheries, forestry and rural development), insert—

(1) 2006 c.32.

“Matter 1.1

The red meat industry, in relation to—

- (a) increasing efficiency or productivity in the industry;
- (b) improving marketing in the industry;
- (c) improving or developing services that the industry provides or could provide to the community;
- (d) improving the ways in which the industry contributes to sustainable development.

Interpretation of this field

In this field “the red meat industry” means all of the activities comprised in—

- (i) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and
- (ii) producing, processing, marketing, manufacturing and distributing products derived to any substantial extent from those animals (apart from milk and milk products, fleece wool and hides).

For the purposes of this definition—

“cattle” means bovine animals, including bison and buffalo;

“pigs” means porcine animals, including wild boar and other feral pigs.”

Name

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Government of Wales Act 2006 (“the 2006 Act”). The Order extends the legislative competence of the National Assembly of Wales to make laws known as Measures of the National Assembly for Wales (referred to in the 2006 Act as “Assembly Measures”). The legislative competence conferred by this Order is subject to general limitations on the exercise of that legislative competence, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act.

Article 2(2) inserts matter 1.1 and interpretation provisions into field 1 (agriculture, fisheries, forestry and rural development) of Part 1 of Schedule 5 to the 2006 Act. The new matter extends the legislative competence of the National Assembly for Wales to cover the red meat industry, in relation to—

- increasing efficiency or productivity in the red meat industry;
- improving marketing in the red meat industry;
- improving or developing services that the red meat industry provides or could provide to the community;
- improving the ways in which the red meat industry contributes to sustainable development

A full regulatory impact assessment has not been prepared for this Order as no impact on the private or voluntary sectors is foreseen.

MEMORANDUM FROM THE MINISTER FOR RURAL AFFAIRS

The proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008

Proposal for a Government Legislative Competence Order relating to the Welsh Red Meat Industry

Introduction

1. This Memorandum has been prepared and laid in accordance with Standing Order (SO) 22.14. It sets out the background to the provisions in the attached government proposed Legislative Competence Order (LCO) which would confer additional legislative competence upon the National Assembly for Wales.
2. Section 95 of the Government of Wales Act 2006 ("the 2006 Act") empowers Her Majesty, by Order in Council, to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified matters. These matters may be added to Fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision) in relation to matters, subject to the limitations provided for in Part 3 of the 2006 Act. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order (LCO) in this memorandum.
3. The proposed Legislative Competence Order would confer further legislative competence on the National Assembly for Wales, in the field of agriculture, fisheries, forestry and rural development (field 1 within Schedule 5 to the 2006 Act). Schedule 5 of the 2006 Act is attached at Annex 1.
4. New legislative powers in respect of the specified matter will enable the Assembly Government, Assembly Members and Assembly Committees to bring forward coherent proposals for legislation, in the form of Measures, which are based on Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly.

Background

5. As a result of the devolution settlements of 1998, agriculture is devolved to all of the devolved administrations of the UK.
6. Within Wales, as a result of the devolution of agriculture, the Welsh Ministers exercise extensive powers in the areas of animal health and welfare, the common agricultural policy (both single payments and grants for rural development, including food processing and marketing), forestry, fisheries, plant health and animal by-products.
7. Included in the Welsh Ministers' devolved powers are powers under various Acts of Parliament including the Agriculture Act 1967, which included certain provisions (some of which have been repealed) relating to agricultural levy raising, promotion and development.
8. By way of background to the specific issue of agricultural levy raising, prior to 2008, several UK or Great Britain wide bodies collected and distributed levy in specific agricultural and horticultural sectors. One such body was the Meat and Livestock Commission ("the MLC"), established under the Agriculture Act 1967 which raised and collected levy from the red meat sector in Great Britain. Following a 2005 review of the agricultural and horticultural levy boards in the UK and Great Britain by Rosemary Radcliffe ("the Radcliffe Review"), the UK administrations agreed in principle to establish a single UK levy board, which would be a non departmental public body and would act as a holding company for six sectoral companies covering beef and lamb, pigs, horticulture, cereals, dairy and potatoes respectively. The purposes of the new UK levy board and its sector companies (according to the Radcliffe Review) were to include increasing efficiency, productivity, marketing, development and sustainability in the UK agriculture sector, and such purposes were to be funded from industry levies. The Radcliffe Review suggested a UK board with subsidiary sector companies or, in relation to specific demands from Wales, Scotland or Northern Ireland, the ability for devolved administrations to create levy and promotional boards to operate within their own territories.
9. The Welsh Assembly Government consulted on the Radcliffe Review and on how the provisions of the Natural Environment and Rural Communities Act 2006 ("the NERC Act") should be implemented in Wales during the early passage of the Bill through Parliament. The consultation results concluded that the agricultural industry in Wales wanted to have a separate red meat levy and promotion board, but to be a part of the UK levy board in all other respects. The Assembly Government accepted these conclusions but decided that it would be preferable for the power to raise levy from and promote, market and develop the red meat sector in Wales to be conferred directly upon the National Assembly for Wales (now Welsh Ministers), rather than by the creation of a separate statutory levy and promotion board. However, the timing of the consultation meant that it was not possible for the Welsh

Assembly Government's policy requirement to be reflected in the Bill and subsequent NERC Act.

10. Consequently the NERC Act conferred powers on the Secretary of State to dissolve existing levy bodies or boards and to create new ones with cross-border functions by means of secondary legislation. It also conferred powers on the National Assembly for Wales (now the Welsh Ministers), the Scottish Ministers and the relevant Northern Ireland department in relation to matters which only concerned their respective territories, to create boards to promote marketing, development and sustainability in their respective agricultural industries.
11. The Welsh Assembly Government's general policy is that where functions are governmental, either policy or delivery, then they should remain in-house with the focus on working directly with clients and customers and placing front line service delivery at the heart of the Assembly Government's culture. Retaining functions in-house ensures Government is more democratically accountable and streamlined. As a result, the option conferred upon the Welsh Assembly Government by the NERC Act to create a separate levy and promotional/development body, rather than undertake those functions itself, was unsatisfactory.
12. As a result, the Welsh Ministers are seeking the conferral of legislative competence in this area upon the National Assembly with a view to bringing forward a Measure on the development, marketing and promotion of the red meat industry in Wales. The National Assembly, with these powers, would be able to confer promotional/development functions directly upon the Welsh Ministers or delegate functions to other bodies in this area. At present, this would not be possible using the powers under the NERC Act.
13. The current statutory framework for the development, marketing and sustainability of the agricultural and horticultural sectors in the UK is set out in the NERC Act and the Agriculture and Horticulture Development Board Order 2008. In Wales, a separate levy raising and promotional/development board for the red meat industry was established by the Welsh Levy Board Order 2008.
14. The following paragraphs set out in more detail the basic principles of these pieces of legislation and how they interact.

The Natural Environment and Rural Communities Act 2006

15. The relevant provisions of the NERC Act are set out in Chapter 2 of Part 8 (section 87 onwards) and include powers for the appropriate authority, by order:
 - a. to establish a body for a purpose or purposes falling within section 88, and
 - b. assign to it a function or functions falling within section 89.

16. In relation to matters concerning Wales only, the appropriate authority was the National Assembly for Wales² (a function which has transferred to the Welsh Ministers, by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006). For matters relating to England and Wales, or to the existing levy bodies, the appropriate authority is the Secretary of State acting with the approval of the National Assembly (now the Welsh Ministers).
17. Section 88 provides that the permissible purposes of a body (a board) established under section 87 are:
- a. Increasing efficiency or productivity in an agricultural or related industry;
 - b. Improving marketing in an agricultural or related industry;
 - c. Improving or developing services that an agricultural or related industry provides or could provide to the community; and
 - d. Improving the ways in which an agricultural or related industry contributes to sustainable development.
18. Sections 89 to 97 (and Schedules 8 to 10) make further detailed provision relating to agricultural boards, the permissible functions of a board, powers to dissolve existing levy bodies, powers of the appropriate authority (i.e. powers to make grants and to issue binding directions to a board) and order making procedures.
19. Two relevant pieces of legislation have been made under the NERC Act:
- The Agriculture and Horticulture Development Board Order 2008 (SI 2008/576); and
 - The Welsh Levy Board Order 2008 (SI 2008/420 (W.39)).

The Agriculture and Horticulture Development Board Order 2008

20. The Agriculture and Horticulture Development Board Order 2008 (“the AHDB Order”) applies to³:
- a. the beef and sheep industry in England;
 - b. the cereal and oilseed industries in the United Kingdom;
 - c. the horticulture industry in Great Britain;
 - d. the milk industry in Great Britain;
 - e. the pig industry in England; and
 - f. the potato industry in Great Britain
21. Within this scope, the AHDB Order establishes a body called the Agriculture and Horticulture Development Board, whose purposes (in line with Section 88 of the NERC Act) are⁴:
- a. Increasing efficiency or productivity in the industry;
 - b. Improving marketing in the industry;
 - c. Improving or developing services that the industry provides or could provide to the community; and

² Section 96(1)(b)

³ Article 2 of the Order (scope)

⁴ Article 3 (Establishment of the Agriculture and Horticulture Development Board)

- d. Improving the ways in which the industry contributes to sustainable development.
22. The functions of the Board are in line with the functions provided for in section 89 of and Schedule 9 to the NERC Act. They are listed in 20 paragraphs in Schedule 1 to the Order and include (by way of examples): promoting or undertaking scientific research; providing or promoting the provision of training for those engaged in or proposed to be engaged in the industry; and promoting or undertaking research for improving arrangements for marketing and distributing products.
23. In order to provide services for each industry covered by the Order, the AHDB must impose a levy⁵.
24. In relation to the geographical areas mentioned in Article 2 of the Order, the Board replaces the British Potato Council, the Home-Grown Cereals Authority, the Horticultural Development Council, the Meat and Livestock Commission and the Milk Development Council, all of which are dissolved⁶.

The Welsh Levy Board Order 2008

25. Under the NERC Act, provision was made in separate Welsh legislation to give effect to the conclusion of the Assembly Government's consultation that there should be a Wales specific red meat levy raising and promotional body. As a result of the Welsh Ministers being unable to confer levy raising and promotional/development powers upon themselves under the NERC Act, the Welsh Ministers made the Welsh Levy Board Order 2008 ("the WLB Order") as a temporary measure on 19 February 2008. The Welsh Levy Board came into existence on 20 February 2008, and started to exercise its levy raising and promotional/development functions on 1 April 2008. This Order had the effect of keeping the promotion and marketing of Welsh red meat within Wales.
26. The WLB Order is very similar in form and content to the AHDB Order, though with a much more limited scope, namely the beef, sheep and pig industries in Wales (i.e. it completes the gaps left by the AHDB Order – see paragraph 20 above). The WLB Order defines the beef, sheep and pig industries in a similar way as the AHDB Order, but with the addition of "processing", namely:
- "beef and sheep industry" means all the activities comprised in the production, processing, marketing and distribution of—
- a. cattle and sheep, including the carrying on of slaughterhouses and cattle and sheep auctions and markets;
 - b. meat and meat products (other than milk and milk products) from cattle and sheep;

⁵ Article 6 (Levies)

⁶ Article 17 (Dissolution of existing bodies)

“pig industry” means all the activities comprised in the production, processing, marketing and distribution of pigs or pig products, including the carrying on of slaughterhouses and pig auctions and markets. In relation to these industries the purposes of the Welsh Levy Board are those set out in the AHDB Order, and listed at paragraphs 17 and 21 above.

27. To this end, the WLB may impose levies (Article 6), may act through subsidiaries (Article 5) and has the same functions as the AHDB has in relation to the beef, sheep and pig industries in England (see Schedule 1).
28. In practice, the Welsh Levy Board has delegated many of its functions by way of a delegation agreement to Hybu Cig Cymru (a company limited by guarantee and wholly owned by the Welsh Ministers) (“HCC”).

Scope

29. The scope of the LCO is aligned very closely to the relevant provisions of the NERC Act, and it reproduces the wording of section 88(1) of that Act (which sets out the permissible purposes of the Boards) in relation to the red meat industry. These purposes are listed at paragraph 17.
30. The LCO would confer a Measure making power on the National Assembly for Wales relating to those purposes insofar as they relate to the red meat industry in Wales; purposes for which secondary legislation can currently be made under the NERC Act. In doing so, the LCO would give the National Assembly the flexibility to organise the structure of the promotion, marketing and development of the red meat sector in Wales in several possible ways, including conferring such powers directly upon the Welsh Ministers.
31. In the LCO, “cattle” and “pigs” are precisely defined in order to provide clarity. As the term “cattle” has a variety of definitions in existing legislation, leaving this term undefined could cause ambiguity regarding the animals that the term is intended to cover. Additionally, because the term “cattle” has been defined, without further definition, an inference could be drawn that the term “pigs” is meant to be limited to common, domestic pigs whilst, in reality, the term is meant to include wild boar and other feral pigs.
32. For the purposes of the definition, “cattle” means bovine animals, including bison and buffalo, and “pigs” means porcine animals, including wild boar and other feral pigs. These definitions seek to capture the Welsh Assembly Government’s red meat policy, to enable the National Assembly to have the necessary scope to deal fully with the substance in a future Measure.
33. The red meat industry is defined in the proposed LCO as all of the activities comprised in:

- (i) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and
- (ii) producing, processing, marketing, manufacturing and distributing products derived to any substantial extent from those animals (apart from milk and milk products, fleece wool and hides).

34. The wording, “products derived to any substantial extent from those animals” has been chosen to reflect the wording of the NERC Act closely. The term “breeding” also reflects the NERC Act (which refers to “breeding and keeping”).
35. In the same way, the term “manufacturing” used in the LCO has been chosen as it more closely reflects the wording of the NERC Act.
36. In order to avoid doubt, the LCO is clear on its face that fleece wool and hides are specifically excluded. The British Wool Marketing Board administers a separate marketing scheme for fleece wool.
37. The LCO is consistent with the wider legislative framework set out in the NERC Act. It would confer sufficient powers on the National Assembly for Wales to allow the Welsh Ministers to carry out the activities currently carried out by the Welsh Levy Board (namely raising a levy in the red meat sector), apart from any activities involving fleece wool and hides. The primary intention is to confer those powers on the Welsh Ministers and to dissolve the Welsh Levy Board through secondary legislation. As such, the proposed LCO is intended, primarily, as a means of addressing the policy issues that could not be addressed during the progress of the NERC Bill through Parliament.

Geographical limits of any Assembly Measure

38. Section 94 of the 2006 Act imposes a prohibition upon Assembly Measures having effect other than in relation to Wales. It provides that a provision of an Assembly Measure is not law in so far as it is outside the Assembly’s legislative competence. A provision is outside competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives power to do so). There are limited exceptions for certain kinds of ancillary provision, for example provision appropriate to make the provisions of the Measure effective, provision enabling the provisions of the Measure to be enforced and provision to make consequential amendments to other legislation.
39. The limitation relating to functions other than in relation to Wales prevents the Assembly from passing any Measure conferring on the Welsh Ministers, Welsh local authorities or any other public authority, functions which do not relate to Wales.

Minister of the Crown functions

40. This proposed Order in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Part 2 and Part 3 of Schedule 5 to the 2006 Act, the Assembly may not by Measure alter the functions of a Minister of the Crown without the consent of the Secretary of State. In relation to any future proposals that may impact on Minister of the Crown functions, the appropriate UK Government Departments will be consulted and agreement sought to any future proposals to change or modify those functions.
41. The Secretary of State will remain the appropriate authority for the purposes of the NERC Act in relation to cross-border levy raising bodies, although the Secretary of State can only act on cross-border issues under the NERC Act with the approval of each devolved appropriate authority (as appropriate).

Conclusion

42. For the reasons outlined above, the Welsh Assembly Government proposes that the legislative competence of the National Assembly for Wales should be extended in accordance with the proposed LCO to which this Explanatory Memorandum relates.

Elin Jones
Minister for Rural Affairs

July 2008

ANNEX 1

GOVERNMENT OF WALES ACT 2006

SCHEDULE 5 ASSEMBLY MEASURES

Section 94

Part 1 Matters

Field 1: agriculture, fisheries, forestry and rural development

Field 2: ancient monuments and historic buildings

Field 3: culture

Field 4: economic development

Field 5: education and training

[*Matter 5.1*

Provision about the categories of school that may be maintained by local education authorities.

Matter 5.2

Provision about the establishment and discontinuance of schools maintained by local education authorities, their change from one category to another and their alteration in other respects.

Matter 5.3

Provision about the admission of pupils to schools maintained by local education authorities.

Matter 5.4

Provision about the curriculum in schools maintained by local education authorities.

Matter 5.5

Provision about school attendance, the behaviour of pupils at school, school discipline and the exclusion of pupils from school (including the duties of parents in connection with those matters).

Matter 5.6

Provision about the making of arrangements for the provision of education for persons of compulsory school age who have been excluded from schools or who for any other reason would not otherwise receive suitable education.

Matter 5.7

Provision about entitlement to primary, secondary and further education and to training.

Matter 5.8

Provision about the provision of services that are intended to encourage, enable or assist people—

- (a) to participate effectively in education or training,
- (b) to take advantage of opportunities for employment, or
- (c) to participate effectively in the life of their communities.

Matter 5.9

Provision about food and drink provided on school premises or provided for children at a place where they receive education or childcare.

Matter 5.10

[Arrangements for persons to travel to and from the places where they receive education or training.

This matter applies to—

- (a) persons receiving nursery, primary, secondary or further education or training;
- (b) persons described in matter 5.17 receiving higher education.

This matter does not include any of the following—]

- (a) the regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used;
- (b) road traffic offences;
- (c) driver licensing;
- (d) driving instruction;
- (e) insurance of motor vehicles;
- (f) drivers' hours;
- (g) traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits;
- (h) public service vehicle operator licensing;
- (i) the provision and regulation of railway services, apart from financial assistance which—
 - (i) does not relate to the carriage of goods,
 - (ii) is not made in connection with a railway administration order, and
 - (iii) is not made in connection with [Council Regulation \(EEC\) 1191/69](#) as amended by [Council Regulation \(EEC\) No 1893/91](#) on public service obligations in transport;
- (j) transport security;

- (k) shipping, apart from financial assistance for shipping services to, from or within Wales;
- (l) navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation;
- (m) technical and safety standards of vessels;
- (n) harbours, docks, piers and boatslips, apart from those used or required wholly or mainly for communications between places in Wales;
- (o) registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.

[Matter 5.11

Provision for and in connection with securing the provision of facilities for post-16 education or training.

Matter 5.12

Provision for and in connection with the establishment and dissolution of—

- (a) institutions concerned with the provision of further education, and
- (b) bodies that conduct such institutions,

including the circumstances in which an educational institution becomes or ceases to be an institution concerned with the provision of further education.

Provision about—

- (a) the conduct and functions of such institutions and bodies that conduct such institutions;
- (b) the property, rights and liabilities of such institutions and bodies that conduct such institutions;
- (c) property held by any person for the purposes of such an institution;
- (d) the governance and staff of such institutions.

Matter 5.13

Provision for and in connection with securing collaboration—

- (a) between bodies that conduct institutions concerned with the provision of further education, or
- (b) between one or more such bodies and other persons or bodies that have functions relating to education or training in Wales,

including, in particular, provision for and in connection with the establishment of bodies for the purpose of discharging functions on behalf of one or more persons or bodies that are party to arrangements for collaboration.

Matter 5.14

The provision of financial resources for and in connection with—

- (a) education or training provided by institutions concerned with the provision of further education;
- (b) post-16 education or training provided otherwise than by such institutions;
- (c) the carrying out of research relating to education or training falling within paragraph (a) or (b).

Matter 5.15

The inspection of—

- (a) education or training provided by institutions concerned with the provision of further education;
- (b) post-16 education or training provided otherwise than by such institutions;
- (c) the training of teachers and specialist teaching assistants for schools;
- (d) services of the kinds mentioned in matter 5.8.

Matter 5.16

The provision of advice and information in connection with, and the carrying out of studies in relation to, any of the kinds of education, training or services mentioned in matter 5.15.]

[*Matter 5.17*

Education and training for—

- (a) persons who have a greater difficulty in learning than the majority of persons of the same age as those persons;
- (b) persons who have, or have had—
 - (i) a physical or mental impairment, or
 - (ii) a progressive health condition (such as cancer, multiple sclerosis or HIV infection) where it is at a stage involving no physical or mental impairment.

This matter does not include arrangements for persons to travel to and from the places where they receive education or training.]

Interpretation of this field

[In this field—

["nursery education" means education suitable for children who have not attained compulsory school age;]

"post-16 education" means—

- (a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age, and
- (b) organised leisure-time occupation connected with such education;

“post-16 training” means—

(a) training suitable to the requirements of persons who are above compulsory school age, and

(b) organised leisure-time occupation connected with such training.

References in this field to an institution concerned with the provision of further education are references to an educational institution, other than a school or an institution within the higher education sector (within the meaning of the [Further and Higher Education Act 1992](#)), that is conducted (whether or not exclusively) for the purpose of providing further education.]

Expressions used in this field and in the [Education Act 1996](#) have the same meaning in this field as in that Act.]

Field 6: environment

Field 7: fire and rescue services and promotion of fire safety

Field 8: food

Field 9: health and health services

[*Matter 9.1*

Provision for and in connection with the provision of redress without recourse to civil proceedings in circumstances in which, under the law of England and Wales, qualifying liability in tort arises in connection with the provision of services (in Wales or elsewhere) as part of the health service in Wales.

Interpretation of this field

In this field—

“the health service in Wales” means the health service continued under [section 1\(1\)](#) of the National Health Service (Wales) Act 2006;

“illness” has the same meaning as in that Act;

“patient” has the same meaning as in that Act;

“personal injury” includes any disease and any impairment of a person's physical or mental health;

“qualifying liability in tort” means liability in tort owed in respect of or consequent upon personal injury or loss arising out of or in connection with breach of a duty of care owed to any person in connection with the diagnosis of illness or the care or treatment of any patient.]

Field 10: highways and transport

Field 11: housing

Field 12: local government

[*Matter 12.1*

Provision for and in connection with—

- (a) the constitution of new principal areas and the abolition or alteration of existing principal areas, and
- (b) the establishment of councils for new principal areas and the abolition of existing principal councils.

“Principal area” means a county borough or a county in Wales, and “principal council” means a council for a principal area.

Matter 12.2

Provision for and in connection with—

- (a) the procedure for the making and coming into force of byelaws, and
- (b) the enforcement of byelaws.

“Byelaws” means those of a class which may be confirmed by the Welsh Ministers (but the provision which may be made includes provision to remove a requirement of confirmation).

Matter 12.3

Any of the following—

- (a) the principles which are to govern the conduct of members of relevant authorities,
- (b) codes of conduct for such members,
- (c) the conferral on any person of functions relating to the promotion or maintenance of high standards of conduct of such members (including the establishment of bodies to have such functions),
- (d) the making or handling of allegations that members (or former members) of relevant authorities have breached standards of conduct, including in particular—
 - (i) the investigation and adjudication of such allegations and reports on the outcome of investigations,
 - (ii) the action that may be taken where breaches are found to have occurred,
- (e) codes of conduct for employees of relevant authorities.

For the purposes of this matter—

“relevant authority” has the same meaning as in [Part 3](#) of the Local Government Act 2000, except that other than in paragraph (d) it does not include a police authority,

“member” includes a co-opted member within the meaning of that Part.

Matter 12.4

Provision for and in connection with strategies of county councils and county borough councils for promoting or improving the economic, social or environmental well-being of their areas or contributing to the achievement of sustainable development in the United Kingdom, including provision imposing

requirements in connection with such strategies on other persons with functions of a public nature.

Matter 12.5

Provision for and in connection with—

- (a) the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised,
- (b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions, and
- (c) the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.

The following are “relevant Welsh authorities”—

- (a) a county council, county borough council or community council in Wales,
- (b) a National Park authority for a National Park in Wales,
- (c) a fire and rescue authority in Wales constituted by a scheme under [section 2](#) of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
- (d) a levying body within the meaning of [section 74\(1\)](#) of the Local Government Finance Act 1988 in respect of which the county council or charging authority referred to in section 74(1)(b) of that Act was a council or authority for an area in Wales,
- (e) a body to which section 75 of that Act applies (special levies) and which as regards the financial year beginning in 1989 had power to levy a rate by reference to property in Wales.]

Field 13: National Assembly for Wales

Matter 13.1

Creation of, and conferral of functions on, an office or body for and in connection with investigating complaints about the conduct of Assembly members and reporting on the outcome of such investigations to the Assembly.

Matter 13.2

Conferral of functions on the Assembly Commission for and in connection with facilitating the exercise by the Assembly of its functions (including the provision to the Assembly of the property, staff and services required for the Assembly's purposes).

Matter 13.3

Provision for and in connection with the payment of salaries, allowances, pensions and gratuities to or in respect of Assembly members, the First Minister, any Welsh Minister appointed under section 48, the Counsel General and any Deputy Welsh Minister.

Matter 13.4

Provision for and in connection with the creation and maintenance of a register of interests of Assembly members and the Counsel General.

Matter 13.5

Provision about the meaning of Welsh words and phrases in—

- (a) Assembly Measures,
- (b) subordinate legislation made under Assembly Measures, and
- (c) subordinate legislation not so made but made by the Welsh Ministers, the First Minister or the Counsel General.

Matter 13.6

Provision for and in connection with the procedures for dealing with proposed private Assembly Measures, including, in particular—

- (a) procedures for hearing the promoters of, and objectors, to proposed private Assembly Measures,
- (b) the persons who may represent such promoters and objectors, and the qualifications that such persons must possess,
- (c) the imposition of fees for and in connection with the promotion of proposed private Assembly Measures, and
- (d) the assessment of costs incurred in connection with proposed private Assembly Measures.

Field 14: public administration

Field 15: social welfare

Matter 15.1

Charges levied by local authorities for social care services provided or secured by them and payments in respect of individuals with needs relating to their well-being so that they, or persons looking after them, may secure social care services to meet those needs.

This matter does not include any of the following—

- (a) child support;
- (b) tax credits;
- (c) child benefit and guardian's allowance;
- (d) social security;
- (e) independent living funds;
- (f) motability.

Interpretation of this field

In this field—

"local authorities" means the councils of counties or county boroughs in Wales;

“social care services” means any of the following provided in connection with the well-being of any person: non-residential care services; advice, counselling or advocacy services; or any other assistance;

“well-being”, in relation to individuals, means well-being so far as relating to any of the following—

- (a) physical and mental health and emotional well-being;
- (b) protection from harm and neglect;
- (c) education, training and recreation;
- (d) the contribution made by them to society;
- (e) social and economic well-being;
- (f) securing their rights.

Field 16: sport and recreation

Field 17: tourism

Field 18: town and country planning

Field 19: water and flood defence

Field 20: Welsh language

Pwyllgor ar y Gorchymyn Arfaethedig
ynghylch Diwydiant Cig Coch Cymru

Proposed Welsh Red Meat Industry LCO
Committee



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales
Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff CF99 1NA

22 October 2008

Dear Colleague

Consultation - Proposed Welsh Red Meat Industry LCO Committee

The Proposed Welsh Red Meat Industry LCO Committee was established on 14 October 2008 to consider and report on the proposed *National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008*, which would enable the Assembly to acquire the powers to introduce legislation in relation to the development, marketing and promotion of the red meat industry in Wales.

The Committee has agreed the scope of its scrutiny as follows:

- the general principles of the proposed Order, i.e. that legislative competence, as specified in 'Matter 1.1', be conferred on the Assembly; and
- whether the proposed Order provides an appropriate framework for the delivery of the policy agenda on the Welsh red meat industry, in particular whether the terms of the proposed Order are too broadly or too narrowly defined.

The purpose of the committee's work is to scrutinise the drafting of the proposed Order and, as such, the committee will avoid engaging in detailed discussions on proposed Measures which could be brought forward as a result of the conferral of legislative competence, reviewing existing policies in this area or replicating work already undertaken by former subject committees.

I am writing to invite you to submit evidence to the Committee to help inform its work. In preparing your submission, it would be helpful if you could address the following questions:

1. What are your views on the general principle that legislative competence in the area identified in Matter 1.1 be conferred on the Assembly?
2. What are your views on the terms of the proposed Order? For example, is Matter 1.1 too narrowly or too broadly drawn?

3. Is it necessary to include interpretations of 'the red meat industry', 'cattle' and 'pigs' in the proposed Order? If so, are the interpretations provided appropriate or should there be any additions or deletions?

Further information on the proposed Order, its Explanatory Memorandum and details of the committee, together with a Guide to the legislative process can be found at

http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2008-no8-ag_rural_dev.htm

If you wish to contribute to the committee's work, submissions should be sent, preferably by email, or otherwise on disc or in hard copy to:

Sarah Sargent, Deputy Committee Clerk, Legislation Office, National Assembly for Wales, Cardiff Bay, CF99 1NA.

Email: legislationoffice@wales.gsi.gov.uk. (Please title the email '*Consultation: Proposed Welsh Red Meat Industry LCO Committee*'.)

Submissions should arrive in the Assembly by Wednesday 19 November 2008. It may not be possible to take into account responses received after this date.

When putting together your submission, please keep the following in mind:

- Your response should be concise and address the issues before the committee. Please reference your response using the title applied above;
- The National Assembly normally makes responses to public consultation available for public scrutiny and they may also be seen and discussed at Committee meetings. **If you do not want your response or name published, it is important that you clearly specify this in your submission;**
- Please indicate whether you are responding on behalf of an organisation, or as an individual;
- Please indicate whether or not you would be prepared to give oral evidence to the Committee.

The Committee welcomes contributions in English and Welsh. If you are interested in being contacted as part of any future consultation in this area, please indicate this in your response.

If you have any queries, please contact the Clerk, Sarah Beasley (029 2089 8032), or Sarah Sargent, the Deputy Clerk (029 2089 8408).



Mick Bates AM
Chair

Proposed Welsh Red Meat Industry LCO Committee

Consultation responses

WRMI 1 - Welsh Association of Chief Police Officer (WACPO)

WRMI 2 - National Farmers Union Cymru

WRMI 3 - Farmer's Union of Wales

WRMI 4 - Hybu Cig Cymru / Meat Promotion Wales

WRMI 5 - Welsh Lamb and Beef Producers Ltd

WRMI 6 - National Beef Association

WRMI 7 - National Sheep Association

Welsh Red Meat Industry LCO Committee**Schedule of Oral Evidence**

Meeting date	Business
11 November	<u>Oral evidence</u> <ul style="list-style-type: none">▪ Minister for Rural Affairs
18 November	<u>Oral evidence</u> <ul style="list-style-type: none">▪ Welsh Lamb and Beef Producers Ltd▪ Hybu Cig Cymru