

# UK Agriculture Bill 2019-21

## Bill Summary

9 July 2020



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# UK Agriculture Bill 2019-21

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July 2020

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This research briefing has drawn on the [\*\*House of Commons Library Briefing paper on the UK Agriculture Bill 2019-20\*\*](#) by Sarah Coe and Jonathan Finlay.

On 6 May the National Assembly for Wales became the Welsh Parliament, to be commonly known as Senedd. As a result, references in this research briefing reflect the change of name, referring to the institution as the 'Assembly' in a historical context (prior to 6 May) and 'Senedd' thereafter.



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# Summary

**The UK Government introduced the Agriculture Bill 2019-21** ('the 2019-21 Bill') to the UK Parliament on 16 January 2020. On the same day the Welsh Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, ('The Minister') **made a statement on the introduction of the 2019-21 Bill.**

Leaving the EU means the UK is leaving the EU's Common Agricultural Policy (CAP). The 2019-21 Bill provides the legislative framework for the domestic continuation of payments to farmers. The extent to which the 2019-21 Bill provides for departure from the CAP system of support differs across the UK.

For England, the 2019-21 Bill provides for the phasing out and termination of CAP Direct Payments to allow transition to new schemes. It aims to set the framework for future financial assistance schemes where farmers will be paid to produce 'public goods' such as environmental or animal welfare improvements.

For Wales, the 2019-21 Bill provides for the continuation of Direct Payments to farmers after 2020 (Schedule 5) with powers to 'simplify and improve' Direct Payments. These are transitional powers (with a sunset clause of 31 December 2024) ahead of the introduction of an Agriculture (Wales) Bill, expected in the Sixth Senedd. The Welsh Bill is then expected to introduce new land management schemes, providing transition from the CAP system of support.

For Northern Ireland, the 2019-21 Bill also provides for the continuation of Direct Payments (Schedule 6). It provides a future Executive with the flexibility to develop future agricultural policy in Northern Ireland.

There is no Schedule which applies specifically to Scotland. The Scottish Government has introduced the **Agriculture (Retained EU Law and Data) (Scotland) Bill** and proposes to **keep farm support largely the same until 2024**. The Scottish Bill makes provision from 2021 and allows for the amendment of any part of CAP legislation.

In addition to agricultural payments, the Bill also includes powers for the Welsh Ministers to intervene in agricultural markets, on the collection and sharing of data, marketing standards and carcass classification, and data protection (Schedule 5).

The 2019-21 Bill also contains provisions that apply in Wales and elsewhere. The provisions on food security, fertilisers, identification and traceability of animals,

organic products, and World Trade Organisation (WTO) compliance apply to the whole of the UK. Provisions on agricultural tenancies apply to England and Wales only; and provisions on the red meat levy apply to the whole of Great Britain.

As agriculture is a devolved policy area, a Legislative Consent Motion has been sought for several of the Bill's clauses (outlined in the **Explanatory Notes to the 2019-21 Bill - Annex A**). The Welsh Government **laid its Legislative Consent Memorandum (LCM) for the 2019-21 Bill on 12 February 2020** which concludes:

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

There are several differences between the Welsh Government's and the UK Government's view as to when the Senedd's legislative consent is required. The Welsh Government believes that the Senedd's consent is required for clauses 27 (fair dealing obligations), 40-42 (WTO), 46 (data protection), and 47-54 (general and final provisions) of the Bill. However the UK Government did not identify these clauses as requiring consent on introduction of the Bill. However the UK Government later considered consent to be required for clauses 40-42..

The Senedd's Climate Change, Environment and Rural Affairs (CCERA) Committee published its **report on the LCM** in relation to the 2019-21 Bill on 14 May 2020. It recommends to the Senedd that it gives consent to the provisions in the UK Agriculture Bill 2019-21, subject to it being satisfied by the Minister's response to each of the 29 recommendations in its report (detailed throughout this briefing).

The Minister **laid her response** to the CCERA Committee's LCM report on the 2019-21 Bill on 30 June 2020.

Following amendments to the Bill made in the House of Commons, the Welsh Government laid a **supplementary LCM** for the Bill on 11 June 2020. The supplementary LCM concludes that, while the Welsh Government "is generally supportive of the Bill as drafted...it is not possible to give an unequivocal recommendation to the Senedd to consent to the Bill until we are closer to the end of the Lords stage". It explains that, if required, further supplementary LCMs will be laid, "with a recommendation from the Welsh Government in respect of the consent of the Senedd at the appropriate time." The **CCERA Committee felt** that additional time should be made available in the autumn term for scrutiny of any

additional supplementary LCMs to enable the Committee to reach a fully informed view on consent.

The Legislation, Justice and Constitutional (LJC) Committee also published reports on the LCM and supplementary LCM which can be found on the [Senedd website](#).

This Bill follows a previous UK Agriculture Bill. On 12 September 2018, the previous UK Government introduced an [Agriculture Bill 2017-19](#) ('the 2017-19 Bill'). The Bill was amended by the Public Bill Committee but fell at dissolution in October 2019.

[Senedd Research published a blog post](#) on the 2017-19 Bill and its implications for Wales.

This briefing provides a background to the issues and describes the provisions of the 2019-21 Bill. It explores how the Bill has changed from the 2017-19 Bill and how the Senedd's work on the previous Bill has been taken forward. It includes stakeholder views on both iterations of the Bill, principally taken from the CCERA Committee's work as the subject Committee responsible for scrutiny of the Bills.

## Current farm support

Farmers in the UK currently receive around £3.5 billion support annually under the CAP. More than 80% of the CAP payments that UK farmers receive are Direct Payments based on how much land they farm. The remainder mainly pay for rural and environmental farm management schemes (including the agri-environment scheme **Glastir** in Wales) under the Rural Development Programme (RDP).

In Wales, Direct Payments account for a high proportion of farm profit relative to the rest of the UK. In 2014-15, Direct Payments accounted for an **average of 81% of net Welsh farm profit for all Welsh farm types.** The annual UK Government publication '**Agriculture in the United Kingdom**' shows that Direct Payments typically amount to a total of €260 – €300 million per year (since 2014) in Wales.

The UK Government has **guaranteed the current annual budget to farmers** across the UK in every year of this UK Parliament. It stated that remaining EU funding under CAP Pillar 2 (for rural development and environmental projects) will continue until the current EU funding is used up or 2023, whichever is earliest.

Although **the Welsh Government has consulted** on plans to move away from the CAP-style system of support, the Minister **has confirmed that Direct Payments to farmers will continue in 2021.** Therefore transition is unlikely to take place before 2022.

## The Agriculture Bill 2017-19

The 2017-19 Bill aimed to provide the legal framework for leaving the CAP. Schedule 3 applied specifically to Wales. These provisions were included at the request of the Welsh Government. Schedule 5 of the 2019-21 Bill brings forward much of Schedule 3 of the 2017-19 Bill.

Schedule 3 set out broad powers for the Welsh Ministers to continue making payments to farmers and land managers after Brexit, to make changes to current schemes, to phase out the CAP schemes (over a seven year transition period) and implement replacement schemes. Schedule 3 also included powers around data collection, market intervention and marketing standards.

The 2017-19 Bill also included provisions that applied across the UK including provisions relating to WTO **Agreement on Agriculture (AoA)** compliance and

redistribution of the red meat levy.

In relation to the 2017-19 Bill, the Welsh Government laid its **LCM** in October 2018, and a **supplementary LCM** in March 2019. The CCERA Committee **reported on the LCM in January 2019** and the **supplementary LCM in June 2019**. Detail of the CCERA Committee's conclusions is provided throughout this briefing. The Minister **responded to both reports** on 25 July 2019. The (then) **Constitutional and Legislative Affairs (CLA) Committee (now (LJC) Committee)** also considered the LCM for the 2017-19 Bill, focusing on constitutional and legislative aspects. It **reported on the LCM** in January 2019 and the **supplementary LCM** in June 2019. The **Minister responded** in July 2019.

Whilst much of the 2017-19 Bill has been replicated in the 2019-21 Bill, there are some significant differences. Principally, **the 2019-21 Bill does not include the provisions for the Welsh Ministers to transition from the CAP system of support and introduce new agricultural schemes**; rather it provides for the **continuation** (and 'simplification and improvement') of Direct Payments. In addition, four new significant provisions have been added to the Bill that apply in Wales on: food security; fertilisers and identification and traceability of animals; agricultural tenancies; and organic products.

Provisions relating to transparency and fairness in the agri-food supply chain appear in both Bills and are included in the Welsh Government's LCM for the 2019-21 Bill. However the Welsh Government did not include these provisions in its LCM or supplementary LCM for the 2017-19 Bill.

## The Agriculture Bill 2019-21

In order to prepare the Senedd for its legislative consent decision this briefing focuses on the provisions that apply in Wales and have been included in the Welsh Government's LCM. It does not describe the entire Bill.

The first section describes the new clauses in the 2019-21 Bill. It includes evidence from stakeholders on these clauses, provided to the CCERA Committee on **26 February** and **5 March 2020**.

The second section considers the clauses that have been carried over from the previous 2017-19 Bill and the CCERA Committee's work scrutinising them to date.

## Section 1 - New clauses in the 2019-21 Bill

### Part 2 – Food and agricultural markets

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#### Food security

Clause 17 places a new duty on the Secretary of State to lay a report on food security before the UK Parliament at least once every five years. The report is to contain “an analysis of statistical data”. The clause sets out five areas that the report “may” include, “among other things”:

- global food availability;
- supply sources for food;
- the resilience of the supply chain for food;
- household expenditure on food; and
- food safety and consumer confidence in food.

The Explanatory Notes state that the report:

... will provide a broad understanding of what food security is, the challenges and risks to UK food security in a global context, and our current assessment of the state of our food security to inform our policy thinking on the resilience and security of food supply.

Food security was not dealt with in the 2017-19 Bill. A summary of discussions on this issue during scrutiny of the 2017-19 Bill at UK level can be found in the [\*\*House of Commons Library briefing on the 2019-21 Bill\*\*](#) (pages 43 to 45). The House of Commons Library has also recently published a [\*\*blog post discussing how food security is measured\*\*](#).

#### Stakeholder evidence on the 2019-21 Bill and CCERA conclusions

During the CCERA Committee’s scrutiny of the 2019-2021 Bill, witnesses welcomed the requirement for the Secretary of State to lay a report on food security before the UK Parliament.

However several stakeholders, including the Farmers Union of Wales (FUW) and Organic Forum Wales, said that such a report should be laid annually, at least initially, because of Brexit.

**The Committee concluded in its LCM report that ‘the [food security] report must be prepared and published annually or biannually.’**

CLA Cymru emphasised that the Welsh Government should be:

included in the methodology planning for the report so that Welsh (and other Devolved Administrations) are able to extrapolate their own data to inform future policy making in the individual jurisdictions that constitute the UK.

**The Committee concluded that ‘the Welsh perspective must be reflected in the methodology for assessing the UK’s food security.’**

The Welsh Organic Forum and National Farmers Union (NFU) Cymru said that the lack of an obligation on Ministers to take action in response to the findings of the report on food security was a deficiency in the Bill.

The Tenant Farmers Association (TFA) Cymru suggested that the Bill should include requirements for the UK Government to specify food security targets, developed in consultation with the devolved administrations, and to report on whether they were being met.

**The Committee concluded that ‘the Bill should be amended to require the UK and Welsh Governments to publish a response to, and take appropriate action in respect of, the food security report’.**

### Part 3 – Transparency and fairness in the agri-food supply chain

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#### **Fair dealing with agricultural producers and others in the supply chain**

Clause 27 gives the Secretary of State powers to make regulations to impose obligations on “business purchasers of agricultural products in relation to contracts they make for the purchase of agricultural products from qualifying sellers” (Clause 27(1)). Obligations might include a requirement to use a written contract or to include specific terms in a contract, for example on premiums or deductions. The Explanatory Notes state that this is for the purpose of “promoting fair contractual dealing by the business purchasers of agricultural products from qualifying sellers” (Clause 27(2)). The Explanatory Notes say that these powers “will not be exercised in respect of any commercial arrangements” within the Grocery Code Adjudicator’s remit.

The **Groceries Code Adjudicator** was established in 2013 to enforce the **Groceries Supply Code of Practice** between grocery retailers and their direct suppliers. However, the majority of farmers do not supply supermarkets directly. They are therefore not covered by the Groceries Code Adjudicator and since it has been established there have been calls from farming unions to address fairness in this

part of the supply chain in some way.

Clause 27 aims to address the “unfair trading practices” in agri-food supply chains which arise because of the disparity between primary agricultural producers which the Explanatory Notes state “tend to be small, individual businesses operating without strong links between them” compared to other actors further up the supply chain, who are “typically highly consolidated businesses that command substantial shares of the relevant market”.

Notably, the 2019-21 Bill has widened the scope for the application of these powers, compared to the 2017-19 Bill. Formerly, the “qualifying seller” was limited to “the producer” and only “first purchasers” were covered by the requirement, as opposed to “business purchasers” in the current Bill wording.

**This clause is included in the Welsh Government’s LCM. However the UK Government’s Explanatory Notes do not identify it as requiring legislative consent from the Senedd.**

### **Stakeholder evidence on the 2019-21 Bill and CCERA conclusions**

Witnesses welcomed the provisions relating to fair dealing within the supply chain but stressed that much would depend on the content of the secondary legislation.

CLA Cymru emphasised that most Welsh rural businesses are small and medium-sized with limited scope to dictate prices to the businesses they supply, so fair dealing requirements should be mandatory.

The Welsh Organic Forum agreed, stating that it was “bitterly” disappointed that this was a discretionary power rather than a duty to act.

FUW warned against applying requirements to the smallest businesses as this could actually work against them (in terms of exposing sensitive commercial information) so recommended that an appropriate business turnover threshold should be applied.

**The Committee concluded that ‘the Minister should clarify what assessment she has made of the impact of the provisions on fair dealing on food producers in Wales. The Minister should also clarify whether she has considered that businesses which do not reach a certain threshold of turnover should be exempt from certain requirements in relation to data collection.**

## Part 4 - Matters relating to farming and the countryside

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### Fertilisers

**Clause 31 amends the** Agriculture Act 1970 ('the 1970 Act') to reflect changes in the fertiliser industry. The amendments deal with the regulation of fertilisers by the Secretary of State and the three devolved administrations. This issue was not dealt with in the 2017-19 Bill.

Under the 1970 Act a fertiliser is defined as something "used for the cultivation of crops or plants of any description, including trees". The [Delegated Powers Memorandum](#) (PDF 857KB) states that this has led to a focus on mineral fertilisers and the new provisions aim to reflect the emergence of innovative products (such as bio-stimulants and soil conditioners/improvers). Including these provisions in the Bill aims to support a reduced reliance on non-renewable materials, and highlight negative consequences of fertiliser use, including emissions and contamination of soils and watercourses.

**Clause 31(2)** of the Bill broadens what is defined as a fertiliser to allow for the "appropriate regulation of this new innovative market".

**Clause 31(3)** allows the regulation of fertilisers on the basis of their "function", in addition to regulation based on "composition or content" as under the 1970 Act, allowing different requirements to be set for different types of fertiliser (e.g. soil conditioner/improver, plant biostimulant, fertiliser inhibitor/additive, growing medium and blended fertiliser).

**Clause 31(4)** inserts new subsections into the 1970 Act setting out that regulations may provide for:

- procedures to assess composition, content or function of fertilisers (including registration of materials, the person or organisation who will carry out assessments, and provision for fees and appeals);
- market surveillance and regulation functions to be conferred on a public authority (and enforcement powers which it may be given including the power to require products to be withdrawn from sale); and
- the keeping and provision of information by manufacturers and others involved in the supply of fertilisers.

**Clause 31(4)** also allows these regulations to amend and repeal [EU Regulation](#).

**2003/2003 relating to fertilisers**, and other retained direct EU legislation. The Delegated Powers Memorandum explains that this regulation is already to be repealed by the new **EU Regulation 2019/1009**, which has a staggered application. Clause 31(4) will therefore allow those elements of the new regulation which become retained EU law to be amended or repealed if inconsistent with the new domestic regime.

The first regulations made relating to fertilisers under these clauses will be subject to the affirmative procedure, as set out in **Clause 31(5)**. Any other regulations conferring market surveillance functions on a public authority would also be subject to this procedure, as would any regulations amending retained EU law.

## **Stakeholder evidence on the 2019-21 Bill and CCERA conclusions**

Witnesses were generally content with the provisions relating to fertilisers. However witnesses representing the organic sector stated that they would like to see a clearer delineation between organic and non-organic fertilisers. The Committee did not draw any conclusions in relation to the provisions on fertilisers.

## **Identification and traceability of animals**

The Agriculture and Horticulture Development Board (AHDB) is leading on the development of a new multi-species livestock information, identification and tracking service. This will be known as the Livestock Information System (LIS) and its **programme vision** states:

Working in partnership, Defra and industry will develop world leading standards of livestock traceability in the UK. This will deliver a competitive trade advantage, make us more resilient and responsive to animal disease and will drive innovation, interoperability and productivity improvements throughout the meat and livestock sectors.

The AHDB has said that the LIS is expected to be delivered “by late 2020”.

The Welsh Government currently runs **EID Cymru**, which is the electronic sheep and goat movement recording system for Wales.

**Clause 32** amends the *Natural Environment and Rural Communities Act 2006* (‘the 2006 Act’) to enable the AHDB (established by powers under that Act) to manage the new system.

**Clause 32(1)** adds a new section to the 2006 Act which allows “a board established under that Act” to be given functions relating to the collection, management and

availability of information regarding animal health, movement and identification. The Delegated Powers Memorandum states that “the AHDB is ideally placed to be able to deliver the programme and the new service”, but also notes that assigning the functions in this way also means that they could be assigned to any new board established under the Act without the need for further primary legislation.

Functions may also be given relating to the means of identifying animals (i.e. the format of identification tags, and the issuing of individual identification numbers). Section 8 of the Animal Health Act 1981 provides a power to make orders “for prescribing and regulating the marking of animals”. This is amended by Clause 32(2) to replace reference to “the marking of animals” with “the means of identifying animals” in relation to England only, which the Explanatory Notes state will allow associated secondary legislation to reflect new technologies. For Wales and Scotland the “marking of animals” description remains.

This clause also establishes that orders under this section may bind the Crown (the Explanatory Notes states that this means Crown animals such as police horses will be covered).

Clauses 32(3) and 32(4) amend two EU regulations, ([Regulation 1760/2000](#) on cattle identification, and [Regulation 21/2004](#) on sheep and goat identification) to disapply them in relation to England (subject to commencement). The Explanatory Notes state that this will allow the named EU regulations, once they have become retained EU law, to be disapplied and replaced with a new order without the need for further primary legislation. These changes do not apply to Wales. As such, further primary legislation would be needed to make similar changes for Wales in the future.

## **Stakeholder evidence on the 2019-21 Bill and CCERA conclusions**

Witnesses expressed concern that the provisions identify the AHDB as the body to develop the new LIS given that AHDB is not accountable to the Welsh Government. FUW emphasised that AHDB is “effectively an English board” and that it would have the power not only to collect data, but also to decide policy in the area of animal health, traceability and identification.

**The Committee concluded that ‘the Minister should explain in detail how the problems in relation to the lack of accountability of that Board to the Welsh Government will be addressed.’**

Witnesses also emphasised that the Welsh Government’s current livestock

identification system, EIDCymru, and the new UK-wide system must be compatible with each other.

**The Committee concluded that ‘the Minister should provide an update on her understanding of how the new Livestock Identification System will interact with EIDCymru’ and the ongoing work to ensure compatibility.**

## Part 5 – Marketing standards, organic products and carcass classification

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Legislative consent is only being sought for the clauses in this Part that relate to organic products.

### Organic products

Clause 36 gives the Secretary of State, and where applicable, devolved Ministers, powers to make new provisions or amend existing provisions regarding organic certification, the import and export of organic products and the enforcement of organic regulations. This is a new section added for the 2019-21 Bill. It allows the Secretary of State to make new organics regulations and amend the existing regime.

The Delegated Powers Memorandum explains that current organic product regulations become retained EU law at the end of the Implementation Period on 31 December 2020. However there are only limited powers to amend them. This could restrict the ability to amend rules, for example to reflect UK environmental standards or any future trade agreements. It states that the new power is therefore needed to enable wider changes to the law after the end of the Implementation Period.

**Clause 36(1)** confers powers on the Secretary of State to make regulations in relation to organic certification, which is the principle means of regulating organics. Certification can be certification of organic products, of activities relating to organic production, including preparation, processing, distribution and marketing, and of persons carrying out activities relating to organic products.

**Clause 36(2), (3) and (4)** expand on **Clause 36(1)**.

- **Clause 36(2)(a)** allows the Secretary of State to make provision relating to “certification authorities”. This allows certification activities to be delegated, for example by the Competent Authority to private Control Bodies, as in the current organics regime;

- **Clause 36(3)** sets out a non-exhaustive list of purposes for which provisions may be made on the objectives, principles and standards of organic production in relation to organic certification; and
- **Clause 36(4)** expands on the provisions that may be made under Clause 36(1) in relation to labelling, marketing and sale of organic products.

**Clause 36(5)** confers a power on the Secretary of State to make provision in relation to the import of organic products into the UK. Clause 36(6) sets out the circumstances within which restrictions or prohibitions on the import of organic products may be made. These circumstances include where imports are recognised as compliant or equivalent with organic standards applicable in the UK, or where a trade agreement is in place.

**Clause 36(7)** confers power on the Secretary of State to make provision in relation to the export of organic products from the UK to overseas countries, including export procedures.

The remaining subsections in **Clause 36** are:

- Clause 36(8)(a) which confers a general power to prohibit marketing, sales or other organic production activities in cases of non-compliance, and Clause 36(8) (b) which confers a power to make provision for the charging of fees in respect to functions relating to organic certification;
- Clause 36(8)(c), (9) and (10) which contain a provision about enforcement. Clause 36(9) allows the regulations to make provision:
  - for conferring powers of entry, inspection, search and seizure;
  - about providing, using and retaining information;
  - for keeping records;
  - for imposing monetary penalties;
  - for creating summary offences punishable with a fine (or a fine not exceeding an amount specified in the regulations); and
  - conferring functions on a person.
- **Clauses 36(11) and (12)** which define the terms “marketing”, “organic production” and “organic product”; and
- **Clause 36(13)** which specifies the types of products that qualify for organic certification.

**Clause 37(1)** extends the powers in **Clause 36** to Ministers in Scotland, Wales and Northern Ireland where it is within legislative competence.

**Clauses 37(2) and (3)** relate to the parliamentary procedure to be used for making provisions. Regulations must follow the affirmative procedure on every use where the powers relate to the objectives, principles and standards of organic production. Other provisions must follow the affirmative procedure on first use and the negative procedure thereafter.

## **Stakeholder evidence on the 2019-21 Bill and CCERA conclusions**

Representatives of the organic sector told the Committee they had not been consulted during the development of the Bill. They noted, however, that much of the detail of the provisions will be contained in secondary legislation. They expected to be consulted at that stage.

They were also concerned about maintaining future equivalence or compliance with new EU organic regulations after the end of the transition period on 31 December 2020. New EU regulations are due to come into force on 1 January 2021 and it is unclear how future UK regulations will interact with these regulations. The Welsh Organic Forum noted that:

New EU organic regulation (848/2018) requires that third countries are compliant with EU Regulation via a trade agreement. Historically equivalence was acceptable.

Contributors said their preferred outcome would be a comprehensive trade agreement between the UK and the EU that included an agreement on equivalence for organic regulations.

**The Committee concluded that ‘the Minister should set out her position on future equivalence or compliance with EU organic regulations and provide an update on how this is being reflected in discussions with the UK Government’.**

Several contributors were also concerned about the status of organics in any future trade deal with other countries, including the USA. They expressed concern that imported products may be labelled as organic but subject to different and, in some cases, less stringent standards than in the UK.

**The Committee concluded that ‘the Minister should explain how she will seek to ensure that current Welsh organic standards are not undermined by future trade deals’.**

Representatives of the organic sector told the Committee that divergence in standards and requirements for organics across the countries of the UK could add

complexity for producers in the UK and risk distorting the internal market.

**The Committee concluded that ‘the Minister should set out whether she believes that common organic standards should be maintained across the UK.’**

### Schedule 3 – Agricultural tenancies

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**Schedule 3** provides for agricultural tenancies. Agricultural tenancies were not dealt with in the 2017-19 Bill but they were the subject of a **Welsh Government consultation between April and July 2019**. The consultation ran concurrently with a **very similar Defra consultation** for England.

The consultations followed the **work of the Tenancy Reform Industry Group (TRIG)**, an industry advisory group to the Welsh and UK governments, which identified several areas of agricultural tenancy legislation presenting potential barriers to productivity and structural change.

The Welsh Government consultation sought views on options for reforming agricultural tenancy law in Wales and also included a call for evidence on other matters to inform future policy. The Welsh Government has yet to publicly respond publicly to the consultation.

Some of the issues raised in the consultation are included in the 2019-21 Bill, notably around restrictive clauses in tenancy agreements and succession procedures. There are also provisions in the 2019-21 Bill, concerning arbitration and third party determination, that were not covered in the consultation.

In his **legislative statement on 16 July 2019** the First Minister, Mark Drakeford, told the Assembly that the Welsh Agriculture Bill, to be introduced in the Sixth Senedd, would “look at wider issues such as the rights of tenant farmers”. The Bill will be preceded by a White Paper consultation, expected before the end of this Senedd.

### Background to tenancies

There are two main types of agricultural tenancy:

- **1986 Act Tenancies** governed by the *Agricultural Holdings Act 1986* (those agreed before 1 September 1995); and
  - **Farm Business Tenancies** governed by the *Agricultural Tenancies Act 1995*
-

(those agreed after 1 September 1995).

The *Agricultural Holdings Act 1986* (the 1986 Act) was introduced to provide more security to tenant farmers. Generally, tenancies granted under the 1986 Act have lifetime security of tenure and those granted before 12 July 1984 also carry statutory succession rights on death or retirement.

The *Agricultural Tenancies Act 1995* (the 1995 Act) was introduced to provide a simpler, more flexible framework to encourage more agricultural lettings. Farm Business Tenancies provide a flexible framework, can vary in length and do not have statutory succession rights.

The Welsh Government consultation document states that the number of 1986 Act Tenancies is in natural decline and on current trends will cease to be a significant part of the tenanted sector by around 2050; most land from ending 1986 Act tenancies is relet as a Farm Business Tenancy.

Most of the tenancy provisions in the Agriculture Bill relate to the 1986 Act.

## **Arbitration and third party determination**

The 1986 Act currently allows landlords or tenants, by notice, to demand that a rent review or other dispute be referred for arbitration. If the parties cannot agree on an arbitrator, the tenant or landlord can apply to the President of the Royal Institution of Chartered Surveyors (RICS) to appoint one.

The *Deregulation Act 2015* added an alternative mechanism through which the landlord and tenant could refer a rent review to an independent third party for determination. In practice, the third party will be an expert in the area, most likely an experienced land agent.

The 2019-21 Bill makes amendments to the 1986 Act dealing with the process for referring a rent review dispute to arbitration/determination, as well as the bodies that may appoint arbitrators in various disputes.

**Paragraphs 2 and 3 (of Schedule 3)** amend the 1986 Act to replace the demand for arbitration with a “notice of determination” that can precede either of the two mechanisms discussed above. The Explanatory Notes state that this will allow the parties to agree to the appointment of a third party to resolve a dispute at any time before the rent review date, as an alternative to arbitration.

**Paragraphs 4, 5 and 6** amend the 1986 Act so that other “professional authorities”

can also appoint arbitrators, namely the President of the Central Association of Agricultural Valuers (CAAV) and the Chair of the Agricultural Law Association (ALA), in addition to the President of the RICS, as at present. The Explanatory Notes state that this will give tenants and landlords more choice.

The 2019-21 Bill gives a power to the Welsh Ministers, in relation to Wales, (and the Secretary of State in relation to England) to make regulations to further amend the list of professional authorities. This is a Henry VIII power as it involves amending primary legislation. The **Delegated Powers Memorandum** states that the negative procedure (the default for regulations under the 1986 Act) is appropriate “given the narrow scope of the power”. It also states that any changes introduced through regulations will be developed in consultation with industry.

**Paragraphs 23 to 29** also amend the 1995 Act to make similar changes relating to professional authorities who may appoint arbitrators in disputes under that Act. The Explanatory Notes state that any changes to this definition in the 1986 Act (by regulations, as described above) will also apply to the 1995 Act.

## Requests for the landlord's consent

Tenant farmers have raised the question of restrictive clauses in tenancy agreements potentially making it difficult to access support under a future “public goods” scheme.

**TFA's response** (PDF 403KB) to Defra's consultation on tenancy reform (in England) stated that many tenants are restricted to using their holdings for agricultural purposes only, and would be “disenfranchised” if landlords did not give consent for them to access new schemes providing public money for public goods. Even if consent is given, the TFA expressed concern that landlords could use this leverage to “secure unreasonable demands from tenants”.

**Paragraph 7** inserts Section 19A into the 1986 Act dealing with disputes relating to requests for the landlord's consent or a variation of the terms of the tenancy. This paragraph relates to requests that are made for the purpose of enabling a tenant to receive “relevant financial assistance” or complying with statutory duties (including under retained EU law).

The Welsh Ministers, in relation to Wales, (and the Secretary of State in relation to England) are given a power to make regulations specifying types of financial assistance or statutory duties to which the request may relate, as well as any other conditions.

“Relevant financial assistance” is defined in **Paragraph 7(7)**. The definition for Wales relates to the tenant accessing financial assistance in exceptional market conditions, under **Paragraph 7** of **Schedule 5** (see below) or so the tenant can meet a statutory obligation.

The definition for England is broader than for Wales because it also includes the ability for the tenant to access funding under a public goods scheme or a “third party scheme”, the relevant clauses for which apply to England only. The proposed Welsh Sustainable Farming Scheme, the equivalent to the English public goods scheme, is **expected to be included** in a Welsh Agriculture Bill to be introduced in the Sixth Senedd.

The regulations may provide that the tenant can refer such a request for arbitration if no agreement has been reached, and that the landlord and tenant can refer the request for third party determination. The Delegated Powers Memorandum states that the dispute process will be designed in consultation with tenants and landlords, and that regulations under this paragraph can be reviewed and adjusted as the new financial assistance schemes are rolled out.

## **Tenancy succession**

**Paragraphs 10 to 18** make amendments to succession procedures under the 1986 Act, to remove certain restrictions and amend the provisions around determining suitability of applicants.

1986 Act Tenancies granted before 12 July 1984 carry statutory succession rights, on death or retirement, for close relatives provided the potential successor meets certain eligibility criteria. A 1986 Act tenant can also name a successor to take over the holding when they retire, with similar conditions for succession to those that apply on succession on death. A close relative of the deceased or retired tenant can apply to the relevant Tribunal – in Wales this is the **Agricultural Land Tribunal** - in order to succeed to the tenancy.

The Tribunal must be satisfied that the applicant is both eligible and suitable. Eligibility currently includes the Commercial Unit Test, meaning that an applicant is not eligible if they already occupy of a commercial unit of agricultural land. The **tenancy reform consultation** stated that the Commercial Unit Test is now incompatible with Welsh Government “policy objectives of improving farming productivity by encouraging the transfer of land into the hands of skilled commercial farmers”.

In determining suitability – the Suitability Test - the relevant Tribunal is currently required to have regard to “all relevant matters” including experience of agriculture, age, physical health, financial standing and the views of the landlord. The consultation stated that this test “sets only a very low standard of suitability”, due in part to the absence of a requirement for business management skills.

**Paragraphs 10 to 16** repeal all provisions relating to the Commercial Unit Test.

**Paragraphs 17 and 18** remove the current Suitability Test provision from the face of the 1986 Act so that new criteria can be set out in regulations by the Welsh Ministers, in relation to Wales, (and the Secretary of State in relation to England). The criteria set out in regulations “must relate to the person’s likely capacity to farm the holding commercially to high standards of efficient production and care for the environment”.

Criteria which may be included are listed, and are similar to the existing test, but include criteria relating to experience, training or skills in agriculture “or business management”. The Tribunal is still to have regard to any views stated by the landlord in determining the applicant’s suitability. The Delegated Powers Memorandum explains that the details of the new Suitability Test will be developed in consultation with tenants and landlords, and regularly reviewed to keep up with developments in industry-led work on continuing professional development and farming skills.

Alongside these provisions for the Suitability Test, **Paragraph 13** also qualifies the existing requirement that a successor must have worked on the holding for five of the last seven years. The new text sets out that any time which the applicant spent in full-time higher or further education during this seven-year period would be treated as if they had been working on the holding, up to a maximum of three years.

## Other provisions

**Paragraph 8** amends Schedule 2 of the 1986 Act to make clear that payments by a tenant to a landlord for productivity improvements should be disregarded by any arbitrator or third party in a rent review dispute. The tenancy reform consultation explained that this “may help unlock landlord investment” and productivity improvements. Without the change, the consultation stated, any such payments agreed between the landlord and the tenant can currently be viewed as an obligation of the tenancy and may be deemed relevant in a rent review.

**Paragraph 9** deals with changes to pensionable age by amending a part of

Schedule 3 of the 1986 Act which deals with notices to quit local authority smallholdings under the *Agriculture Act 1970*. The amendment establishes that the Tribunal's consent is not required for such notices when a tenant has reached pensionable age, rather than the age of 65 as currently set.

**Paragraphs 19 and 20** repeal provisions of the 1986 Act requiring that, in order for a person named in the retirement notice to be able to apply to succeed to the tenancy, the retiring tenant must not be under 65. The Explanatory Notes state that this will mean applications for succession on retirement may be made at any age in future. The tenancy reform consultation highlighted that removing the minimum age of 65 would allow holdings to be passed on sooner, unlocking potential productivity improvements.

**Paragraph 21** makes amendments to Section 94 of the 1986 Act to add references to the National Assembly for Wales in setting out the parliamentary procedures to be followed when making regulations and orders.

### **Stakeholder evidence on the 2019-21 Bill and CCERA conclusions**

Contributors broadly welcomed the provisions aimed at reforming agricultural tenancies. TFA Cymru said it supported "all of the changes being made" but felt that there was a need for certain aspects to be improved. TFA Cymru set out numerous proposals in its written submission for amendments to the UK Bill.

TFA Cymru noted that the Welsh Government had consulted on broad proposals for tenancy reform but only some had been brought forward in the UK Bill. There was concern amongst contributors that the Welsh Government had not published its response to the consultation and, as a result, its broader intentions for tenancy reform were unclear.

### **The Committee concluded the Minister should publish the response to the Welsh Government's consultation on agricultural tenancies.**

FUW told the Committee there is scope for a separate Welsh Bill to deal with agricultural tenancies. CLA Cymru agreed, adding that the breadth of current Bill meant that a necessary in-depth discussion around tenancies was unlikely to happen.

### **The Committee concluded the Minister should respond to the view**

**expressed by stakeholders that agricultural tenancies requires a separate Senedd Bill in future.**

NFU Cymru noted that it remains to be seen how the changes in the Bill would interact with the Welsh Government's proposed post-Brexit Sustainable Farming Scheme, which has an emphasis on delivering public goods.

Contributors emphasised that it can often be difficult for tenant farmers to obtain the landlord's consent for undertaking certain works or activities on-farm, which prevents them from taking part in public goods schemes. This is because of the inherent conflict between the effects of such schemes and landlords' requirements to keep land in good agricultural condition.

TFA Cymru noted that the provisions which will allow a tenant to object to a refusal from the landlord for consent to enter into a scheme introduced under the financial assistance provisions of the Bill or to carry out works in accordance with a statutory obligation will only apply to tenancies regulated by the *Agricultural Holdings Act 1986*. It was concerned that these provisions will not extend to tenancies regulated by the *Agricultural Tenancies Act 1995*.

**The Committee concluded 'the Minister should explain the rationale for the provisions in the UK Bill applying to 1986 Act holdings and not 1995 Act holdings. The Minister should set out her views on whether the provisions should be extended to cover 1995 Act holdings.'**

## Section 2- Analysis of provisions carried over from the 2017-2019 Bill

### Part 4 - Matters relating to farming and the countryside (the red meat levy)

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**Clause 33**, relating to the red meat levy, enables the Secretary of State, the Welsh Ministers and the Scottish Ministers (as appropriate) to jointly establish a scheme that requires levy boards within Great Britain to redistribute levy between themselves.

### Background

The **red meat levy** is a fee paid by all producers or slaughterers at the point of slaughter (or live export). The levy is paid to the relevant levy board in each country to be used for marketing and promotion of that country's meat products. The

country of slaughter dictates which country's levy will be paid. In Wales the levy is paid to Hybu Cig Cymru (HCC) (Meat Promotion Wales), which is mainly funded through the levy.

The levy has been criticised in the past as it does not take into account livestock produced in one country then slaughtered in another; the money is paid to the levy board in the country of slaughter regardless of origin. The Bill aims to enable those who invest in breeding and rearing livestock to benefit from the levy collected in relation to their livestock, even if the levy is collected by a slaughter house in another country within Great Britain.

## **The 2017-19 Bill**

The provisions relating to the red meat levy have been carried forward from the 2017-19 Bill. This provision (Part 8) was included as an amendment agreed by the House of Commons' Public Bill Committee.

The CCERA Committee considered this amendment in its supplementary LCM report. It welcomed the redistribution of the red meat levy but stated (conclusion 1) that:

The Welsh Government must give a commitment that it will not use the increase in receipts arising from the repatriation of the levy to replace existing Welsh Government funding for Hybu Cig Cymru.

The **Minister responded** saying:

I do not intend to use the reform of the Red Meat Levy system to change the way in which Hybu Cig Cymru's operations are funded by Welsh Government.

## **Part 6 - World Trade Organisation: Agreement on Agriculture**

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**Part 6 (Clauses 40-42)** relates to WTO Agreement on Agriculture (AoA) compliance. It gives powers for the Secretary of State to: conclusively determine the classification of financial support across the UK; set limits of spending for the whole of the UK; set individual ceilings of support across the devolved administrations; and create different ceilings across the devolved administrations.

This Part also intends to ensure that the UK is able to meet its obligations to make notifications required under the AoA and respond to any challenges from other WTO members.

The UK Government considers these provisions to be reserved matters. As such, it

is not seeking legislative consent. However the Welsh Government's LCM for the 2019-21 Bill states:

It is the Welsh Government's view that these provisions require consent because they make provision with regard to agriculture and concern the domestic implementation of international obligations.

## Background

The **WTO AoA** is an international treaty that sets out a number of general rules and commitments on agricultural trade practices as agreed by WTO members. These measures fall under three pillars:

- disciplines on domestic support;
- market access; and
- export subsidies.

The EU is a WTO member and the UK is also a member of the WTO in its own right. As such the EU and the UK are both signatories to the AoA and the UK will continue to be subject to any constraints and obligations under the AoA. The UK Government will be responsible for ensuring that all UK policies on domestic support (subsidies) in relation to agriculture are WTO compliant.

In WTO terminology, subsidies are identified by '**boxes**' given the colours of traffic lights. The 'amber box' is used for subsidies that distort trade and production and should be limited (the UK has an **Aggregate Measurement of Support** commitment). 'Green box' subsidies broadly cannot distort trade or involve price support, therefore subsidies are not limited. The 'blue box' subsidies can be seen as the 'amber box with conditions'. For example, there may be a limit on production to reduce trade distortion. Currently there are no limits on the blue box subsidies. The AoA does not contain any 'red box' subsidies which, in other sectors, indicate support that is forbidden. More background on the AoA can be found in a **Senedd Research blog post**.

The WTO powers in the 2019-21 Bill are intended to ensure that all support schemes are properly classified in the WTO 'box' system. If they fall into the amber box, the powers should ensure that the UK does not breach its Aggregate Measurement of Support commitment.

## The 2017-19 Bill

The provisions relating to WTO AoA compliance have been carried forward from the 2017-19 Bill. The relevant clause (Clause 26 in the Bill as introduced and 28 as

amended) was classed by the UK Government as a reserved matter, as is the case with the 2019-21 Bill.

On introduction of the Bill, the **Minister stated** that the Welsh Government disagreed with the UK Government on the extent to which the WTO clause was reserved. The statement emphasised the strong relationship between WTO powers and devolved responsibilities on agricultural support. During the passage of the 2017-2019 Bill, the Welsh and UK Governments agreed a governance mechanism for use of the Secretary of State's powers contained in the WTO clause, "**so that the interests of all parts of the UK are fully taken into account**". This governance mechanism was codified in **The UK and Welsh Government Bilateral Agreement on WTO provisions within the Agriculture Bill**, March 2019, ('the Bilateral Agreement').

According to the Welsh Government's supplementary LCM, the Bilateral Agreement provides "strong mechanisms for the Welsh Ministers to exert their views".

In the CCERA Committee's first LCM report it raised stakeholders' concerns about the implications of the WTO clause, and its potential to restrict the Welsh Government in devolved areas. The CCERA Committee stated (conclusion 19):

We believe this must be addressed either by an amendment to the UK Bill or, at the very least, a formal, published agreement between the UK and Welsh Governments.

Following the publication of the LCM report, the Bilateral Agreement was published which was then addressed in the CCERA Committee's supplementary LCM report:

Despite the further assurances provided by the Minister, we remain to be convinced that this Agreement is sufficiently robust to ensure that Welsh' interests are properly considered or safeguarded.

We note the Minister's assertion that the Bilateral Agreement provides the Welsh Government with more than a consultative role in relation to the draft regulations ... However, it remains the case that the SoS [Secretary of State] will have the final say on the draft regulations, and that ultimately, the decision to approve the regulations will rest with the UK Parliament. Given the Welsh Government's view that the WTO provisions are within the Assembly's legislative competence, and the potential for these provisions to restrict the Welsh Government in a key area of devolved competence, we do not believe this is appropriate.

Given these concerns, and the fact that the agreement was not legally binding the CCERA Committee concluded (conclusion 2) (emphasis added):

The Welsh Government should seek the UK Government's agreement to **amend the Bill** to address the Committee's concerns.

**The Minister responded** to say that the Welsh Government has secured the 'strongest possible role' for the Welsh Ministers in the use of the powers. She stated that a 'unilateral veto over the power to make WTO regulations would be difficult for the UK Government to concede, since it has the responsibility for representing the nations of the United Kingdom at the WTO'.

The 2019-21 Bill has not been amended to put the Bilateral Agreement on the face of the Bill. The Welsh Government's LCM for the 2019-21 Bill refers to the Bilateral Agreement:

There remains disagreement between the UK Government and the Welsh Government on whether the WTO clause is wholly reserved. However, a bilateral agreement has been reached to require the UK Government to consult the devolved administrations before bringing forward regulations under this power.

Tim Render, the Welsh Government's Lead Director for the Environment and Rural Affairs, **gave evidence to the House of Commons Public Bill Committee** on 13 February 2020. When asked if the Welsh Government wants the Bill to require the UK Government to consult the Welsh Government on WTO provisions he stated:

Yes, we would love a consent [sic] provision, but in the context of the last Bill we came to a bilateral agreement between the UK Government ... and the Welsh Government on how the provisions would be operated in practice. The Minister has confirmed to us that that agreement will be carried over with this Bill.

When asked if the Welsh Government wants a requirement to consult on the face of the Bill he said:

We would be happy with that, yes. That is essentially our way of working, but if it is written in the text, that would be even stronger.

## **Stakeholder evidence on the 2019-21 Bill and CCERA conclusions**

Most contributors said they still had significant reservations about the provisions in the Bill. For NFU Cymru, the Bill meant that the Secretary of State could introduce "artificial constraints" on agricultural spending in Wales and therefore "constrain" Welsh policy choices.

FUW highlighted that there is no requirement to set minimum spending under the WTO boxes. This could result in divergence across the UK in allocations for agriculture, causing market imbalances. It believed this should be addressed by

amending the Bill to “allow regulations to be introduced, following consultation and agreement between the four UK nations, which specify both minimum and maximum spending thresholds in relation to specific policy areas.”

**The Committee concluded that the Minister should provide an update on any discussions she has had with the Secretary of State about amending the Bill to strengthen the bilateral agreement.**

## Part 1, Schedule 5 – Financial support after EU exit

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**Part 1, Schedule 5** provides for the Welsh Ministers to continue Direct Payments in Wales under the Basic Payment Scheme after 2020 (Paragraphs 1-3). These powers extinguish at the end of 2024 (Part 7, Clause 44).

EU Regulations on Direct Payments will be carried over into domestic law as ‘EU retained law’ under the *EU Withdrawal Act 2018*. EU retained law applies from the end of the Implementation Period.

This Part of the 2019-21 Bill includes powers for the Welsh Ministers to modify retained EU law relating to the Basic Payment Scheme and includes powers to simplify or improve the Basic Payment Scheme or to terminate **greening payments** (Paragraph 2).

As originally drafted, these powers were available to “simplify or improve” the Basic Payment Scheme. Paragraph 2 was **amended in the House of Commons** to specify five purposes for which the legislation may be modified.

This part also enables the Welsh Ministers to make regulations that modify, in relation to Wales, retained EU law relating to the financing, management and monitoring of the CAP (Paragraph 4).

It also provides the Welsh Ministers with a power to make regulations that modify retained EU law relating to support for rural development (Paragraph 5). The power can be used either to repeal that legislation or to simplify or improve the operation of such legislation.

Paragraph 5 was **amended in the House of Commons**:

- to broaden the regulation making powers by removing the above restrictions, allowing the legislation to be modified so far as it has effect in relation to Wales;
- to make the regulation powers subject to the affirmative resolution procedure,

rather than the negative procedure.

The Welsh Government sets out its intention for this clause in its supplementary LCM – “to make extensions of schemes and projects beyond the existing RDP 2014-20 or to operate a domestic Welsh equivalent”.

The new legislative framework for farm support provided by the 2019-21 Bill applies after 2020.

## Background

Direct Payments are the income support payments which UK farmers currently receive under the CAP, paid out of the EU budget. They are mainly regulated under the **EU Direct Payments Regulation**. This regulation sets out the **Basic Payment Scheme** that operates under the CAP. Member States tailor the operation of this scheme to their own circumstances within certain permitted parameters. In the UK, the implementation of CAP is devolved and funds are administered by national governments. Payments are based mainly on the amount of land a farmer owns, rather than on how much they produce to avoid incentivising overproduction. Farmers must currently meet certain standards on environmental management, animal welfare standards and traceability (known as ‘cross-compliance’) in order to qualify for payments.

EU Direct Payments to farmers were excluded from applying during the 2020 Implementation Period under the Withdrawal Agreement. Direct Payments in 2020, across the UK, are covered by the provisions in the recently enacted **Direct Payments to Farmers (Legislative Continuity) Act 2020**. This allows payments in 2020 to continue domestically much the same as under CAP schemes in previous years. A **Senedd Research blog post** provides further details. Following 2020, continuation of Direct Payments would be provided for under the 2019-21 Bill.

## The 2017-19 Bill

Schedule 3, Part 2 of the 2017-19 Bill also included powers for the continuation of Direct Payments. However, it included powers relating to the ‘de-linking’, phasing out and termination of Direct Payments, and a seven year transition period; **these powers have been removed in the 2019-21 Bill**.

These transitional powers within the 2017-19 Bill aimed to make way for a new system of land management support in Wales which would have been provided for under Part 1, Schedule 3: ‘New financial assistance powers’. These wide ranging

powers have not been carried forward into the 2019-21 Bill.

In its LCM report on the 2017-2019 Bill, the CCERA Committee emphasised the need for legislation to continue Direct Payments to ensure certainty post-Brexit (conclusion 2). However, one key area of concern was that Part 1, Schedule 3 on new financial assistance powers was passing through the UK Parliament rather than the Assembly. The CCERA Committee stated that ‘the most appropriate way to legislate on a subject as significant as the long term future of agriculture in Wales is through an Assembly Bill’ (conclusion 1).

The Minister stated this approach was required due to the pressures on the Assembly’s legislative timetable. **She emphasised** that the UK Bill was a transitional arrangement and a Welsh Bill would be introduced at a later date. The CCERA Committee requested that a sunset clause should be included in the Bill to give effect to this transitional intention (conclusion 4). The Minister accepted this recommendation suggesting a sunset clause of 31 December 2024. As discussed, the 2019-21 Bill includes a sunset clause (Clause 44) for Schedule 5, set for the end of 2024.

The CCERA Committee also felt that there had not been sufficient impact assessment or pilot scheme development before the decision had been made to phase out Direct Payments (conclusion 11). The Committee called for the Welsh Government to clarify its intentions in relation to when transition will begin and what it will mean for the sector in practice (conclusion 10). **To date a timeline for transition to the new Welsh schemes has not been announced by the Welsh Government.**

The LJC Committee’s **report (January 2019)** said that the LCM process was inappropriate for consideration for a Bill which ‘transfers extensive powers to the Welsh Ministers to develop significant policy and, in so doing, prevents detailed scrutiny by Assembly Members’.

The removal of the clauses to bring forward a new system of agricultural support in Wales in the 2019-21 Bill was discussed by the Minister in her **statement on the Bill's introduction**, with reference to the Assembly’s reports (emphasis added):

Given the passage of time since the original Bill was first introduced in September 2018, **I have reflected on the scope of the Welsh schedule, taking into account the helpful reports provided by the Senedd during scrutiny. I have concluded it is no longer appropriate to take powers to allow the Welsh Ministers to operate or transition to new schemes.** My intention now is these will be

provided for instead by the Agriculture (Wales) Bill. I intend to publish a White Paper towards the end of 2020 which will set out the context for the future of Welsh farming and pave the way for an Agriculture (Wales) Bill.

## **Stakeholder evidence on the 2019-21 Bill and CCERA conclusions**

Contributors generally welcomed the powers for Welsh Ministers to make changes to the Basic Payment Scheme rather than introduce new agricultural schemes. Several emphasised the need to exercise caution before moving away from this system of support to any proposed successor schemes.

### **Part 2, Schedule 5 – Intervention in agricultural markets**

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**Part 2, Schedule 5** of the 2019-21 Bill allows the Welsh Ministers to:

- make a declaration if they consider there are “exceptional market conditions” (Paragraph 6);
- intervene in agricultural markets if they consider there are exceptional market conditions, which warrant financial assistance or intervention (Paragraph 7); and
- modify powers under retained EU legislation which provide for the operation of public intervention and aid for private storage mechanisms, in response to exceptional market conditions (Paragraph 8).

“Exceptional market conditions” exist where there is (or is a threat of) a severe disturbance in agricultural markets, which has, or is likely to have, a significant adverse effect on agricultural producers in Wales in terms of the prices available for their product.

The powers conferred on the Welsh Ministers in Part 2 of Schedule 5 are the same as the intervention powers conferred on the Secretary of State under Part 2 of the Bill in respect of England (Clauses 18-20).

## **Background**

The CAP currently includes a range of agricultural market support measures under the Common Market Organisation (CMO) Regulation. It is a complex legal framework provided by **Regulation (EU) No 1308/2013** which consists of 232 articles “to stabilise the markets and to ensure a fair standard of living for the agricultural community”. The CMO includes measures on public intervention and the payment of aid for the storage of products by private operators (private

storage).

Intervention involves the competent authority in the Member State buying and storing the products until they are disposed of. Putting products into storage helps to stabilise the market for a product if there's a surplus and prices become weak. In addition, there are broad powers for the EU to stabilise markets at times of crisis. **Those powers were used for UK producers** to provide packages of support for dairy farmers in 2015 and 2016.

## The 2017-19 Bill

The provisions relating to intervention in agricultural markets have been carried forward from the 2017-19 Bill. The CCERA Committee heard that although stakeholders welcomed the provisions, the powers for the Welsh Ministers to declare "exceptional market conditions" and to provide support to the sector were discretionary. Stakeholders expressed a preference for a duty on the Welsh Ministers to take action.

Tenant Farmers Association (TFA) Cymru sought assurance that "natural phenomena such as drought, flood and disease as well as economic phenomena" would warrant the exercise of the powers, as well as long-lasting difficulties.

In explaining the circumstances in which the powers to intervene in agricultural markets may be exercised, a **Welsh Government official told the CCERA Committee:**

Past examples have been some of the very extreme price fluctuations or extreme weather events that cause major short-term disruption.

CLA Cymru noted that the 2017-19 Bill contained corresponding powers for the Secretary of State in relation to England. It questioned the appropriateness of including separate powers for England and Wales, given both nations have such an integrated supply chain, and raised concern that "any unilateral decision to invoke the provisions could distort the market".

The **Welsh Government official** suggested that intervention in agricultural markets was "a classic area" where a UK common framework is needed.

The CCERA Committee's LCM report supported the provisions relating to intervention in agricultural markets in principle. However it stated that it is unclear how the Welsh Government intends to use the powers being sought (conclusion 21). The Committee stated 'These are extensive executive powers and the Welsh

Government should clarify their intended purpose and effect'. The Minister responded that she intends to provide examples of how the provisions could be used. **These examples have not been provided to date.**

**The Committee stated that it expected a UK common framework for agriculture to cover the exercise of powers to intervene in agricultural markets (conclusion 22). The Minister accepted this recommendation stating that 'good progress is being made in developing the Common Frameworks which will embed the new forms of intergovernmental cooperation'. This work on common frameworks is on-going.**

### **Stakeholder evidence on the 2019-21 Bill and CCERA conclusions**

Similar issues were raised as for the 2017-19 Bill. TFA Cymru reiterated its view that environmental phenomena, especially given recent flooding, should warrant the exercise of the Welsh Ministers' powers to intervene in markets.

FUW expressed concern that respective governments in England and Wales may take a different view about what would constitute exceptional market conditions. FUW suggested this could be mitigated by adding a requirement to the Bill for Welsh Ministers and UK Government departments to work together in such circumstances.

TFA Cymru suggested that assurances should be sought from the Welsh Government that the provisions would apply not only to "acute" difficulties causing exceptional market conditions, but also "chronic" or long term problems, such as "endemic disease or structural changes in agricultural markets which may require farmers to undergo significant adjustment."

**The Committee made a general conclusion that the Minister should give a commitment that she will provide the Committee with secondary legislation arising from this UK Bill in draft and provide enough time for scrutiny in the Senedd.**

**The Committee concluded that:**

**The Minister should set out the circumstances where she envisages the powers in relation to intervention in agricultural markets would be exercised. Further, the Minister should set out what mechanisms are in place to ensure that Welsh and UK Governments work together in such circumstances. The Minister should also set out whether the provisions will apply not only to short-term, but also to longer-term problems affecting agricultural**

## **markets.**

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

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**Part 3, Schedule 5** enables the Welsh Ministers to introduce new requirements for those in the agri-food supply chain to provide information in relation to that supply chain. It sets out who may be covered and the purposes for which information may be processed. The specified purposes include; to help farmers and producers increase productivity; to help producers to manage risk and market volatility; and to support animal and plant health and traceability.

These include powers for the Welsh Ministers to require the provision of certain information (paragraph 9(1)), to make regulations to collect information (paragraph 9(2)) and to enforce a requirement to provide information (Paragraph 14(1)).

- There is a new duty in the 2019-21 Bill for the Welsh Ministers to publish a requirement for data provision in draft before it is finalised (Paragraph 12).
- This clause is intended to make data collection throughout the agri-food supply chain more transparent and to improve the dissemination of this information.
- The powers conferred on the Welsh Ministers in Part 3 of Schedule 5 are the same as the collection and data sharing powers conferred on the Secretary of State under Part 3 Chapter 1 of the 2019-21 Bill in respect of England (clauses 21 to 26).

## **Background**

There have been calls for a number of years to strengthen farmers' and food producers' positions in relation to the supply chain. The **NFU has said** that there is a "black hole" in market data in parts of the supply chain, particularly the processor-buyer end, which "stifles trust, collaboration and the development of market risk management tools".

## **The 2017-19 Bill**

The provisions relating to the collection and sharing of data have been carried forward from the 2017-19 Bill. As discussed, the duty in the 2019-21 Bill for the Welsh Ministers to publish a requirement for data provision in draft before it is finalised is new in comparison to the 2017-19 Bill. In addition there is an added requirement to provide information for the purpose of promoting soil health (in addition to plants and fungi).

During its consideration of the 2017-19 Bill the CCERA Committee heard that

representatives of the agricultural sector were broadly supportive of the powers as a means of improving transparency within the supply chain. However, it was noted that powers were discretionary and, as such, there was no obligation on the Welsh Ministers to continue doing what is required under EU regulation. The Committee called for further clarification from the Welsh Government on how the powers would be used (conclusion 21). As discussed for Part 2, the Minister responded that she intends to provide examples of how the provisions could be used. Again, these examples have not been provided to date.

In its report the CCERA Committee raised concerns about the practical implications for smaller farms of meeting any information requirements. It states ‘it will be important to ensure that any future requirements are not overly burdensome for these farmers’. **This Minister did not address this point in her response.**

## Stakeholder evidence on the 2019-21 Bill

The FUW cautioned that divergence in data collection and sharing requirements in different parts of the UK could potentially lead to distortion of the UK internal market by placing additional burdens on some producers. It suggested that Welsh Ministers would need to “work closely with other administrations to ensure relative uniformity.”

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

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**Part 4, Schedule 5** enables the Welsh Ministers to make provisions:

- in relation to marketing standards regarding the quality of agricultural products and product information to customers in Wales. The aim of this part is to tailor and modernise existing marketing standards regarding the quality of agricultural products; and
- about the classification, identification and presentation of bovine, pig and sheep carcasses at slaughterhouses in Wales. This will enable the technical updating of these classifications. The classifications seek to ensure market transparency and efficiency by establishing mandatory standards for carcass specification and grading.

These powers include the Welsh Ministers’ ability to amend or revoke the current marketing standards and carcass classification rules as set out in retained EU legislation and in domestic legislation. They also provide the flexibility to introduce new standards and rules that will be tailored to suit the domestic agricultural

sectors.

The powers conferred on the Welsh Ministers in Part 4 of Schedule 5 are the same as the powers conferred on the Secretary of State under clauses 35 and 38 of, and Schedule 4 of, the Bill in respect of England.

An amendment to the Bill to ensure products imported into the UK comply with WTO safety rules and the UK's own standards, under future trade deals, was **voted down in the House of Commons.**

## Background

The UK currently works to a range of EU marketing standards for agricultural products which are designed to guarantee quality. They are set out in the **CMO Regulation**. The requirements vary by product and this variation takes into account aspects such as: freshness, size and presentation.

Carcass classification is a mechanism designed to ensure market transparency and efficiency by establishing mandatory standards for carcass specification and grading. More information on carcass classification can be **found here**.

## The 2017-19 Bill

The provisions relating to marketing standards and carcass classification have been carried forward from the 2017-19 Bill. As discussed, the Welsh Ministers may provide the standards with which certain 'products' must conform. Paragraph 16, Part 4 of Schedule 5 of the 2019-21 Bill is different to equivalent section of the 2017-19 Bill (Paragraph 22, Part 5, Schedule 3). **Some products have been lost in the 2019-21 Bill – 'processed meat and vegetable products', 'bananas' and 'live plants' were listed in the 2017-19 Bill.** The Welsh Ministers may make regulations to amend the list of products.

- In its LCM report for the 2017-19 Bill, the CCERA Committee noted calls from stakeholders for the 2017-19 Bill to include safeguards to ensure that standards are not undercut by imports in any future trade arrangements. It sought clarification from the Welsh Government on any discussions that have been held with the UK Government on this matter (see the 'Our view' box, page 63).  
**This point was not addressed in the Minister's response. Such safeguards have not been introduced into the 2019-21 Bill.** It also believed the Welsh Government had not provided information to explain in detail the purposes for which it will use the provisions (conclusion 21). As discussed for Part 2 and 3, the

Minister responded that she intends to provide examples of how the provisions could be used. **Again, these examples have not been provided to date.**

The CCERA Committee highlighted (conclusion 22) the need for cooperation and agreement between the UK nations for animal health standards through an intergovernmental mechanism. As discussed for Part 2, the Minister responded that 'good progress' is being made in developing the common frameworks.

**Discussions around UK common frameworks are ongoing.**

### **Stakeholder evidence on the 2019-21 Bill and CCERA conclusions**

Stakeholders continued calls for the Bill to include safeguards to ensure that food standards are not undercut by imports in any future trade arrangements.

**The Committee concluded 'the Minister should clarify whether she believes the Bill needs to be amended to include safeguards to ensure that market standards in Wales are not undercut by imports in any future trade arrangements. Further, the Minister should provide an update on any discussions she has had with the UK Government on this matter.'**

**The Committee also concluded that 'the Minister should provide an update on progress of developing UK common frameworks in relation to animal health standards.'**

### **Part 5, Schedule 5 – Data protection**

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This part is new from the 2017-19 Bill. It provides a statutory override to specify that any exercise of data by the Welsh Ministers will be done in compliance with the GDPR. These powers reflect those available to the Secretary of State for England under Clause 46 of the Bill.