

Report on the Supplementary Legislative Consent Memorandum for the Agriculture Bill

June 2019



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

An electronic copy of this document can be found on the National Assembly website: **www.assembly.wales/SeneddCCERA**

Copies of this document can also be obtained in accessible formats including Braille, large print, audio or hard copy from:

Climate Change, Environment and Rural Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: **0300 200 6565**

Email: **SeneddCCERA@assembly.wales**

Twitter: **[@SeneddCCERA](https://twitter.com/SeneddCCERA)**

© **National Assembly for Wales Commission Copyright 2019**

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

Report on the Supplementary Legislative Consent Memorandum for the Agriculture Bill

June 2019



About the Committee

The Committee was established on 28 June 2016. Its remit can be found at:
www.assembly.wales/SeneddCCERA

Committee Chair:



Mike Hedges AM

Welsh Labour
Swansea East

Current Committee membership:



Andrew RT Davies AM

Welsh Conservatives
South Wales Central



John Griffiths AM

Welsh Labour
Newport East



Llyr Gruffydd AM

Plaid Cymru
North Wales



Dai Lloyd AM

Plaid Cymru
South Wales West



Jenny Rathbone AM

Welsh Labour
Cardiff Central



Joyce Watson AM

Welsh Labour
Mid and West Wales

The following Member was also a member of the Committee during the scrutiny of the Bill.



Gareth Bennett AM

UKIP Wales
South Wales Central

Contents

Conclusions	5
Introduction	6
1. The Supplementary LCM	7
1. 1. Our approach	7
2. Provisions for which consent is sought	8
2. 1. The red meat levy	8
Background	8
Provision for which consent is sought.....	8
Evidence from stakeholders	9
Our view	10
2. 2. World Trade Organisation provisions	11
Background	11
Our initial conclusions on the WTO provisions.....	12
Update on the WTO provisions.....	12
The Bilateral Agreement	13
Evidence from stakeholders	14
Evidence from the Minister	15
Our view	15
2. 3. Powers in relation to direct payments	16
Background	16
Provisions for which consent is sought	17
Our previous work on the Agriculture Bill	17
Evidence from stakeholders	18
Our view	18
Annex 1	19
Annex 2	21

Conclusions

Conclusion 1. We welcome the inclusion of the red meat levy provisions (new clause 29) in the Bill. 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. Page 11

Conclusion 2. The Welsh Government should seek the UK Government's agreement to amend the Bill to address the Committee's concerns in relation to clause 28..... Page 16

Conclusion 3. We welcome the inclusion of the new provisions in Schedule 3, Part 2 of the Bill, which will enable the continuation of direct payments beyond 2020. Page 18

Recommendation 1. We recommend to the Assembly that it gives consent to the provisions in the UK Agriculture Bill, subject to the conditions set out in our first report. Conclusion 19 in our first report (relating to the World Trade Organisation provisions) has been superseded by conclusion 2 in this report.

If the above conditions cannot be satisfied, we recommend that the Assembly's consent should be limited to Part 8 (Red Meat Levy), and to provisions in Part 2 of Schedule 3 that enable the immediate continuation of financial support after Brexit, until such time that an Agriculture (Wales) Bill can be brought forward.

In such circumstances, we would expect the Welsh Government to bring forward a new Legislative Consent Memorandum.

Introduction

- 1.** This is the Climate Change, Environment and Rural Affairs Committee's (the Committee) second report on the UK Government's Agriculture Bill (the Bill). Our first report on the Legislative Consent Memorandum for the Bill, was published in January 2019. In that report, we recommended that the Assembly gives consent to the provisions in the Bill, subject to a number of conditions.
- 2.** This report sets out our conclusions on the main changes made to the Bill at Committee Stage in the House of Commons for which the Welsh Government is now seeking consent (see Chapter 2). It builds on the conclusions in our first report and should be read in conjunction with that report.
- 3.** The Welsh Government has yet to respond to our first report.

1. The Supplementary LCM

4. During our consideration of the Legislative Consent Memorandum for the Agriculture Bill (the first LCM), the Bill was amended at Committee Stage in the House of Commons. The Minister for Environment, Energy and Rural Affairs (the Minister) informed us that she would lay a Supplementary Legislative Consent Memorandum (Supplementary LCM) at an appropriate time. The Minister laid the Supplementary LCM (Memorandum No.2) for the Agriculture Bill on 26 March 2019.

5. On 2 April, the Business Committee referred the Supplementary LCM to this Committee for consideration and set a reporting deadline of 11 June 2019.

1.1. Our approach

6. We considered the Supplementary LCM at our meetings on 3 April 2019, 8 May 2019 and 6 June. We wrote to relevant stakeholders seeking views on the provisions for which consent is being sought, and on the UK and Welsh Government Bilateral Agreement on World Trade Organisation provisions within the Bill. The responses received, along with evidence we received on the first LCM, informed our consideration of the Supplementary LCM.

7. On 6 March 2019, the Committee heard oral evidence from Hybu Cig Cymru (HCC) as part of a separate inquiry. We took the opportunity to question HCC on the amendments to the Bill relating to the red meat levy (see paragraph 14), for which consent is being sought in the Supplementary LCM.

8. We also wrote to the Minister for further explanation on the approach taken by the Welsh Government to satisfy its concerns on the provisions in relation to the World Trade Organisation's Agreement on Agriculture. A copy of our letter, and of the Minister's response can be found at the end of this report.

2. Provisions for which consent is sought

9. As mentioned, several amendments were made to the Bill during the Commons' Committee Stage which require the Assembly's consent. Details of the substantive amendments, which are of most interest to the Committee, are set out in the remainder of this Chapter. Details of other amendments can be found in paragraphs 20 to 24 of the Supplementary LCM¹.

2.1. The red meat levy

Background

10. The red meat levy is a fee paid by all producers and slaughterers at the point of slaughter (or live export). The levy is paid to the relevant levy board to enable it to meet its expenses in supporting the red meat industry in the country in which the levy is raised.²

11. When the Bill was introduced to Parliament, the Minister expressed disappointment that it failed to address the inadequacies of the current red meat levy system. She explained that further work would be undertaken to secure amendments to the Bill to make provisions for the redistribution of the levy.³

12. The Bill was amended at the Commons' Committee Stage to include such provisions, and the Supplementary LCM seeks consent for them..

Provision for which consent is sought

13. New clause 29 of the Bill (as amendment at Committee Stage in the House of Commons) makes provisions in relation to the red meat levy. It is the Welsh Government's view that these provisions require the Assembly's consent.

14. The Supplementary LCM highlights the problems associated with the current red meat levy system:

“Levies are based on the geographical location of abattoirs rather than the origin of the livestock and do not take into account the trading patterns that exist across GB borders. As a result, the levy paid by

¹ www.assembly.wales/laid%20documents/lcm-ld12461/lcm-ld12461-e.pdf

² The red meat levy boards are: Hybu Cig Cymru (Wales), Agriculture and Horticulture Development Board (England), and Quality Meat Scotland (Scotland).

³ <https://gov.wales/written-statement-introduction-uk-agriculture-bill>

producers who are operating in one part of Britain may be used to fund promotional and developmental activities in another.”⁴

15. New clause 29 (Red meat levy: payments between levy bodies in Great Britain) 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. It is intended that this will 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.

16. The Supplementary LCM explains that the Welsh Government is content the new clause provides appropriate means to resolve the “current anomalies” within the levy system. It goes on to state that the Bill “provides an ideal opportunity to gain the necessary powers to bring forward an appropriate scheme to correct [the current] imbalance”.⁵

Evidence from stakeholders

17. All respondents supported inclusion of new clause 29 as a means of providing a mechanism to ensure that the red meat levy is apportioned in a fairer way.

18. HCC explained the inadequacies of the current methodology of red meat levy apportionment:

“[it] fails to take into account the trading patterns that exist across GB borders. Levy paid by the producers who are breeding, rearing and finishing animals in one country may be used to fund the red meat promotional and developmental activities in another. Furthermore, the system is extremely vulnerable to changes and restructuring within the abattoir sector and the long-term trend has been towards fewer larger abattoirs located more closely to large centres of population.

...each Red Meat Levy Board is accountable both to their respective Ministers and to their levy payers. As a result, the perceived lack of accountability and inequality within red meat levy apportionment, in regard to the benefit levy payers receive when their livestock are

⁴ www.assembly.wales/laid%20documents/lcm-ld12461/lcm-ld12461-e.pdf

⁵ www.assembly.wales/laid%20documents/lcm-ld12461/lcm-ld12461-e.pdf

slaughtered in a different country, is a key consideration for the Red Meat Levy Boards in agreeing a change to the levy system.⁶

19. Gwyn Howells, Chief Executive of HCC welcomed the provisions, which he hoped “will correct the inaccuracy and inequality that Wales has suffered for far too long”.⁷ He explained that the new scheme could result in the repatriation of between £1 million and £1.5 million per annum to Wales, which would be a 40% increase in HCC’s funding.⁸

20. Gwyn Howells told the Committee he hoped the anticipated increase in receipts from the levy would not lead to a reduction in central funding, and emphasised the need for more resources to safeguard existing markets and build new markets for Welsh red meat produce.⁹

21. HCC confirmed it is content with the provisions, as drafted, and sees no reason for further detail to be included in the Bill either in relation to the role of the levy boards in developing the scheme or the matters on which the scheme may make provision.¹⁰

22. HCC explained that the three levy boards are already working on a methodology for future levy distribution and will be presenting an agreed methodology to Ministers in due course.¹¹

Our view

Repatriation of the red meat levy has been a long-standing issue for the red meat sector in Wales, with calls for a fairer system of apportioning the levy for many years. We are therefore pleased that this issue is now being addressed.

We acknowledge that the most effective way to achieve a system which enables the redistribution of the levy across Great Britain is by means of a UK Bill.

We note that the new provisions will give rise to a significant increase in levy receipts. However, it is unclear whether this will result in an increase in funding for HCC and therefore be of practical benefit to the Welsh red meat industry.

⁶ Written evidence, Hybu Cig Cymru

⁷ RoP, para 6, 6 March 2019

⁸ RoP, para 11, 6 March 2019

⁹ RoP, para 70, 6 March 2019

¹⁰ Written evidence, Hybu Cig Cymru

¹¹ Written evidence, Hybu Cig Cymru

Conclusion 1. We welcome the inclusion of the red meat levy provisions (new clause 29) in the Bill. 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.

2. 2. World Trade Organisation provisions

Background

23. In the first LCM¹², the Welsh Government seeks the Assembly's consent for the provisions in the Bill in relation to the World Trade Organisation's Agreement on Agriculture (the WTO provisions). The provisions are contained in clause 28 (previously clause 26) of the Bill.

24. Clause 28 provides powers for the Secretary of State (SoS) to make regulations about securing compliance by the UK with its obligations under the World Trade Organisation's Agreement on Agriculture (WTO AoA). These powers will enable the SoS: to conclusively determine the classification of financial support for the agricultural sector across the UK; to set limits of spending for the whole of the UK; to set individual ceilings of financial support across the devolved administrations; and to create different ceilings across the devolved administrations.

25. The UK Government considers the matters to which the provisions relate to be reserved. As such, it does not consider the Assembly's consent is required.

26. On introduction of the Bill to Parliament, the Minister for Environment, Energy and Rural Affairs stated:

“Welsh Ministers have secured an important agreement from the UK Government to commit in Parliament to consult the Devolved Administrations on WTO-related regulations. We have also agreed to find a process for how such regulations will be brought forward. However, a commitment to consult is insufficient given the importance of this matter. We will therefore continue to work towards an agreement which ensures appropriate engagement with and consideration of the views of Welsh Ministers and other administrations.”¹³

¹² www.assembly.wales/laid%20documents/lcm-ld11765/lcm-ld11765-e.pdf

¹³ <https://gov.wales/written-statement-introduction-uk-agriculture-bill>

Our initial conclusions on the WTO provisions

27. In Chapter 7 of our first report¹⁴, we outlined our concerns about the powers in clause 28, in particular those which would enable the SoS to determine the classification of financial support across the UK, and set limits on levels of domestic support. We concluded that these provisions could restrict the Welsh Government's ability to design future agricultural support schemes that meet the distinct needs of the agriculture sector in Wales.

28. We called on the Welsh Government to pursue an amendment to clause 28, to provide the Welsh Ministers and other devolved administrations with a clear role in determining classification of financial support and spending limits. While an amendment was our preferred course of action, we suggested, as an alternative, a formal, published agreement between the Welsh and UK Governments to address these issues.

Update on the WTO provisions

29. The Supplementary LCM provides an update on the Welsh Government's position in respect of the WTO provisions.¹⁵

30. It explains that the Welsh and UK Governments have agreed a governance mechanism for use of the SoS's powers contained in clause 28, "so that the interests of all parts of the UK are fully taken into account".¹⁶ This governance mechanism has been codified in The UK and Welsh Government Bilateral Agreement on WTO provisions within the Agriculture Bill, March 2019, (the Bilateral Agreement).

31. According to the Supplementary LCM, the Bilateral Agreement provides "strong mechanisms for the Welsh Ministers to exert their views". It goes on to state:

"This is a good outcome providing a strong role and flexibility for the Welsh Ministers following extensive and highly collaborative working between Governments. It provides a valuable model which could be used in other areas where intergovernmental cooperation is needed and demonstrates both governments' commitment to collaboration."¹⁷

¹⁴ www.assembly.wales/laid%20documents/cr-ld12020/cr-ld12020-e.pdf

¹⁵ www.assembly.wales/laid%20documents/lcm-ld12461/lcm-ld12461-e.pdf

¹⁶ www.assembly.wales/laid%20documents/lcm-ld12461/lcm-ld12461-e.pdf

¹⁷ www.assembly.wales/laid%20documents/lcm-ld12461/lcm-ld12461-e.pdf

32. The Supplementary LCM explains that a Bilateral Agreement has now been reached on how the SoS will exercise the powers relating to the WTO provisions. In view of the Bilateral Agreement, the Welsh Government is now content with the WTO provisions.¹⁸

The Bilateral Agreement

33. The Bilateral Agreement sets out the arrangements for making the initial regulations under clause 28:

- Defra officials will share with DA counterparts proposals for regulations to be made under the WTO powers in the Agriculture Act.
- Draft regulations will be presented to the four UK agriculture Ministers with the aim of securing agreement, followed by an exchange of letters. This would provide the opportunity for a devolved administration to set out its position, and for the Defra Secretary of State to explain the reasons for the final form of the regulations and how UK Government has sought to reach agreement.
- Ministers will seek to proceed by agreement but in the event of a dispute, the matter would be escalated in line with the existing MoU governing Intergovernmental relations.
- In the event of a dispute, once all these attempts at resolution have been exhausted, the exchange of letters should be made available to both Houses in advance of the affirmative vote on the regulations under clause 28.¹⁹

34. The second part of the Bilateral Agreement offers a further model for the administrations to use for dealing with decisions related to WTO classifications and on-going operation of regulations under clause 28. In the event consensus cannot be reached through existing dispute resolution mechanisms, issues will be referred to an “expert panel” for independent advice. The purpose of the panel is

¹⁸ www.assembly.wales/laid%20documents/lcm-ld12461/lcm-ld12461-e.pdf

¹⁹ www.gov.uk/government/publications/agriculture-bill-progress-with-devolved-administrations/uk-and-welsh-government-bilateral-agreement-on-wto-provisions-within-the-agriculture-bill

to prepare an independent, expert view on the issue being considered. The SoS should “have regard to” the panel’s advice when making a final decision.²⁰

Evidence from stakeholders

35. NFU Cymru refers to the need for a protocol between Governments to ensure that the UK “remains compliant with its WTO obligations”. It is therefore, “pleased” that the Bilateral Agreement has been reached.²¹

36. Dr Petetin and Dr Dobbs state that the Bilateral Agreement “indicates a step in the right direction for Wales to keep the powers it currently has under the Common Agricultural Policy”. Notwithstanding this, they reiterate the concerns raised in their evidence to inform our first report, and state:

“(i) Clause 28 [of the Bill] still exceeds what is required [to ensure compliance with the WTO Agreement on Agriculture]; (ii) it effectively gives powers to the SoS that currently belong to the devolved administrations; and (iii) the [Bilateral] Agreement does little to effectively ensure that Wales keeps the powers it currently has. To the contrary, Clause 28 indeed leads to a recentralisation of powers as to the financial support for farmers and the design of support schemes across the UK.”²²

37. They also state:

“...overall, the [Bilateral Agreement] is too narrow in scope and ignores key concerns. It is a soft-law instrument by nature and could be modified (or even ignored) by future governments. A potential recentralisation [of powers] cannot be overlooked. The challenge is less what the current UK Government might do now, but what a future UK Government might do in a new context.”²³

²⁰ www.gov.uk/government/publications/agriculture-bill-progress-with-devolved-administrations/uk-and-welsh-government-bilateral-agreement-on-wto-provisions-within-the-agriculture-bill

²¹ Written evidence, NFU Cymru

²² Written evidence, Dr Ludivine Petetin and Dr Mary Dobbs

²³ Written evidence, Dr Ludivine Petetin and Dr Mary Dobbs

Evidence from the Minister

38. In responding to the Committee's concerns that the Bilateral Agreement is insufficiently robust to ensure that the Welsh interest is properly considered and safeguarded, the Minister stated:

"The Agreement sets out a robust process which ensures Welsh interests are properly protected. I can confirm the Agreement I have made with the Secretary of State is far more than a consultation commitment and is based on a requirement to seek to proceed by consensus. Where consensus cannot be reached the Agreement sets out clear and transparent mechanisms which must be used to resolve disagreements...

A mechanism giving the Welsh Ministers a clear role in the classification of financial support is also part of the agreement."

39. We asked the Minister to clarify whether she had pursued with the UK Government an amendment to clause 28 to address the Committee's concerns. She explained that work was underway "on an extensive package to address concerns raised by the Committee in its report on the first LCM", and that "good progress is being made".

Our view

We note the work undertaken by the Welsh and UK Governments to resolve matters in relation to the WTO provisions since we first reported on the Agriculture Bill, and that a Bilateral Agreement between governments has now been published. 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 under clause 38. However, it remains the case that the SoS 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.

The Bilateral Agreement includes a dispute resolution process where agreement cannot be reached on proposed WTO classifications. While this has been strengthened since the draft Bilateral Agreement to include the provision of independent advice from an expert panel, the fact remains that final decisions regarding the classification of domestic support will be made by the SoS.

The Committee has made clear in previous reports that leaving the EU will necessitate new intergovernmental relationships. We have called for a shared governance model, with parity of status for each of the constituent parts of the UK. In doing so, we have emphasised the need for: independent dispute resolution; arbitration and adjudication mechanisms; and transparency and accountability. The model set out in the Bilateral Agreement falls short of this.

As referred to in evidence from stakeholders, regardless of their robustness, Bilateral Agreements such as this are not legally binding. They rely on continuing commitment from, and co-operation between Governments. We therefore question how sustainable these agreements will be.

Moreover, it would appear that there is an increasing reliance on agreements such as these to overcome disagreements between the Welsh and UK Governments on issues around legislative competence. We are concerned about the impact of this on the devolution settlement.

Given the above, we believe that the most appropriate way to address concerns in relation to clause 28 is through an amendment to the Bill. Furthermore, if the UK Government is committed to resolving this matter, we question its reluctance to enshrine the necessary protections in legislation.

Conclusion 2. The Welsh Government should seek the UK Government's agreement to amend the Bill to address the Committee's concerns in relation to clause 28.

2.3. Powers in relation to direct payments

Background

40. In the first LCM²⁴, the Welsh Government seeks the Assembly's consent for Schedule 3 of the Bill (Provisions relating to Wales). Part 2 of Schedule 3 (Financial support after exiting the EU) includes provisions which will enable the Welsh

²⁴ www.assembly.wales/laid%20documents/lcm-ld11765/lcm-ld11765-e.pdf

Ministers to phase out direct payments²⁵ for farmers to make way for new financial support schemes. Part 1 of the Schedule (Financial assistance powers) provides for the establishment and operation of these new schemes.

41. Chapters 2 to 5 of our first report includes further details of, and sets out our views on, the above.²⁶

42. During the Committee Stage in the House of Commons, amendments were made to Part 2 of the Schedule to include new provisions in relation to direct payments. The Supplementary LCM seeks consent for these provisions.

Provisions for which consent is sought

43. Schedule 3, Part 2, new paragraph 7 provides power for the Welsh Ministers to make regulations to reduce the direct payment ceiling for Wales in 2020 by up to 15%. This power will allow the Welsh Ministers to maintain direct payments in 2020 at the same level as in 2019.

44. Schedule 3, Part 2, paragraph 8 provides power for the Welsh Ministers to make regulations to provide for the continuation of the basic payments scheme beyond 2020. This includes a power to prescribe the method by which direct payment ceilings would be determined after 2020.

Our previous work on the Agriculture Bill

45. We considered the above provisions as part of our work on the first LCM. In our report on that LCM, we considered the need for legislation and the approach taken by the Welsh Government to legislate in relation to agricultural support post-Brexit. We concluded that there is a case for legislating “to enable financial support to continue to be provided to the sector under the existing [Common Agricultural Policy] schemes” and that, without legislation, support could not continue beyond 2020.²⁷

46. Given the above, we welcomed the inclusion of new paragraphs 7 and 8.

²⁵ Under the European Union’s Common Agricultural Policy (CAP), farmers receive support in the form of direct payments, mainly based on the area farmed.

²⁶ www.assembly.wales/laid%20documents/cr-ld12020/cr-ld12020-e.pdf

²⁷ www.assembly.wales/laid%20documents/cr-ld12020/cr-ld12020-e.pdf

Evidence from stakeholders

47. Dr Petetin and Dr Dobbs welcome the new powers (new paragraph 7 and 8) as a means of providing “greater flexibility” than the Bill, as introduced, and “greater security”, particularly for small and family farms. Notwithstanding this, they remain concerned about the impact of the proposed approach on farmers.²⁸

48. NFU Cymru welcomes the new power to provide for the continuation of the basic payment scheme (BPS) as a means of offering “additional stability” for the sector. It calls for a commitment from the Welsh Government “to extend the transition period by at least a year for each additional year that the BPS is maintained”.²⁹

49. NFU Cymru does not support the new power to reduce the direct payments ceilings for Wales on the basis that it “[remains] opposed to the concept of diverting money away from direct payments”.³⁰

Our view

We reiterate our support for the new provisions, which will enable the continuation of direct payments to farmers beyond 2020, and until a settled view has been reached on a suitable system of financial support for the agricultural sector post-Brexit. We welcome the certainty that this provides for the sector.

Notwithstanding the above, we reiterate the concerns set out in our first report, that the Bill goes far beyond ensuring the continuation of financial support by enabling the Welsh Ministers to introduce a new, post-Brexit agricultural policy: one which is still being developed, has yet to be costed or tested, and will not be subject to an appropriate level of Assembly scrutiny.

Conclusion 3. We welcome the inclusion of the new provisions in Schedule 3, Part 2 of the Bill, which will enable the continuation of direct payments beyond 2020.

²⁸ Written evidence, Dr Ludvine Petetin and Dr Mary Dobbs

²⁹ Written evidence, NFU Cymru

³⁰ Written evidence, NFU Cymru

Annex 1

Cynulliad Cenedlaethol Cymru

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig

National Assembly for Wales

Climate Change, Environment and Rural Affairs Committee

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

14 May 2019

Dear Lesley

Supplementary Legislative Consent Memorandum for the Agriculture Bill

Thank you for your letter, dated 26 March covering the Supplementary Legislative Consent Memorandum for the Agriculture Bill.

The Committee had an initial discussion on the Supplementary LCM at its meeting on 8 May and agreed I should write seeking further assurances from you in relation to the Secretary of State's powers under **Part 7 of the Bill (World Trade Organisation Agreement on Agriculture)**.

In our report on the first LCM, we raised concern about the powers, in particular those which would enable the Secretary of State to determine the classification of agricultural support across the UK, and set limits on levels of domestic support.

We note the *UK and Welsh Government Bilateral Agreement on WTO provisions within the Agriculture Bill* ('the Agreement'), which sets out the governance mechanism for use of the Secretary of State's powers under Part 7. We remain to be convinced that the Agreement is sufficiently robust to ensure that the Welsh interest is properly considered or safeguarded. **We seek further assurance from you on this matter.** You told this Committee that "a commitment to consult is insufficient given the importance of this matter". However, on the face of it, the Agreement describes a process consisting of the Secretary of State consulting



Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA
SeneddNHAMG@cynulliad.cymru
www.cynulliad.cymru/SeneddNHAMG
0300 200 6565

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA
SeneddCCERA@assembly.wales
www.assembly.wales/SeneddCCERA
0300 200 6565

Welsh Ministers. We would be grateful to know how the agreement ensures an appropriate level of engagement, above and beyond consultation.

In our report, we called for the Welsh Government to pursue with the UK Government an amendment to the WTO provisions, to provide the Welsh Ministers and other devolved administrations with a clear role in determining classification of financial support and spending limits. **We would like you to clarify whether you have pursued this matter with the UK Government, and to provide details of the outcome. If you have not pursued this matter, we would like you to outline your reasons for this.**

Finally, on a related matter, it would be helpful if you could provide an indication of when the Committee can expect a response from the Welsh Government to its report on the first LCM.

As you know, the reporting deadline for reporting on the Supplementary LCM is **11 June**. Given this, I should be grateful if you would respond as soon as possible, and by **24 May**, in order to enable the Committee to take account of your response in its report.

Yours sincerely,



Mike Hedges AM

Chair of Climate Change, Environment and Rural Affairs Committee



Annex 2

Lesley Griffiths AC/AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Mike Hedges AM
Chair of Climate Change, environment and Rural Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

Llywodraeth Cymru
Welsh Government

21

May 2019

Dear Mike

Thank you for your letter of 14th May regarding the Supplementary Legislative Consent Memorandum for the Agriculture Bill. I am pleased to provide the further assurance you seek on the UK and Welsh Government Bilateral Agreement on WTO provisions within the Agriculture Bill (Part 7, WTO Agreement on Agriculture).

The Agreement sets out a robust process which ensures Welsh interests are properly protected. I can confirm the Agreement I have made with the Secretary of State is far more than a consultation commitment and is based on a requirement to seek to proceed by consensus. Where consensus cannot be reached the Agreement sets out clear and transparent mechanisms which must be used to resolve disagreements.

In the case of making regulations under the powers in Part 7, draft regulations will be presented to the Welsh Ministers with the aim of securing agreement, followed by an exchange of letters. This will provide the opportunity for the Welsh Ministers to set out their position, and for the Secretary of State to explain the reasons for the final form of the regulations and how UK Government has sought to reach agreement. Any disagreements would be escalated in line with the existing MoU governing Intergovernmental relations and any future agreements on dispute resolution. In the event of a dispute, once all these attempts at resolution have been exhausted, the exchange of letters should be made available to both Houses of Parliament in advance of the affirmative vote on the regulations required under Part 7.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

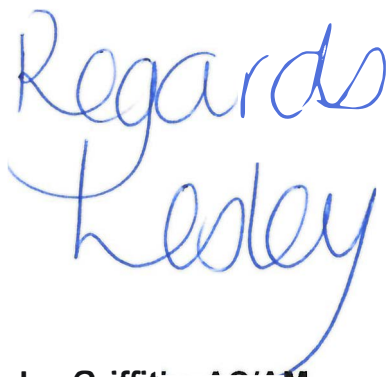
Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

A mechanism giving the Welsh Ministers a clear role in determining the classification of financial support is also part of the Agreement. The Welsh Ministers will propose classifications for support for agricultural producers in Wales, consistent with the regulations made under Part 7 and the detailed process set out in a Memorandum of Understanding on their operation. The proposed classification will be considered by the Secretary of State and the other UK agriculture Ministers. In the event of agreement, the Secretary of State will notify the classification to the WTO. If consensus cannot be reached through existing dispute resolution mechanisms, issues will normally be referred to an expert panel for an independent, expert view on the issue being considered. The Secretary of State is required to have regard to the advice and to share with the Welsh Ministers the advice, the Secretary of State's decision and the reason for the decision.

Officials are working with Defra on an extensive package to address concerns raised by the Committee in its report on the first LCM. I can confirm good progress is being made with this and while I am not in a position to respond formally at this stage will do so soon after the Bill resumes its Parliamentary passage.



Lesley Griffiths ~~AC/AM~~

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