

Report on the Supplementary LCM for the Agriculture Bill

July 2020

Overall recommendation

We note that the Welsh Government has outstanding concerns regarding certain provisions within the UK Agriculture Bill 2019-21. We are therefore not in a position to recommend to the Senedd that it gives consent to the provisions in the Bill.

1. Introduction

1. This is the Climate Change, Environment and Rural Affairs Committee's ('the Committee') second report on the UK Government's Agriculture Bill 2019-21 ('the Bill'). Our first report on the Legislative Consent Memorandum for the Bill, was published in May 2020. In that report, we recommended that the Senedd gives consent to the provisions in Bill, subject to it being satisfied by the Welsh Government's response to each of our recommendations.

2. This report sets out our conclusions on amendments made to the Bill in the House of Commons for which the Welsh Government considers consent is required (see Chapter 2). Clause numbers in this report relate to the version of the Bill as amended at Report Stage in the House of Commons.

3. This report should be read in conjunction with our first report on the Bill and the Welsh Government's response to our recommendations in that report.



The Supplementary LCM

- 4.** The Minister for Environment, Energy and Rural Affairs ('the Minister') laid the Supplementary Legislative Consent Memorandum for the Bill ('the Supplementary LCM') on 11 June 2020.
- 5.** On 15 June 2020, the Business Committee referred the Supplementary LCM to this Committee, and to the Legislation, Justice and Constitution Committee, for consideration and set a reporting deadline of 9 July 2020.

Our approach

- 6.** Given the limited time available within which we had to consider and report on the Supplementary LCM, we were not in a position to take evidence from the Minister.
- 7.** We considered the Supplementary LCM at our meeting on 25 June 2020.

2. Supplementary provisions for which consent is required

8. The Supplementary LCM sets out the changes to the Bill made in the House of Commons for which the Welsh Government considers consent is required. Further details of the changes can be found in paragraphs 12 to 28 of the Supplementary LCM.

The Assembly's name change

9. The Bill has been amended to replace references to the National Assembly for Wales with Senedd Cymru to reflect its recent name change.

Clause 32 (identification and traceability of animals)

10. As originally drafted, Clause 32(2), (3) and (4), which make changes to existing legislative provisions, only applied in relation to England. The Clause has been amended so that the changes now also apply in relation to Wales.

Schedule 5, Part 1: Financial support after exiting the European Union

Paragraph 2 (power to modify legislation governing the basic payment scheme)

11. Paragraph 2 provides powers for the Welsh Ministers to modify certain legislation governing the basic payment scheme.

12. As originally drafted, these powers were available to “simplify or improve” the scheme. Paragraph 2 has now been amended to specify five purposes for which the legislation may be modified. The purposes are:

(a) simplifying the administration of the scheme or otherwise making its operation more efficient or effective;

(b) removing provisions which are spent or of no practical utility;

(c) removing or reducing burdens, or the overall burdens, on persons applying for, or entitled to, direct payments under the scheme or otherwise improving the way that the scheme operates in relation to them;

(d) securing that any sanction or penalty imposed under the scheme is appropriate and proportionate;

(e) limiting the application of the scheme to land in Wales only.

13. Paragraph 2 has also been amended:

- to clarify that the Welsh Ministers may use the powers to terminate greening payments; and
- to define “burden” (as used in paragraph 2).

Paragraph 4 (Other financial support: modification in relation to Wales of general provision connected with payments to farmers and other beneficiaries)

14. Paragraph 4 provides powers for the Welsh Ministers to modify, so far as it operates in relation to Wales, retained direct EU legislation relating to the “financing, management and monitoring of the common agricultural policy”, and subordinate legislation relating to that legislation. It also provides a non-exhaustive list of that legislation.

15. As originally drafted, the powers were available for the purpose of securing that any provision of that legislation ceases to have effect in relation to Wales, or simplifying or improving the operation of the legislation in relation to Wales.

16. Paragraph 4 has now been amended to specify four purposes for which the legislation may be modified. The purposes are:

(a) securing that any provision of the legislation ceases to have effect;

(b) simplifying the operation of any provision of such legislation, or making its operation more efficient or effective;

(c) removing or reducing burdens, or the overall burdens, imposed by such legislation on persons applying for, or in receipt of, payments governed by the legislation, or otherwise improving the way that the legislation operates in relation to such persons;

(d) securing that any sanction or penalty imposed by such legislation is appropriate and proportionate.

17. Paragraph 4 has also been amended:

- to include “legacy regulations” in the non-exhaustive list of the retained direct EU legislation, and to define the term; and
- to define “burden” (as used in paragraph 4).

Paragraph 5 (Support for rural development: modification of legislation in relation to Wales)

- 18.** Paragraph 5 confers powers on the Welsh Ministers to modify “retained direct EU legislation relating to support for rural development” and related subordinate legislation.
- 19.** As originally drafted, these powers could be used to secure that certain legislation ceases to have effect in relation to Wales, or to simplify or improve the operation of that legislation (pending that legislation ceasing to have effect).
- 20.** Paragraph 5 has now been amended:
- 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.

The Welsh Government’s position on the Bill as amended

- 21.** According to the Supplementary LCM, the Welsh Government is content with the amendments to Clause 32 (identification and traceability of animals) and Schedule 5 (Provision relating to Wales).
- 22.** However, it explains there are “outstanding concerns” regarding the Secretary of State’s powers to make subordinate legislation under Clause 32 and Clause 36 and 37 (regulation of organic products) and the absence of appropriate requirements to obtain the Welsh Ministers’ consent in certain circumstances. The Supplementary LCM reports that work is continuing to resolve these issues.

The Welsh Government’s position on consent

- 23.** 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”.
- 24.** 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.”

Our view

We have no objection to the amendments made to the Bill which reflect the recent name change of the Assembly to the Senedd.

While the Supplementary LCM sets out the purpose and effect of the remaining substantive amendments, it does not explain the Welsh Government's rationale for the changes. In particular, it is unclear whether these amendments are as a result of changes in the Welsh Government's position, or some other reason. We would like the Minister to clarify this.

We note the amendments to paragraph 2 and 4 of Schedule 5 as a means of clarifying the purposes for which the powers can be used. However, without a clear explanation about the Welsh Government's policy intentions, it is difficult to establish whether the scope of the powers is appropriately drawn. We reiterate the recommendation we made in our first report, that the Minister should explain how she intends to use the powers provided to the Welsh Ministers in the Bill.

The powers for the Welsh Ministers in paragraph 5 of Schedule 5 are now considerably broader than in the Bill as originally drafted. While regulations made using these powers will now be subject to the affirmative resolution procedure, we believe that further safeguards are necessary to enhance scrutiny. As set out in our first report, we expect the Minister to provide the Committee with draft regulations to be made using powers conferred by Schedule 5 of the Bill.

Further to the above, we seek a commitment from the Minister that any proposals to modify retained EU legislation governing payments to farmers, or relating to support for rural development, will be developed in consultation with the agricultural sector and those representing the interests of rural Wales, as appropriate.

The Welsh Government has indicated that it is not yet in a position to give an unequivocal recommendation that the Senedd gives consent to the Bill. This is due to outstanding concerns in relation to Clause 32, 36 and 37. We would like the Minister to provide an update on progress made in resolving these concerns at the first available opportunity. We expect sufficient time to 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.

Recommendation 1. The Minister must explain the Welsh Government's rationale for the changes to Clause 32 (identification and traceability of animals) and to Schedule 5, Part 1 (Financial support after exiting the European Union). In particular, she should explain whether the amendments are as a result of changes in the Welsh Government's position, or some other reason.

Recommendation 2. The Minister must commit to ensuring that any proposals to modify retained EU legislation governing payments to farmers, or relating to support for rural development, will be developed in consultation with the agricultural sector and those representing the interests of rural Wales, as appropriate.

Recommendation 3. The Minister should provide an update on progress made by the Welsh Government in resolving its outstanding concerns in relation to Clause 32, 36 and 37 of the Bill.