

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No 2) on the Agriculture Bill

July 2020

1. Background

The Bill

1. The UK Government's Agriculture Bill 2019-2021 (the Bill)¹ was introduced to the House of Commons and given its first reading on 16 January 2020. It is sponsored by the Department for Environment, Food and Rural Affairs.
2. The Bill moved to the House of Lords on 18 May. The Second Reading of the Bill took place on 10 June, and Committee Stage began on 7 July.

The Welsh Government's Legislative Consent Memorandum

3. On 12 February 2020 the Welsh Government laid before the Senedd a Legislative Consent Memorandum (LCM) in respect of the Bill.²
4. We reported on the LCM on 14 May 2020 (first report).³ The first report sets out in more detail the background to the Bill, including the Agriculture Bill 2017-

¹ [Agriculture Bill 2019-21](#)

² Welsh Government, [Legislative Consent Memorandum on the Agriculture Bill](#), February 2020

³ Legislation, Justice and Constitution Committee report, [The Welsh Government's Legislative Consent Memorandum on the Agriculture Bill](#), May 2020



19 (the 2017-19 Bill), to which it is similar in a number of respects. The first report also summarises the purpose and extent of the Bill.

5. The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS (the Minister), responded to the first report on 29 June 2020.⁴

The Welsh Government's Supplementary Legislative Consent Memorandum

6. On 11 June 2020, the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum (No. 2) (LCM No 2) in respect of the Bill.⁵

7. The Business Committee agreed that the Legislation, Justice and Constitution Committee (the Committee) and the Climate Change, Environment and Rural Affairs Committee should report on LCM No 2 by 9 July 2020.⁶ The Business Committee subsequently revised the deadline to 24 September 2020.⁷

8. Paragraphs 14 to 28 of LCM No 2 describe the amendments made to the Bill at Commons Committee stage which require the Senedd's consent.

9. Amendments, that are relevant to Wales, devolved competence and therefore LCM No 2, have been made to clauses 31, 32, 37, 47, 48, 50 and 53 of the Bill, and to Schedules 3 and 5 to the Bill.⁸

10. Clause 31, clause 37, clause 47, clause 48, Schedule 3, Part 1 and Schedule 5, Part 2, paragraph 6 have all been amended to reflect the institution's recent change in name from the National Assembly for Wales to Senedd Cymru.

11. 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.

⁴ [Letter from the Minister for Environment, Energy and Rural Affairs](#), 29 June 2020

⁵ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No 2\) on the Agriculture Bill](#), June 2020

⁶ Business Committee, [Timetable for consideration of the Supplementary Legislative Consent Memorandum on the Agriculture Bill](#), June 2020

⁷ Business Committee, [Revised timetable for consideration of the Supplementary Legislative Consent Memorandum on the Agriculture Bill](#), July 2020

⁸ Clause numbers and Schedule references relate to the version of the Bill as amended in the House of Commons Report stage.

- 12.** Paragraphs 2 and 4 of Schedule 5, Part 1, have been amended to include specific purposes for the modification of certain legislation.
- 13.** Paragraph 5 of Schedule 5, Part 1, has been amended to broaden regulation-making powers, allowing retained direct EU legislation relating to support for rural development, and subordinate legislation relating to that legislation, to be modified insofar as it has effect in relation to Wales. It has also been amended to make the regulation powers subject to the affirmative procedure.
- 14.** LCM No 2 sets out the reasons for making the provisions for Wales in the Bill. It states:

“As set out in the first Memorandum, it remains Welsh Government’s intention to publish an Agriculture White Paper before the end of this Senedd term which will build on the proposals set out in the Sustainable Farming and Our Land consultation and lay the groundwork for an Agriculture (Wales) Bill to be introduced in the next Senedd term. The detail of any new scheme is dependent on the outcome of policy and operational decisions which cannot be made until analysis of results from both the consultations and White Papers has been completed, and all relevant considerations are taken into account.

Making provision for Wales in the UK Agriculture Bill will enable the continued provision of existing agricultural subsidies beyond 2020, and ensure the effective operation of agricultural markets following the UK’s departure from the EU.”⁹

- 15.** LCM No 2 concludes:

“This supplementary memorandum describes the relevant changes made to the Bill since introduction requiring Senedd consent. The Welsh Government is generally supportive of the Bill as drafted. It should be noted however, that 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. In the event of future amendments within the legislative competence of the Senedd then further Supplementary Legislative Consent Memoranda will be laid before the Senedd as appropriate, with a recommendation from Welsh

⁹ Welsh Government, Supplementary LCM, paragraphs 30-31

Government in respect of the consent of the Senedd at the appropriate time."¹⁰

2. Committee consideration

16. We considered LCM No 2 at our meeting on 22 June 2020.¹¹ We were not in a position to take evidence from the Minister due to the tight timetable for reporting.

17. We considered the Minister's response to our first report at our meeting on 6 July 2020.¹²

Our view

18. Our report should be read alongside our first report on the Bill, which was published in May 2020.

19. In our first report we noted that the Bill is an important piece of legislation in the context of the UK's exit from the European Union. The recommendations we made in our first report reflect the importance of the Bill as a piece of legislation which will have a significant impact on the agricultural sector in Wales for at least the next three years.

20. While we welcome the fact that the Minister has formally responded to our first report in a timely manner, we are not satisfied with the Minister's response to recommendation 1 in that report.

21. We expect recommendations from this Committee to be either accepted or rejected, with an appropriate accompanying narrative. We do not consider it acceptable to simply note a recommendation. Furthermore, the extent to which the Bill relates to any common framework is not addressed. We asked for an explanation on this point, as well as information clearly identifying the provisions in the Bill that are necessary to achieve that framework. The Minister's response to our first recommendation unfortunately does neither of those things.

¹⁰ Welsh Government, Supplementary LCM, paragraph 36

¹¹ [Legislation, Justice and Constitution Committee, 22 June 2020](#)

¹² [Legislation, Justice and Constitution Committee, 6 July 2020](#)

Recommendation 1. The Minister should revisit recommendation 1 in our first report on the LCM for the Bill and provide an appropriate and full response to the Committee.

22. Recommendation 2 of our first report on the LCM stated:

“The Minister should provide information, in either a supplementary document or within any supplementary LCM, justifying why it is appropriate to take each of the regulation-making powers for the Welsh Ministers contained within the Bill, and the choice of procedure for each regulation-making power.”

23. In making recommendation 2, we acknowledged that recommendations in our report on the first LCM for the 2017-2019 Bill in January 2019¹³ were not met because the Bill fell at dissolution. However, we suggested that the relevant information should have been included in the LCM to accompany the current Bill.

24. We note that in accepting recommendation 2, the Minister has undertaken to provide a “full summary of the Welsh Ministers’ regulation making powers... as part of the Welsh Government’s response to the Committee’s report on the Supplementary LCM laid on 11 June.” We are disappointed that an opportunity has not been taken to include it in LCM No 2, particularly when the motion to debate legislative consent at the time LCM No 2 was published was scheduled for 15 July 2020.

25. We believe the approach the Minister has taken is against the spirit of the Welsh Government’s response of 25 July 2019 to the original recommendations.¹⁴ It is now 18 months since the information was originally requested and we do not understand the delay particularly when, in July 2019 and before the UK general election was called, it was the Welsh Government’s intention to produce this information for the Report Stage of the 2017-2019 Bill.

26. In relation to recommendation 2 of our first report on the LCM, we ask that the Minister ensures that the information requested in that recommendation is included in the summary of the Welsh Ministers’ regulation making powers she refers to in her response.

¹³ Constitutional and Legislative Affairs Committee, The Welsh Government’s Legislative Consent Memorandum on the Agriculture Bill, January 2019

¹⁴ Letter from the Minister for Environment, Energy and Rural Affairs, 25 July 2019, Recommendations 5 to 7

- 27.** This information is important to enable us to perform our scrutiny function and, if necessary, to draw relevant issues to the attention of the Senedd so that all Members can make an informed decision on whether to consent to the UK Parliament granting regulation-making powers to the Welsh Ministers.
- 28.** While we acknowledge the views of the Welsh Government, as set out in LCM No 2, our scrutiny has been limited by the lack of sufficient information in the supplementary LCM.
- 29.** We acknowledge that a number of changes made to clauses 31, 37, 47, 48 of the Bill, and Schedule 3 and 5 to the Bill, reflect our own institutions' change of name from 'National Assembly for Wales' to 'Welsh Parliament/Senedd Cymru'.
- 30.** However, as regards the substantive amendments made to clause 32 and Schedule 5, LCM No 2 does not provide a level of detail which we believe is necessary to understand the full impact of the amendments as they relate to Wales and the powers of the Welsh Ministers.
- 31.** We note that the Welsh Government is content with the amendments tabled by UK Ministers during the Commons Committee and Report stages in respect of clause 32. However, it is not clear to us whether the amendments to clause 32, which extend what was an England-only provision on the identification and traceability of animals to now also apply to Wales, are as a result of changes in the Welsh Government's position. LCM No 2 also provides no detail on whether the amendments were made at the request of the Welsh Government.

Recommendation 2. The Minister should confirm whether the amendments to clause 32 are as a result of changes in the Welsh Government's position on the identification and traceability of animals and whether this led the Minister to request that the clause be amended.

- 32.** Further, consequential changes have been made to clauses 50 and 53 of the Bill, which relate to the commencement of the provisions in clause 32. The LCM is silent on whether the Minister is content with the changes to clauses 50 and 53.
- 33.** Despite being content with the changes made so far to clause 32, we note that LCM No 2 also states that the Minister has outstanding concerns with the clause which relate to the absence of appropriate requirements to obtain the Welsh Ministers' consent in certain circumstances. We acknowledge that the same concerns apply to clauses 36 and 37, and that LCM No 2 states that work to resolve these concerns will continue during the Bill's parliamentary passage.

34. It is not clear whether the action that will be taken to address the Minister's concerns will take the form of legislative or non-legislative solutions. We again repeat our concern at what appears to be an overdependence by both the Welsh and UK governments on the use of intergovernmental agreements to resolve disputes.

35. Moreover, as we have said in other recent reports on LCMs for other Brexit-related UK Bills, the development of non-binding intergovernmental agreements is not an adequate substitute for legislative solutions to the Welsh Ministers' red lines.

Recommendation 3. The Minister should provide the Committee with an update on the progress made in resolving the outstanding concerns in relation to clauses 32, 36 and 37, which should include detail of how the Minister's concerns will be resolved, i.e. whether by means of legislative or non-legislative solutions.

36. We note that Schedule 5 to the Bill has been amended in three areas: provisions relating to the modification of legislation governing the basic payment scheme (paragraph 2); provisions relating to the modification in relation to Wales of general provisions connected with payments to farmers and other beneficiaries (paragraph 4); and provisions relating to the support for rural development (paragraph 5). We also note that the powers within these paragraphs remain subject to the sunset provision in clause 44, and will therefore expire at the end of 2024.

37. Further, we acknowledge that the Welsh Government, as stated in LCM No2, is content with the amendments tabled by UK Ministers to Schedule 5. However, again, LCM No 2 lacks the necessary detail on whether the Minister requested that these changes be made.

Recommendation 4. The Minister should confirm whether the amendments to Schedule 5 were tabled at the request of the Minister.

38. While it may be argued that the amendments made to the powers contained in paragraphs 2 and 4 to Schedule 5 provide a higher level of detail on the face of the Bill, there remains a lack of transparency about their effect and it is not clear to us whether the changes narrow or broaden the powers. We note that LCM No 2 is silent on this matter, which contrasts with the commentary provided for the changes to paragraph 5 of Schedule 5 (discussed further below.)

Recommendation 5. The Minister should provide more detail on the effect of the amendments made to paragraphs 2 and 4 of Schedule 5, specifically as

regards whether the changes amount to a broadening of the regulation-making powers in those paragraphs.

39. As mentioned above in paragraph 38, we note that the amendments made to paragraph 5 of Schedule 5 do broaden the Welsh Minister's regulation making powers. We also acknowledge that regulations made under paragraph 5 will now be subject to the affirmative procedure in the Senedd.

40. In previous reports on the 2017-19 Bill and in our first report on the LCM, we commented on the dispute between the Welsh and UK governments on clauses 40 to 42 of the Bill that relate to the WTO's Agreement on Agriculture.

41. We are aware, from our own analysis of the Annex to the Explanatory Notes to the version of the Bill introduced to the House of Lords, that the UK Government now considers that the Senedd's legislative consent is required for clauses 40 to 42 because the clauses alter the executive competence of the Welsh Ministers.

42. We note the Minister's comments in paragraph 33 of LCM No 2 which indicates that an agreement has been reached with the Secretary of State on the exercise of the regulations-making powers in clauses 40 to 42.

43. However, we would have expected the Minister, in LCM No 2, to make it clear and transparent that the UK Government's position on legislative consent had changed.

Recommendation 6. The Minister should provide detailed information to the Committee on the UK Government's revised position regarding the need for legislative consent for clauses 40 to 42 of the Bill.

Recommendation 7. The Minister should provide the Committee with the detail of the agreement reached with the Secretary of State on the exercise of the regulation-making powers in clauses 40 to 42.

Recommendation 8. The Minister should respond to all recommendations in this report as a matter of urgency and ahead of the Welsh Government tabling a legislative consent motion for the Bill.