

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 3)

Agriculture Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of, the Senedd.
2. The Agriculture Bill (“the Bill”) was introduced in the House of Commons on 16 January 2020 and has completed House of Lords Committee Stage. This Memorandum sets out the relevant amendments to the Bill made during House of Lords Committee stage. The latest version of the Bill, as amended at Committee stage, can be found at:

<https://publications.parliament.uk/pa/bills/lbill/58-01/130/5801130.pdf>

3. The Bill completed its passage through the House of Lords Committee stage on 28 July and will now move to the House of Lords Report stage on a date to be confirmed following Summer recess.

Policy Objective(s)

4. The UK Government’s stated policy objectives are to provide, for England, a new system of paying farmers based on the principle of “public money for public goods” for the next generation of farmers and land managers.
5. The Bill also includes measures to enable the continuity of existing agricultural support and to ensure the effective functioning of the agricultural sector following the departure of the UK from the European Union (EU). In particular, the Bill includes provision to enable payments to continue to be made to farmers with powers to modify Direct Payments and Rural Development, for example, and to intervene in agricultural markets in the event of exceptional market conditions.

Summary of the Bill

6. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.
7. The Bill provides the legal basis, in England, to transition away from the Common Agricultural Policy (CAP) and establish new financial assistance schemes based on the principle of public money for public goods.
8. The Bill also provides powers to enable the continuity of existing agricultural support and to intervene in agricultural markets in the event of exceptional market conditions, as noted above, as well as provisions on the collection and

sharing of data and marketing standards and carcass classification. At the request of the Welsh Government, these powers will be available to the Welsh Ministers in relation to Wales under the provisions of Schedule 5 to the Bill. The provisions in Schedule 5 (and a small number of related provisions) are time-limited to expire at the end of 2024 in accordance with the expiry provision at clause 44 (duration of provision in relation to Wales), as explained at paragraphs 57 and 58 of the Legislative Consent Memorandum laid on 12 February.

9. The Bill also includes provisions that apply in Wales on organic products; the identification and traceability of animals; fair dealing and producer organisations; matters relating to farming and the countryside, including red meat levy redistribution and agricultural tenancy reforms; a requirement for the Secretary of State to report to the UK Parliament on food security; and regulation-making powers for the Secretary of State to secure the UK's compliance with WTO Agreement on Agriculture. These are not subject to the expiry provision (clause 44).
10. The Welsh Government laid a Legislative Consent Memorandum in relation to the Agriculture Bill (as introduced on 16 January 2020) on 12 February 2020 and a Supplementary Legislative Consent Memorandum on 11 June 2020. Those memoranda noted concerns regarding the provisions in the Bill for the identification and traceability of animals (clause 32) and the regulation of organic products (clause 36 and 37). Those concerns related to the absence of appropriate provision requiring the Welsh Ministers' consent when, in certain circumstances, the Secretary of State exercises powers to make subordinate legislation under those provisions.
11. Government amendments to address these concerns were tabled and agreed at the House of Lords Committee Stage and now form part of the Bill.

Supplementary provisions in the Bill for which consent is required

12. Since the publication of the first memorandum and supplementary memorandum, the Bill has been amended during the House of Lords Committee stage.
13. This supplementary memorandum (memorandum no. 3) sets out those changes to the Bill made at House of Lords Committee Stage which require the consent of the Senedd. The first and supplementary memoranda laid respectively on 12 February and 11 June must be considered together with this memorandum (and with any further supplementary memoranda which may be laid before the Senedd to cover any future amendments) when deciding on consent.
14. Consent is required for the following amendments to provisions of the Bill because they make provision with regard to devolved matters. Clause numbers below relate to the version of the Bill ordered to be printed on 28 July 2020 (the version as amended in House of Lords Committee stage).

Clause 32 (identification and traceability of animals)

15. Clause 32(1) inserts a new section 89A into the Natural Environment and Rural Communities Act 2006 (the “NERC Act 2006”). This sets out that the Secretary of State may make or have made an Order establishing a body, and provides that certain functions may be assigned to that body. These may include functions that are exercisable in relation to England, Wales, Northern Ireland or Scotland, and relate to collecting, managing and making available information regarding the identification, movement or health of animals, or the means of identifying animals. Clause 32(1) is amended so as to include further wording within the new section 89A of the NERC Act 2006. The amendments provide that the Secretary of State may only make an order assigning functions under section 87(1)(b) of the NERC Act 2006 with the approval of the Welsh Ministers, if the functions are exercisable in relation to Wales. Similar provision is made about the approval of the relevant devolved administrations in respect of Scotland and Northern Ireland.
16. It is the Welsh Government’s view that this amendment requires consent because it makes provision with regard to devolved matters in so far as it applies to Wales, including agriculture and animal health.

Clauses 36 and 37 (organic products)

17. These clauses are intended to regulate the organic sector. In particular, the clauses confer regulation making powers in respect of the certification of organic products and import and export controls.
18. A new section 37(2) is inserted so that the Secretary of State can only make regulations under section 36 containing provision which could be made under that section by an authority referred to in section 37(1)(b) to (d) with the consent of that authority. This means that the consent of the Welsh Ministers is required for the Secretary of State to make provision by regulations under clause 36 that the Welsh Ministers could make (as determined in this case by reference to the legislative competence of the Senedd (clause 37(1)(c))). There is a consequential amendment to clause 37(1)(a) so that the reference to the Secretary of State making regulations “in any case” is omitted.
19. It is the Welsh Government’s view that these amendments require consent because they make provision with regard to a devolved matter. In particular, these amendments require the Secretary of State to obtain the consent of the Welsh Ministers when making regulations that would be within the Welsh Ministers’ executive competence, determined by reference to the legislative competence of the Senedd.

Clause 42 (Regulations under section 40: classification of domestic support)

20. Clauses 40 to 42 provide the Secretary of State with powers to ensure the UK’s compliance with its obligations under the World Trade Organisation (“WTO”) Agreement on Agriculture.

21. Clause 42 is amended to omit clause 42(4) and (5). Clause 42(4) specifically provided that the Secretary of State's regulation making powers under section 40 includes powers to require the Welsh Ministers (and the Scottish Ministers or a Northern Ireland department) to provide information to the Secretary of State. Clause 42(5) provided detail of the information that may be required, including time periods within which information must be provided. Minor consequential amendments are made to the heading to clause 42 and to the reference to the heading of clause 42 at clause 40(2)(b).
22. It is the Welsh Government's view that these amendments require consent because they make provision with regard to devolved matters, insofar as they apply to Wales, on the basis they make provision "Observing and implementing international law", which is an exception to the "international affairs" reservation.
23. Although these amendments remove the specific powers at clause 42 to require information, it may still be possible for the Secretary of State to make some provision about the sharing of information under the broad regulation making powers available to the Secretary of State under section 40.

Clause 53 (commencement)

24. Clause 53 provides for commencement. A new clause 53(1) provides that regulation-making powers conferred by Parts 1 to 7 of the Bill are commenced on the day the Act is passed. That includes relevant provisions in the Schedules introduced by clauses in those Parts (that is Schedules 1 to 6). Modifications to legislation that confer a power to make regulations or a power to make an order by statutory instrument are also commenced on the day the Act is passed, as are other provisions insofar as they affect the exercise of these powers (for example, by defining an expression used in the provision conferring it). It remains the case that Part 8, apart from section 49 and Schedule 7, commence on the day the Act is passed.
25. Consequential amendments are made to subsections (2) to (4), which provide the Secretary of State, the Welsh Ministers and DAERA with powers to commence by regulations certain provisions. Subsections (2) to (4) are each amended to exclude from those commencement powers those provisions listed in subsections (2) to (4) to the extent they are commenced by the new clause 53(1). Consequently, the Welsh Ministers will no longer be able to commence the provisions listed at clause 53(3)(a) to (c) insofar as they are commenced under clause 53(1).
26. Provisions commenced in their entirety by the new subsection (1) are omitted from subsections (2) to (4). In particular, paragraph 17 of Schedule 3 and Part 4 of Schedule 5 are omitted from the Welsh Ministers' powers to commence by regulations under subsection (3), as they will now commence under subsection (1).

27. The Welsh Government is of the view that these amendments require consent because they make provision with regard to devolved matters to the extent they relate to devolved regulation-making or order-making powers in the Bill.

Powers to create subordinate legislation

28. The Annex describes a list of regulation-making powers conferred on the Welsh Ministers, updated slightly from the Supplementary Memorandum laid on 11 June to take account of amendments made at House of Lords Committee stage as described in this Memorandum. 'Affirmative resolution procedure' and 'negative resolution procedure' are defined in clause 47(6)(c) and (7)(c) of the Bill respectively as those terms apply to subordinate legislation made by the Welsh Ministers under the Bill.

Reasons for making these provisions for Wales in the Agriculture Bill

29. As set out in the first Memorandum and reaffirmed in the Minister for Environment, Energy and Rural Affairs' oral statement to the Senedd on 8 July, it is the Welsh Government's intention to publish a White Paper before the end of 2020 which will set out the scope of an Agriculture (Wales) Bill to be introduced in the next Senedd term (2021/22).

30. The detail of any new proposal is dependent on the outcome of policy and operational decisions which cannot be made until analysis of responses from both the SFaOL consultation and the White Paper has been completed and all relevant considerations are taken into account.

31. 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.

Welsh Government's position on the Bill as amended

32. The Welsh Government is content with the amendments tabled by UK Government Ministers during House of Lords Committee Stage in respect of the amendments to clause 32 (identification and traceability of animals), clause 37 (Organic products: supplementary), clause 42 (Regulations under section 40: classification of domestic support) and clause 53 (commencement).

33. The Welsh Government's consent to the creation of concurrent functions in UK SIs and UK Bills has always been underpinned by a commitment from the Office of the Secretary of State for Wales (OSSfW) to bring forward a section 109 Order to ensure that the Senedd could in future remove these functions without having to secure Minister of the Crown consent.

34. The Welsh Government remains content with the provisions in respect of the WTO Agreement on Agriculture in view of the agreement reached with the

Secretary of State on the exercise of those regulation making powers. The UK Government has also committed to enshrining the commitments of the bi-lateral agreement between the Welsh and UK governments in a concordat to be developed between the governments of all four nations, which will sit alongside the regulations to be made under Part 6 of the Bill.

35. Any further changes made to the Bill as it progresses through the House of Lords which require memoranda, will be laid before the Senedd as appropriate. A final recommendation in respect of the Senedd's consent will be provided once all amendments to the Bill have been made.

Financial implications

36. There are no direct financial implications for the Welsh Government or the Senedd as a result of taking these powers in this Bill.

Conclusion

37. This supplementary memorandum describes the relevant changes made to the Bill at the House of Lords Committee Stage which require the consent of the Senedd. 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 House of Lords' amending stages. In the event of future amendments making provision with regard to devolved matters, further supplementary legislative consent memoranda will be laid before the Senedd as appropriate, with a recommendation from the Welsh Government in respect of the consent of the Senedd at the appropriate time.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
September 2020

Annex

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM No 3): AGRICULTURE BILL – CONSOLIDATED LIST OF PROVISIONS WHICH CONTAIN POWERS FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION AS AMENDED AT HOUSE OF LORDS COMMITTEE STAGE

<u>Bill provision</u>	<u>Description of Power</u>	<u>Legislative procedure</u>
31 (fertilisers)	Clause 31(4) amends section 74A of the Agriculture Act 1970 and allows for regulations made by the Welsh Ministers in relation to Wales (and the Secretary of State, Scottish Ministers and a Northern Ireland Department in respect of other parts of the UK) to set out an assessment, monitoring and enforcement regime for ensuring the compliance of fertilisers with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers.	The first regulations made by the Welsh Ministers under section 74A(1A) to (1E) of the Agriculture Act 1970 are subject to the affirmative resolution procedure. Subsequent regulations made by the Welsh Ministers, under section 74A(1A)(b) (conferring on a public authority functions relating to market surveillance and regulation) or (1E)(a)(i) or (ii) (amending and repealing retained EU law relating to fertilisers) are also subject to the affirmative resolution procedure (clause 31(5), amending section 84 of the Agriculture Act 1970). Otherwise the negative resolution procedure applies (see section 84(2), Agriculture Act 1970).
33 (red meat levy)	Powers for the Welsh Ministers (acting jointly with the Secretary of State and/or the Scottish Ministers) to make a scheme to make provision for amounts of red meat levy collected by the levy body for one country in Great Britain to be paid to the levy body for another such country.	No procedure
36 and 37 (organic products)	Powers for the Welsh Ministers in respect of the certification of organic products and import and export controls (if and to the extent that provision made by the regulations would be within the legislative competence of the Senedd if contained in an Act of the Senedd (ignoring any requirement for the consent of any person) (clause 37(1)(c)).	Affirmative resolution procedure where— (a) the regulations are made under section 36(1) and contain provision referred to in section 36(3), or (b) the regulations are made under subsection (1), (5) or (7) of section 36 and they are the first regulations to be made under that subsection by the authority making them. Otherwise, regulations under clause 36 are subject to

		negative resolution procedure (unless section 47(5) applies, in which case affirmative resolution procedure).
44 (duration of provision in relation to Wales)	Powers for the Welsh Ministers to make transitional, transitory or saving provision in connection with this section.	Regulations under this clause which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure. Other regulations under this clause are subject to negative resolution procedure.
50(1) (consequential etc. provision)	The appropriate authority may by regulations make supplementary, incidental or consequential provision in connection with any provision of this Act. The Welsh Ministers are the appropriate authority, for provision in connection with— (i) section 32(3) and (4), so far as relating to Wales, (ii) clause 43 and Schedule 5, (iii) clause 44, and (iv) clause 49 and Schedule 7 so far as they apply in relation to Wales.	Regulations under section 50(1) which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure. Other regulations under subsection (1) are subject to negative resolution procedure.
50(5) (consequential etc. provision)	The appropriate authority may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of the Act. The Welsh Ministers are the appropriate authority, for provision in connection with— (i) section 32(3) and (4), so far as relating to Wales, (ii) clause 43 and Schedule 5, (iii) clause 44, and (iv) clause 49 and Schedule 7 so far as they apply in relation to Wales.	No procedure
53(3) (commencement)	Powers, so far as not brought into force by subsection (1)(a) or (b), for the Welsh Ministers, by regulations made by statutory instrument to appoint— (a) so far as relating to Wales— (i) section 32(3) and (4), (ii) paragraphs 10 to 16 and 18 of Schedule 3, and (iii) section 34 so far as relating to those paragraphs, (b) Part 2 of Schedule 5, and section 43 so far as relating to that Part, and (c) Parts 2 and 4 of Schedule 7, and section 49 so far as relating to those Parts.	No procedure
Schedule 3, para 6(7)	Powers for the Welsh Ministers by regulations made in a statutory instrument to amend section 84 of the Agricultural Holdings Act 1986 so as to- a) include a person in, or remove a person	Negative procedure

	from, the definition of “professional authority”; b) reflect changes in the name or internal organisation of any body mentioned in that definition.	
Schedule 3, para 7	Powers for the Welsh Ministers by regulations to make provision for the tenant of an agricultural holding to refer for arbitration requests made by the tenant for landlord's consent or variation of terms	Negative procedure
Schedule 3, para 17	Paragraph 17 amends section 39(8) of the Agricultural Holdings Act 1986 to confer a power on the Welsh Ministers, in relation to Wales, to make regulations specifying the criteria that must be considered when determining a person's suitability to become a tenant of the holding.	Negative procedure
Sch 5, para 2(1)	Powers for the Welsh Ministers to modify legislation governing the basic payment scheme	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 3(1)	Powers for the Welsh Ministers to provide for the continuation of the basic payment scheme beyond 2020, including power to provide for the direct payments ceiling for Wales to be made by Welsh Ministers	Affirmative resolution procedure
Sch 5, para 4(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation.	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 5(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation.	Affirmative resolution procedure
Sch 5, para 8(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for the purposes of altering the operation of provisions of such legislation, so far as they have effect in relation to Wales in connection with exceptional market conditions which are the subject of a declaration under paragraph 6 of Schedule 5 (declaration relating to exceptional market conditions).	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 8(2)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for specified purposes	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 9(2)	Powers for the Welsh Ministers to make regulations requiring persons in or closely connected with an agri-food supply chain to provide information about matters connected with any of the person's activities connected with the supply chain so far as the activities are in Wales.	Affirmative resolution procedure
Sch 5, para 14(1)	Powers for the Welsh Ministers to make	Affirmative resolution

	provision for enforcement of a requirement imposed under paragraph 9(1) or (2) of Schedule 5 (agri-food supply chains: requirement to provide information)	procedure
Sch 5, para 15(1)	Powers for the Welsh Ministers by regulations, in relation to products which fall within a specified sector and are marketed in Wales, to make provisions about the standards with which those products must conform	Affirmative resolution procedure
Sch 5, para 16(3)	Powers for the Welsh Ministers to amend paragraphs 15 and 16 for or in connection with the purpose of— (a) adding or removing an agricultural product from paragraph 16(1); (b) altering the description of an agricultural product in paragraph 16(1).	Affirmative resolution procedure
Sch 5, para 17(1)	Powers for the Welsh Ministers to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales	Affirmative resolution procedure