

Report on the Food (Wales) Bill

May 2023



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About the Committee

The Committee was established on 26 May 2021. Its remit can be found at www.senedd.wales/SeneddLJC

Current Committee membership:



**Committee Chair:
Huw Irranca-Davies MS**
Welsh Labour



Alun Davies MS
Welsh Labour



James Evans MS
Welsh Conservatives



Peredur Owen Griffiths MS
Plaid Cymru

The following Member attended as a substitute during the scrutiny of the Bill.



Sioned Williams MS
Plaid Cymru

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1. Introduction

On 12 December 2022, the Food (Wales) Bill (the Bill)¹ was introduced by Peter Fox MS (the Member in charge). He also laid an accompanying Explanatory Memorandum (the EM).²

1. The Business Committee referred the Bill to the Economy, Trade, and Rural Affairs (ETRA) Committee on 29 November 2022, and on 13 December 2022 set a deadline of 28 April 2023 for reporting on its general principles.³ On 14 February 2023, the Business Committee extended the reporting deadline to 12 May 2023.
2. In December 2022, the Member in charge issued a statement of policy intent for subordinate legislation to be made under the Bill.⁴

The purpose of the Bill

3. According to its long title, the Bill makes provision:
 - to place a duty upon public bodies in respect of food goals;
 - to set targets in respect of food goals;
 - to establish the Welsh Food Commission;
 - to require a national food strategy and local food plans; and
 - for connected purposes.

¹ Food (Wales) Bill, as introduced

² Food (Wales) Bill, Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes, December 2022

³ Business Committee, Timetable for consideration: The Health Service Procurement (Wales) Bill, February 2023

⁴ Food (Wales) Bill: Statement of policy intent for subordinate legislation to be made under this Bill, December 2022

Background

4. Standing Order 26.87 provides that, from time to time, the Llywydd must hold a ballot to determine the name of a Member, other than a member of the government, who may seek agreement to introduce a Bill (a Member Bill).⁵

5. On 22 September 2021, the Llywydd held the first Member Bill ballot of the sixth Senedd, in which the Member in charge's proposal for a Food (Wales) Bill was successful.⁶

6. The pre-ballot information the Member in charge provided set out the policy objectives of the proposed Bill as follows:

*"The purpose of the Bill is to establish a more sustainable food system in Wales to strengthen food security, improve Wales' socioeconomic well-being, and enhance consumer choice."*⁷

7. The pre-ballot information stated that the proposed Bill would also aim to:

- place a duty on Welsh Ministers to produce an annual Food Strategy;
- establish a Wales Food Commission;
- require local authorities and other public services to develop community food plans;
- require Welsh Ministers to report annually on levels of food production, and to develop a set of related indicators;
- mandate supermarkets and other relevant shops to donate unwanted food to charities and food banks; and
- strengthen statutory requirements on food labelling.⁸

8. On 27 October 2021, in accordance with Standing Order 26.91A, the Member in charge laid an Explanatory Memorandum for the proposed Bill. He stated within the Explanatory Memorandum that "a number of organisations and individuals with an interest in the food system" had shown interest and support

⁵ See the [Guide to the Member Bill Process](#), published in September 2021, for further information about the Member Bill procedure.

⁶ Plenary, [21 September 2021](#)

⁷ Senedd Cymru, [Tabled Proposals for a Member Bill: Proposal 018 – Peter Fox MS](#), 6 September 2021

⁸ Senedd Cymru, [Tabled Proposals for a Member Bill: Proposal 018 – Peter Fox MS](#), 6 September 2021

for the Bill's overall principles and policy objectives, and there was also "cross-party support" for the proposals, "with Members of the Senedd from different political parties indicating their personal and political support for the overarching aims of the Bill."⁹

9. On 17 November 2021, the Member in charge obtained the Senedd's agreement to introduce the Bill.¹⁰ During the debate on the motion to seek the Senedd's agreement, the Minister for Rural Affairs and North Wales, and Trefnydd (the Minister) spoke on behalf of the Welsh Government and said that she was unable to support the Bill as proposed.¹¹

The Committee's remit

10. The remit of the Legislation, Justice and Constitution Committee is to carry out the functions of the responsible committee set out in Standing Orders 21 and 26C. The Committee may also consider any matter relating to legislation, devolution, the constitution, justice, and external affairs, within or relating to the competence of the Senedd or the Welsh Ministers, including the quality of legislation.

11. In our scrutiny of Bills introduced into the Senedd, our approach is to consider:

- matters relating to the competence of the Senedd, including compatibility with the European Convention on Human Rights (ECHR);
- the balance between the information that is included on the face of the Bill and that which is left to subordinate legislation;
- whether an appropriate legislative procedure has been chosen, in relation to the granting of powers to the Welsh Ministers, to make subordinate legislation;
- any other matter we consider relevant to the quality of legislation.

12. We took evidence from the Minister, in respect of the Bill, on 23 January 2023.¹²

⁹ Explanatory Memorandum: The Food (Wales) Bill, October 2021

¹⁰ Plenary, 17 November 2021, Record of Proceedings, item 7

¹¹ Plenary, 17 November 2021, RoP [255]

¹² LJC Committee, 23 January 2023, Record of Proceedings

13. The Member in charge wrote to us on 25 January 2023 to respond to issues raised by the Minister in her oral evidence.¹³

14. We took evidence from the Member in charge on 30 January 2023.¹⁴ Following the evidence session, we wrote to him on 16 February 2023 with a series of additional questions in relation to the Bill.¹⁵ The Member in charge responded on 8 March 2023.¹⁶

¹³ [Letter from Peter Fox MS, 25 January 2023](#)

¹⁴ LJC Committee, [30 January 2023](#), Record of Proceedings

¹⁵ [Letter to Peter Fox MS, 16 February 2023](#)

¹⁶ [Letter from Peter Fox MS, 8 March 2023](#)

2. Legislative competence

The Member in charge is satisfied that the Bill would be within the legislative competence of the Senedd.¹⁷

General

15. We considered the Bill under the reserved powers model of legislative competence, as set out in section 108A of the *Government of Wales Act 2006* (the 2006 Act).

16. The Llywydd, Elin Jones MS, stated that the Bill as introduced would be within the legislative competence of the Senedd.¹⁸

17. The Member in charge confirmed in oral evidence that he was satisfied the Bill is within the Senedd's legislative competence.¹⁹

18. Although the Minister stated that she believed the issue of whether the Bill is within legislative competence was a matter for the Member in charge and the Llywydd to consider, she said:

*"In general, I would say that, yes, I think [the Bill] falls within legislative competence, but I wouldn't say we've gone into it very deeply."*²⁰

Human rights

19. One of the requirements which must be met for a Bill to be within the legislative competence of the Senedd is set out in section 108A(2)(e) of the 2006 Act and requires all provisions of a Bill to be compatible with the ECHR.

20. The Minister told us that it she viewed it as a matter for the Member in charge and the Llywydd to conclude whether the Bill raised any human rights issues, although she had "not had anything flagged up".²¹

¹⁷ EM, Member's Declaration, page 1

¹⁸ Senedd Cymru, *Food (Wales) Bill: Presiding Officer's Statement on Legislative Competence*, 12 December 2022

¹⁹ LJC Committee, 30 January 2023, RoP [55]

²⁰ LJC Committee, 23 January 2023, RoP [29]

²¹ LJC Committee, 23 January 2023, RoP [57]

Our view

21. We note the evidence in relation to matters of legislative competence from the Member in charge, and the Minister's comments in relation to those matters. We also note the Llywydd's statement that, in her view, the provisions in the Bill would be within the legislative competence of the Senedd.

22. With regard to any potential human rights implications of the Bill, we note the evidence we received with regard to the Bill's compatibility with human rights.

3. General observations

Consultation ahead of the Bill's introduction

23. On 18 July 2022, the Member in charge issued a consultation on a draft version of the Bill.²² Not dissimilar to the Bill as introduced, the draft Bill included provision:

- to place a duty upon public bodies in respect of food goals;
- to set targets in respect of food goals;
- to establish the Welsh Food Commission;
- to require a national food strategy and local food plans; and
- for connected purposes.

24. Within the consultation document accompanying the draft Bill, the Member in charge stated that during its development he had “held discussion and initial consultation with key stakeholders, and the public” and “engaged with the Welsh Government and political colleagues in the Senedd.”²³

25. In October 2022, the Member in charge published a summary of the responses received to the consultation on the draft Bill, which noted that there was “strong support” for the draft Bill’s main features.²⁴

Engagement with the Welsh Government

26. We asked the Member in charge about the level of engagement that he had with the Minister during the Bill’s development. He told us:

“Engagement opportunities with the Minister for this have taken three occasions. The first occasion was the initial overview, just after we took it, 13 months ago. The Minister made it very clear to me at that point that she didn’t want to introduce legislation for legislation’s sake and she didn’t believe there was any need for this and it could be done with her

²² Senedd Cymru, [Consultation: Development of the Food \(Wales\) Bill](#), July 2022

²³ Senedd Cymru, [Consultation: Development of the Food \(Wales\) Bill: Consultation Document](#), July 2022, page 3

²⁴ Senedd Cymru, [Consultation: Development of the Food \(Wales\) Bill: Summary of consultation responses](#), October 2022

existing legislative framework ... Then, I think we met a follow-up time ... And Lesley [the Minister] was trying to understand a little bit more about what we were trying to do, but expressed her main sticking concerns were with the idea of a commission. ... Cefin [Campbell, Plaid Cymru designated member for the Co-operation Agreement] joined us on the third occasion. Again, the Minister wanted to understand further, and this is where we referred a little bit to the proposal for a community food strategy.

... what we haven't had, which I think I'm slightly disappointed in, is that Government and officials didn't say ... I haven't had an opportunity to sit down and say, 'Look, are there elements of this Bill that might be more conducive to your thinking? Where are things that we could do differently that might make a way forward for you?' Not once have I been offered that opportunity. It's almost, 'This isn't going to happen whatever you decide'.²⁵

27. We also asked the Minister to share her perspectives on her engagement with the Member in charge:

"I've met with him several times and officials have met with him several times to try and flesh out, I suppose, what he wanted. ... I think [the Bill] has changed a lot since Peter Fox first introduced this Bill into the Senedd. I think in the beginning, it was perhaps very vague, and it was trying to find out exactly what he wanted. I'm not sure we've been able to agree on many things, unfortunately, going forward. I don't know whose fault that is, but I've certainly had the opportunity and given Peter Fox the opportunity to try and work with him."²⁶

28. The Minister also told us that she and her officials had not “done a huge amount” to seek to shape and amend the Bill during its development, for the following reason:

"I think a lot of what Peter wants now is based on the Good Food Nation (Scotland) Act 2022. And again, because we've got the Well-being of Future Generations (Wales) Act 2015 here in Wales, and Scotland have got nothing—not many countries have got anything very similar to the well-being of future

²⁵ LJC Committee, 30 January 2023, RoP [75, 77, 83–84]

²⁶ LJC Committee, 23 January 2023, RoP [26]

generations Act ... you're trying to put a round peg into a square hole, really, because the legislation is so different."²⁷

29. The Member in charge, however, disputed the Minister's claim that the Bill is based on the *Good Food Nation (Scotland) Act 2022*:

"In short – this is simply not the case. You only have to compare the text of the Food Bill against the provisions of the Good Food Nation (Scotland) Act 2022 ("the Scottish Act") to see that while they cover similar issues they have been drafted in very different ways, and include clearly different provisions.

A prime example of this is the inclusion of food goals in the Bill, which are not included in the Scottish Act. The Minister is correct in her assertion that the legislative framework that we work in in Wales is different to that in Scotland. It is also fair to say, as can be seen from the inclusion of overarching food goals, that it is the Government's own Well-being of Future Generations (Wales) Act 2015 that influenced the development of the Food Bill more than the Scottish Act.

The timing of both Bills would also have made it very difficult for the Food Bill to be based on the Scottish Act. The Good Food Nation (Scotland) Bill, was introduced to the Scottish Parliament on 7 October 2021. My initial proposal (including the call for the Food Commission and food strategies) was submitted to the Senedd's ballot process several months before that Bill was introduced."²⁸

30. Finally, the Member in charge stated the following in respect of the Minister's engagement with the detail of the Bill:

*"... it was disappointing that there appeared to be a lack of engagement on the detail of the Bill by the Minister. While I fully appreciate that this is 'not her Bill' the Food Bill will have major implications for Welsh Ministers if it was successful in securing the support of the Senedd to become an Act of Senedd Cymru."*²⁹

²⁷ LJC Committee, 23 January 2023, RoP [27]

²⁸ Letter from Peter Fox MS, 25 January 2023, page 2

²⁹ Letter from Peter Fox MS, 25 January 2023, page 4

Need for the legislation

31. The Member in charge states in the EM that a “strengthened statutory platform for the Welsh food system is needed to help it better meet the needs of, and challenges facing, communities across the country”,³⁰ for reasons which include the following:

- the Welsh Government’s policy relating to food is not “joined up”;³¹
- a “general lack of scrutiny” of food policy exists;³²
- public bodies have “very different and inconsistent attitudes towards food policy” in their remit;³³
- the Welsh Government’s food plans “focus on different things, resulting in confusion between policy aims”;³⁴
- detail of the Welsh Government’s proposals to introduce a Community Food Strategy has not yet been published, and the timings of its implementation are not known;³⁵
- the Welsh Government’s vision for food production “focuses on food manufacturing and processing and does not provide the overarching approach needed for the food system as a whole”;³⁶ and
- issues surrounding food security require the creation of a framework to consider them together within the Welsh context.³⁷

32. We asked the Member in charge to justify the need for the Bill. He told us:

“Many stakeholders, over the months we talked to them through the consultation process, have highlighted how there is a lack of scrutiny of policy on the wider food system in Wales, meaning that policy is generally not being consistently designed to meet the challenges of today and tomorrow. ...

³⁰ EM, paragraph 16

³¹ EM, paragraph 17

³² EM, paragraph 18

³³ EM, paragraph 19

³⁴ EM, paragraph 24

³⁵ EM, paragraph 33

³⁶ EM, paragraph 46

³⁷ EM, paragraph 58

Also, it's been found that there's a very inconsistent approach in certain policy areas relating to food across the piece, without any formal regulation over the top of them. So, some public bodies will interpret rules or legislation in different ways, or strategies in different ways, and there's an inconsistent approach to how food policy is generated or adhered to. That leads to weaknesses. You've not got a consistent approach across the piste, and you're not moving towards a robust, joined-up food system.

So, there's a very patchy policy framework, we believe, as it currently is, that doesn't join up the dots. There are some great bits of legislation that have been developed. They sometimes contradict themselves, don't necessarily talk to each other, but they certainly don't talk to a wider overarching food perspective that drives us towards that sustainable food system and ensures food security.”³⁸

33. The Member in charge provided further detail on the current legislative landscape which the Bill seeks to improve upon:

“... you've obviously got the Agriculture Act 2020, you've got the sustainable farming scheme, which is coming in to align with that, you've got the environmental Bill, you've got the Social Partnership and Public Procurement (Wales) Bill, you've got various strategies—all of these things. ... what was coming back as a recurrent theme from many of the people we talked to was that, often, legislation is developed in this place in silos. It's got a portfolio mentality that addresses its current thinking, but what it doesn't have is an overarching goal to align to. ... there are some examples of where there is non-alignment between strategy on food and drink and things like that, whereas you would hope that, whilst each piece of legislation has got good intention, it would have some synergy with other bits of legislation so that it delivers a wider goal and it doesn't compete or have different interpretations or a lack of clarity.”³⁹

34. However, the Minister does not see a need for the Bill. In her view:

³⁸ LJC Committee, 30 January 2023, RoP [8-10]

³⁹ LJC Committee, 30 January 2023, RoP [40]

“I don't think the legislation is necessary. There are some very complex issues about food. ... the Bill that's now been brought forward—which I think has changed quite a lot since Peter first brought it to the attention of the Senedd—doesn't really provide the solutions to the many complex issues that have been mentioned in the explanatory memorandum that's come forward with the Bill.”⁴⁰

35. The Member in charge disputed the Minister's claim that the Bill had changed significantly during its development:

“... the only substantial difference between the Bill as introduced and the proposal put forward to the Senedd, and agreed on 17 November 2021, is the inclusion of the Food Goals and associated targets. As the Food Goals themselves provide a mechanism for helping achieve the Bill's policy objectives, I do not believe this is a divergence from the policy objectives originally set out.”⁴¹

36. The Minister also told us that, within the Bill and its supporting documentation, there is “no examination of whether there are ways to improve planning or co-ordination through the existing mechanisms that we have under the existing powers and legislative framework.”⁴²

37. In addition, the Minister stated that:

- if the Bill was passed, “the duties that would follow would take up considerable resources” and would add “another layer of bureaucracy”;⁴³
- the Welsh Government had “already got many policies and strategies in place”, in addition to objective included within the Agriculture Bill to produce food in a sustainable manner;⁴⁴
- it was unclear to her “how this Bill will give us food security”, and that the policy “has to be done at a UK level”, although she had “done a huge amount of work on food security”.⁴⁵

⁴⁰ LJC Committee, 23 January 2023, RoP [7]

⁴¹ Letter from Peter Fox MS, 25 January 2023, pages 1-2

⁴² LJC Committee, 23 January 2023, RoP [11]

⁴³ LJC Committee, 23 January 2023, RoP [21]

⁴⁴ LJC Committee, 23 January 2023, RoP [65]

⁴⁵ LJC Committee, 23 January 2023, RoP [123]

38. In evidence to the ETRA Committee, Food Sense Wales stated that the Bill is “essential to bring about coherent and comprehensive food policy”.⁴⁶ When we invited the Minister to respond to this statement, she said:

“... it’s really disappointing that Food Sense Wales haven’t understood the relevance of the policy framework that we already have with the Well-being of Future Generations (Wales) Act 2015. I think, for me, that’s the big disappointment, really. We’ve already got that policy framework with the Act, and I think it’s a real missed opportunity for them to bring forward, again, solutions and ways of working with the current legislation, with our current policies, with the current framework, because we do have that well-being of future generations Act. Everything that we do, we have to do it through the lens of the Act, and I think they’ve missed a real opportunity there.”⁴⁷

The Welsh Government’s proposed community food strategy

39. In November 2021, as part of their Co-operation Agreement, the Welsh Government and Plaid Cymru committed to “work together to develop a Wales Community Food Strategy to encourage the supply of locally sourced food in Wales.”⁴⁸

40. In March 2022, the Minister told the Senedd that the Welsh Government would wish to incorporate the Member in charge’s “ideas” in respect of the Bill into the community food strategy.⁴⁹

41. As the Member in charge states in the EM, the Minister provided further detail on the proposed content of the strategy in June 2022:

“Welsh Government policy is to develop local networks and supply chain clusters where doing so is sustainable in the long term. ... The Community Food Strategy is an opportunity to further this work and facilitate grass roots activity also.”⁵⁰

⁴⁶ ETRA Committee, 19 January 2023, [Evidence paper – Food Sense Wales](#)

⁴⁷ LJC Committee, 23 January 2023, RoP [20]

⁴⁸ Welsh Government, [The Co-operation Agreement: full policy programme](#), December 2021

⁴⁹ Plenary, 9 March 2022, RoP [142]

⁵⁰ ETRA Committee, 15 June 2022, [Evidence paper – Minister for Rural Affairs and North Wales, and Trefnydd](#), paragraph 8

42. The Minister told us that “a great deal of work” was being undertaken in developing the community food strategy, although:

“... because of the work that officials—when I say ‘officials’, I mean ‘official’—have had to do on Peter Fox’s Bill, that work hasn’t been as fast as I would like it to be.”⁵¹

43. The Minister elaborated on the proposed community food strategy in the context of the Bill’s provisions:

“... what I’m not saying is that the community food strategy is the same as Peter Fox’s Bill; what I’m saying is that we’ve already got lots of legislation, lots of policies, lots of strategies in place, as well as we are bringing forward the community food strategy ... strategies don’t have to be in legislation to achieve and deliver.”⁵²

44. In response to these comments, the Member in charge said:

“I would certainly love to see a community food strategy, because there isn’t one yet; it hasn’t been developed. The Minister has made it clear at ETRA that she has £1.8 million put aside ready to implement it. However, with her limited capacity of staff, and they have been focused on scrutinising this Bill, they haven’t been able to advance the community food strategy as they’d wish. However, I understand that it’s very much looking at localised, or will look at localised opportunities to develop food strategies around smaller entities—community-produced food and different things like that.”⁵³

45. The Member in charge also drew attention to the fact that the strategy would not be enforceable:

“... it wouldn’t make, for instance, food plans—local authorities and public bodies creating food plans that require them to consider. It may suggest that good practice would be to do this, that and the other, as strategies do, but this is what is fundamentally wrong with the current framework is that inconsistent approach to how it’s being looked at, and different

⁵¹ LJC Committee, 23 January 2023, RoP [36]

⁵² LJC Committee, 23 January 2023, RoP [41]

⁵³ LJC Committee, 30 January 2023, RoP [58]

people in different bodies deliver to those strategies in different ways, leading to a lack of consistency.”⁵⁴

The Well-being of Future Generations Act

46. The *Well-being of Future Generations (Wales) Act 2015* (the Well-being of Future Generations Act) includes duties for the Welsh Government and other public bodies to take steps towards achieving seven well-being goals.⁵⁵

47. The EM states that the Bill will “help the Welsh Government and other public bodies to meet their duties” set out in the Well-being of Future Generations Act,⁵⁶ and that it:

“... has been drafted to be consistent with the approach taken by the Well-being of Future Generations Act; in particular the food goals are similar in style and effect to the well-being goals. This will ensure that the Bill fits seamlessly with the existing suite of legislation and help ensure the objectives of both the Well-being of Future Generations Act and the Environment Act are embedded across the Welsh food system.”⁵⁷

48. The Minister commented on the Bill’s potential interaction with the Well-being of Future Generations Act. She told us:

“... serious consideration really needs to be given to how the obligations that have been posed by the Bill on public bodies ... and the creation of a Welsh food commission particularly, would fit into the existing governance structures that we have because of the well-being of future generations Act, and also the established responsibilities that we have. So, how would that Bill work in the policy-making environment that we have already and that we adhere to? It’s very well established, the framework that we have at the moment, and public bodies also understand what’s required of them as well.”⁵⁸

⁵⁴ LJC Committee, 30 January 2023, RoP [58]

⁵⁵ *Well-being of Future Generations (Wales) Act 2015*, anaw 2

⁵⁶ EM, paragraph 14

⁵⁷ EM, paragraph 148

⁵⁸ LJC Committee, 23 January 2023, RoP [48]

49. The Minister claimed that there were “several ways” in which the Well-being of Future Generations Act is able to deliver on the aims of the Bill, including its creation of public services boards, and the ‘A Healthier Wales’ goal.⁵⁹

50. The Minister made reference to the Well-being of Future Generations Act in her comments comparing the Bill to the *Good Food Nation (Scotland) Act 2022* (a comparison disputed by the Member in charge, as previously stated):

“... this Bill really is based on the Good Food Nation (Scotland) Act 2022, and they have nothing like the well-being of future generations Act, so the Scottish approach to me is neither appropriate nor necessary.”⁶⁰

51. The Minister also questioned whether the Bill raised a precedent for future legislation:

“I think there is a lot of risk here ... As a Government, you wouldn’t want to do it with such a high level of risk being there, because I do think if this Bill were to progress, there could be a precedent of legislating on a single issue, and then you would undermine the current overarching governance system and principles that already exist with the well-being of future generations Act, which already has the scope and that flexibility to accommodate very diverse policy issues such as food.”⁶¹

52. An official accompanying the Member in charge responded to the Minister’s comments:

“I think it’s disappointing that the future generations Act ... [is] being used as an excuse not to do something.

I know we shouldn’t just legislate for legislation’s sake, but we’ve had a lot of discussions with the Future Generations Commissioner for Wales—the outgoing future generations commissioner, sorry—about how she sees that argument, and her opinion was that, actually, she could see the need for this Bill. She has supported this Bill throughout its process, and she has talked about issues with capacity within her office, capacity

⁵⁹ LJC Committee, 23 January 2023, RoP [52]

⁶⁰ LJC Committee, 23 January 2023, RoP [48]

⁶¹ LJC Committee, 23 January 2023, RoP [49]

within knowledge and expertise that perhaps doesn't cross cut into the food policy framework."⁶²

53. The Member in charge elaborated on his engagement in respect of the Bill with the then Future Generations Commissioner for Wales, Sophie Howe, stating:

*"I met with the outgoing commissioner only last week at an event, and I talked about how we were progressing and she wishes this well. ... I said, 'A few have suggested that this is something your area could pick up.' She said, 'No, this is too broad, too wide', and that was only last week."*⁶³

Avenues for incorporating the Bill's provisions into other legislation

54. We asked the Member in charge to share his views on whether, if the Bill's general principles are not agreed or it otherwise falls, the Bill's provisions could be incorporated by amendments to any existing bills or future legislation. He told us:

"The Agriculture Bill, which is currently at Stage 2, has a wide scope which includes provisions for sustainable farming. However, the aim of the Food (Wales) Bill as I have set out, is to enable the delivery of a holistic cross-portfolio approach to food – with the establishment of the Food Commission being central to that. It is therefore difficult to see how the provisions of the Food Bill would fall within the scope of the Agriculture Bill.

The Social Partnership and Public Procurement (Wales) Bill has now completed its journey through the amending stages. While there may have been limited scope to include amendments on local procurement I did not feel it appropriate to be tabling amendments on matters that I was taking forward in my own Bill, during Stage 1 of its legislative journey.

I do not believe there are any other Bills in the Government's current legislative programme that would enable the Food Bill's provisions to be incorporated by amendment. The detail of the Government's legislative programme for subsequent years is not yet known so it is not possible to predict where possible

⁶² LJC Committee, 30 January 2023, RoP [13]

⁶³ LJC Committee, 30 January 2023, RoP [16]

amendments could be proposed to incorporate the Bill's provisions."⁶⁴

Impact of the Internal Market Act

55. We asked the Member in charge if he had assessed whether the *United Kingdom Internal Market Act 2020* (the Internal Market Act) has an impact on the Bill. An official accompanying him said:

*"... we've come to the conclusion that that Act wouldn't have an effect on this Bill. I think the Member's intentions are quite clear from the beginning of this that what he wants is to have a piece of legislation that has a real practicable impact on people in Wales and the food system in Wales, and the Bill has been designed to ensure that. For example, food labelling policies haven't been taken forward, because of the concern that strengthening the requirement on food labelling in Wales might not have the desired impact in practice, because of the effect of that Act. So, that's the analysis that we've undertaken, and everything's been done to ensure that it has a practicable impact on food policy in Wales."*⁶⁵

56. The Minister told us that she did not consider the Internal Market Act to be engaged by the Bill's provisions "as it doesn't prohibit or restrict, for instance, the sale of food or other products here in Wales."⁶⁶

Balance between the face of the Bill and what is left to subordinate legislation

57. The Bill comprises 26 sections and a Schedule, and contains three powers for the Welsh Ministers to make regulations subject to the affirmative procedure. Table 2 of the EM provides a summary of these powers, and they are considered in detail within the next section of this report.

58. We asked the Member in charge to set out his approach towards achieving a balance between including detail on the face of the Bill and the delegation of regulation-making powers. An official accompanying him answered on his behalf:

⁶⁴ Letter from Peter Fox MS, 8 March 2023, response to question 11

⁶⁵ LJC Committee, 30 January 2023, RoP [49]

⁶⁶ LJC Committee, 23 January 2023, RoP [34]

“I think Peter has been clear from the start, when preparing the Bill, that he wanted a balance of a clear structure of what is expected from the Welsh Ministers from the Bill and what we want them to do, but underpinned by the flexibility to allow them to react to changing circumstances over time, if we look at the targets and the food goals, that they can evolve as time goes on. But if you look at what’s been left off the face of the Bill for regulations, all of the regulations made under the Bill are subject to the affirmative procedure, so they’ll all have to be approved by the Senedd. In addition to that, all the regulations are subject to some sort of consultation requirement, so there’s no allowance for the Welsh Ministers to act unilaterally, for want of a better phrase; they’ll have to consult with either the commission or other relevant bodies when preparing those regulations. So, even though the detail isn’t on the face of the Bill in that sense, there’s that reassurance that, whatever is passed by regulations will have gone through a consultation process and then the approval process of the Senedd. So, there is that backboard of, ‘That will happen, even though we can’t see it now, it will be subject to scrutiny down the line’.”⁶⁷

59. Another official accompanying the Member in charge provided further detail on the approach undertaken:

“I think we all understand that the committee prefer as much detail on the face of the Bill, rather than issues being left to regulations and I think we completely understand and agree with that. ... But, as the Member in charge mentioned earlier, we’re in this very peculiar position where we’re designing a Bill to be enacted by other people. In an ideal world, Peter would be the Minister, we’d be Government officials, and we’d be able to design the Bill as we would enact it. So, we’ve had to strike a bit of a balance between what we would like this legislation to do and also being aware that if we put something into the Bill and Ministers have a different interpretation of what’s in the Bill, then that might cause a conflict, and that also might mean the Ministers and officials won’t actually support this Bill as it

⁶⁷ LJC Committee, 30 January 2023, RoP [64]

stands. So, we've had to inbuild it with flexibility through this process."⁶⁸

Our view

60. We welcome the Member in charge's decision to consult on a draft version of the Bill ahead of its introduction. We consider this to be best practice, given the potential benefits to the quality of law produced, and we believe that proposers of primary legislation should follow this approach.

61. We also note the engagement between the Member in charge and the Minister ahead of the Bill's introduction. However, we are disappointed to hear evidence, provided by both the Member in charge and the Minister, which suggests that the Minister has not engaged adequately with the detail of the Bill.

62. We therefore believe there would be merit in exploring whether a transparent process could be introduced to ensure that Members of the Senedd who have secured leave to proceed from the Senedd to introduce a Member Bill are able to engage fully with Ministers and their officials if they so wish on the detail of their proposed legislation.

Recommendation 1. As part of its review of the Member Bill procedure, the Business Committee should explore the feasibility of introducing a more transparent process for engagement between the Welsh Government, its officials and Members of the Senedd who have secured leave to proceed to introduce a Member Bill.

63. We acknowledge the Member in charge's reasoning for the need for the Bill, and that the consultation on the draft Bill received widespread support. We also acknowledge that the Minister is not supportive of the need for the Bill, and note her comments that the duties set out within it would take up considerable resources.

64. We also note that the Welsh Government's proposed community food strategy is currently in development, and note the Minister's comments that "strategies don't have to be in legislation to achieve and deliver".

65. We do, however, acknowledge the Member in charge's argument that a strategy which has the same purposes as the Bill's provisions would not have statutory force. We also acknowledge the views of both the Member in charge and the Minister on the Bill's interaction with the Well-being of Future

⁶⁸ LJC Committee, 30 January 2023, RoP [68]

Generations Act. Specifically, we note the Minister's comments that "serious consideration" should be given to how the duties required by the Bill will sit alongside existing duties in the framework provided by the Well-being of Future Generations Act. As previously stated, we are disappointed to hear of the Minister's lack of engagement with the detail of the Bill; engagement which may have provided for detailed consideration of issues such as its interaction with the Well-being of Future Generations Act.

66. We also note the Member in charge's statement that the Bill will fit "seamlessly" into the Well-being of Future Generations Act. We believe that, should the Bill proceed, it should be amended to provide that statutory guidance must be issued to provide clarity to public bodies on this matter and how the two pieces of legislation will work together.

Recommendation 2. The Member in charge should table an amendment to the Bill to provide that statutory guidance must be issued to public bodies on how the duties imposed on them by the Bill interact with their existing duties under the *Well-being of Future Generations (Wales) Act 2015*.

67. The Minister suggested to us that the Bill may set a "precedent of legislating on a single issue", undermining the legislative framework established by the Well-being of Future Generations Act. In our view, we do not believe that the existence of that Act, in itself, should be used as a reason for not legislating on what may be deemed to be a single issue, as the Minister appears to suggest.

68. We note, and bring to the Senedd's attention, the Member in charge's statement that there is no legislation currently before it, and no legislation currently planned within the Welsh Government's legislative programme, which would allow for incorporation of the Bill's provisions should it not proceed.

69. We also note the statements made by both the Member in charge and the Minister which conclude that the Internal Market Act does not have an impact on the Bill's provisions.

70. We acknowledge the evidence provided by the Member in charge and his officials on the balance of what is included on the face of the Bill, and what is left to subordinate legislation. We are content with this balance, subject to the views we set out on particular powers to make subordinate legislation within the next section of the report.

71. We also note the comments made which set out the challenges posed by the inclusion of provisions within a Member Bill for a Government to implement.

4. Specific observations on particular sections and powers to make subordinate legislation

Sections 2 and 3 (Primary food goal and secondary food goals)

72. Section 2 of the Bill sets out a primary food goal, which public bodies⁶⁹ must take reasonable steps to advance, for the provision of:

“... affordable, healthy, and economically, environmentally, and socially sustainable food for the people of Wales.”

73. Within the EM, the Member in charge states that the primary food goal:

“... provides an overarching vision for the food system in Wales, as well as acting as an anchor point that policy created through the Bill will aim to achieve.”⁷⁰

74. Table 1 in section 3 of the Bill lists a series of secondary food goals – economic well-being, health and social, education, environment and food waste – which public bodies must also take reasonable steps to advance. The Bill provides a description for each of these goals.

75. The Member in charge told us that the secondary food goals:

“... are fundamental component parts, because through their breakdown and their indication, they create the blocks that need to have targets put alongside them to achieve the overarching food goal. There are many different interpretations; you could have elements within the food goals, and Welsh Ministers, by regulation, can amend the description of those secondary food goals, as laid out in table 1 of the Bill, if they were minded to do so. They would have to do that—I can't remember the rules—however's appropriate. The fundamental point ... is not what's necessarily described in those food goals; it's the nature of the targets that the Government align to them.”⁷¹

⁶⁹ Public bodies are defined in the Bill for this purpose as the Welsh Ministers, local authorities and local health boards. The Welsh Ministers can amend this list by regulations.

⁷⁰ EM, paragraph 10

⁷¹ LJC Committee, 30 January 2023, RoP [93]

76. However, he stated that:

“... we’ve heard from different people about the nature of secondary goals. Could they be worded differently? Could they be more aligned to the Future Generations Commissioner for Wales? And, you know, it’s a fair challenge. Don’t forget, as I shared here, the Bill very clearly does say that if the Government and the legislature decide that they want to change the description of those food goals—even though we can disagree or agree if they should be on the face of the Bill—they have the power to do that via regulation. So, this, in its entirety, is creating a framework that gives ... flexibility ...”⁷²

77. An official accompanying the Member in charge also stated:

“... in and of themselves, the secondary food goals aren’t the clarity, but the power is behind the targets, and that’s what differentiates this Bill from, for example, our community food strategy in that, when making targets under this Bill, there is that point of reference that the Government have to come back to: ‘Have we matched up the targets we’re setting with the secondary food goals and the ultimate overarching food goal?’ ... ‘a point of reference’ is the best way of describing it. They are there as clarity statements of what is being aspired to, but they will be ultimately underpinned by regulation-made targets that are more quantifiable and set down in legislation what those, as you said, achievable aspects of them are.”⁷³

78. The Minister told us that it “was not very clear” to the Welsh Government why the Bill has “split policy issues between primary and secondary goals”, and questioned the necessity of the primary food goal:

“I think it’s already a complex enough area, and I just think that this would add another level of complexity, and I really question why the primary goal is necessary. But if you look at the detail of the secondary goals, I don’t really see why we’d need the primary goals. I think they’re very important policy points, the detail of which has been outlined in the goals. I think they’re really important policy points, but they’re matters that Welsh Government and, I think, other public bodies are already

⁷² LJC Committee, 30 January 2023, RoP [103]

⁷³ LJC Committee, 30 January 2023, RoP [109]

conscious of, and we've got many policies in place that already either deal with those issues or they're planned to deal with those issues."⁷⁴

79. The Minister also raised concerns about the inclusion of the word “affordable” within the primary food goal:

*“What does that mean? Does he [the Member in charge] mean Welsh Government should subsidise food, and, if so, to whom and how much? I really don't understand that, so I think we would have to look very carefully at that.”*⁷⁵

Section 3(2) (Power to amend the description of secondary food goals)

80. Section 3(2) provides that the Welsh Ministers may by regulations amend the description of a secondary food goal.

81. We asked the Member in charge to justify the need for this power, and to outline the safeguards which would be in place to prevent any significant amendment to the descriptions. In response, he said:

“It is reasonable to expect that the descriptions of the food goals may need to be amended over time to react to changing circumstances. The intention of the regulation making powers is therefore to allow the flexibility required for Ministers to make appropriate amendments to the descriptions without the need for further primary legislation.

*Regulations to amend the food goal descriptions are to be made using the affirmative Senedd procedure, so will be brought to the Senedd's attention and subject to debate and a vote. Before making regulations under this section, the Welsh Ministers must also consult with the Welsh Food Commission. I believe these are sufficient safeguards to ensure that any amendment to the Food Goal descriptions are appropriate.”*⁷⁶

⁷⁴ LJC Committee, 23 January 2023, RoP [60]

⁷⁵ LJC Committee, 23 January 2023, RoP [119]

⁷⁶ Letter from Peter Fox MS, 8 March 2023, response to question 2

Section 3(3) (Duty to consult before making regulations to amend the description of secondary food goals)

82. Section 3(3) provides that the Welsh Ministers must consult with the Welsh Food Commission (to be created by the Bill) before making regulations under section 3(2).

83. We asked the Member in charge to explain why the Bill does not require the Welsh Ministers to consult other appropriate bodies, in addition to the Welsh Food Commission, before amending the descriptions. His response was as follows:

“The intention through the Bill is that the Welsh Food Commission will lead on driving the food goals forward, playing a central role as the body that the Welsh Ministers look to for advice and information. That’s why there is a requirement that the Welsh Ministers consult the Commission before amending any of the secondary food goal descriptions. Having that requirement does not prevent Welsh Ministers also seeking the views of other bodies and stakeholders, for example, if amending the environment secondary food goal description the Welsh Ministers may seek the views of Natural Resources Wales as well as the Food Commission.

If there is a consensus among the Committee that there is a need to specify on the face of the Bill that other appropriate persons may or must be consulted prior to the descriptions being amended, then this is something that we could look to do through amendments at stage 2.”⁷⁷

84. We asked the Minister which approach would the Welsh Government take to such a consultation. In response, she said:

“... as a Government, we are committed to working with a variety of partners, and we see consultation as a very important way of making policy, and, then, taking it forward. ...

I think it is important to go wider when you’re looking for advice and support. We’ve got very long-standing, strong policy frameworks on making sure that consultation is wide.”⁷⁸

⁷⁷ Letter from Peter Fox MS, 8 March 2023, response to question 3

⁷⁸ LJC Committee, 23 January 2023, RoP [69]

Our view

85. We acknowledge the Member in charge’s justification for the inclusion of the primary food goal and secondary food goals within the Bill.

86. However, it is unclear to us why the inclusion of a primary food goal is necessary, considering the detail provided within the descriptions for the secondary food goals. In this regard, we also note the concerns raised by the Minister on the inclusion of the word “affordable” within the primary food goal, and how it may be interpreted. We therefore believe that, in the interests of achieving clarity on the interpretation of the Bill’s objectives, the primary food goal should be removed from the Bill.

Recommendation 3. The Member in charge should table an amendment to the Bill to remove section 2 of the Bill, which sets out the primary food goal.

87. We believe that clarity should also be provided as to the meaning of some of the concepts and wording included within the secondary food goals and therefore how they are to be interpreted consistently by public bodies. While the regulations to set targets for these goals (as discussed in the next section) may provide for further interpretation, we believe the Member in charge should provide clarity on this matter. In addition, providing this information will be relevant to the setting of food targets.

Recommendation 4. The Member in charge should outline the mechanisms by which public bodies will be provided with full and comprehensive information about the secondary food goals and how they are to be interpreted.

88. We note the Member in charge’s explanation of the safeguards contained in the Bill, including the use of the affirmative procedure for regulations which amend the descriptions for the secondary food goals, which would allow an opportunity for the Senedd to approve any changes.

89. We also note his statement that, while not provided for in section 3(3) of the Bill, nothing would prevent the Welsh Ministers from consulting other appropriate bodies in addition to the Welsh Food Commission when seeking to amend the descriptions. However, we believe that expanding the duty within section 3(3) to include a duty to consult any appropriate bodies would ensure wide consultation.

Recommendation 5. The Member in charge should table an amendment to section 3(3) of the Bill so that the duty to consult before amending the descriptions of the secondary food goals applies to other appropriate bodies as well as the Welsh Food Commission.

Sections 4 to 7 (Food targets)

90. Section 4 of the Bill provides that the Welsh Ministers must make regulations to set one or more targets for each secondary food goal.

91. Section 4(5) provides that such regulations must be made within two years of section 4 coming into force. However, section 4(4) provides that the targets will only be set when regulations under section 4(5) come into force. We suggested to the Member in charge that this could lead to a situation where the regulations are made within two years, but are drafted so that they do not come into force until sometime later. In response, he said:

“... we accept that a situation may arise where the Welsh Government make regulations within the 2-year timeframe setting out the targets but decide to omit commencement dates for the actual provisions. As such we are of the view that it would be prudent to mitigate this risk and specify a date for the targets coming into force.

This would be done through a stage 2 amendment to section 4(5), providing that:

*“The first regulations setting one or more targets for each secondary food goal must be made **and come into force** within 2 years of this section coming into force.”⁷⁹ [original emphasis]*

92. An official accompanying the Member in charge explained why the Bill does not include, on its face, deadlines by which targets should be met:

“... that’s just to reflect ... the wide range of things the targets can be set on, and that it was difficult—well, it’s almost impossible—on the face of the Bill, to determine what kind of targets are going to be set for what kind of sector, and the varying timescales and realistic timescales of what will be achieved by when. If we tried to place on the face of the Bill, ‘Target x has to be achieved by such and such a date’, it really reduces the flexibility of the range of targets that can be set. As it is now, there is a requirement that the targets must have a deadline, but that’s left for the regulations to set the target. So, a regulation passed in 2025 might have a two-year target, whereas a different target being set in subsequent legislation

⁷⁹ Letter from Peter Fox MS, 8 March 2023, response to question 4

*might require a five-year target. And that was drafted in that way to retain that flexibility so that Welsh Ministers can tailor the deadline to the nature of the target being set.*⁸⁰

93. Section 5 of the Bill provides that, before making regulations to set the targets for the secondary food goals under section 4, the Welsh Ministers must seek advice from the Welsh Food Commission, and “other persons the Welsh Ministers consider to be independent and to have relevant expertise.”

94. We asked the Member in charge to explain his reasoning for including this wording in the Bill; an official responded on his behalf:

“The policy intention here was that, in setting targets, there should be some form of independent consultation by the Welsh Ministers so they don’t set targets that are either too easy or that don’t go far enough. The consultation requirement was put in there with the independence element to ensure that they were not only realistic but that they were something that actually was a real target rather than just a tick-box exercise. That said, we do appreciate that some arm’s-length bodies could add value to setting targets. You could look at other commissioners, or if it was an environment example then perhaps Natural Resources Wales could add value in setting environmental targets. But I think it’s worth noting that that provision doesn’t prevent the Welsh Ministers consulting non-independent persons, there’s just the requirement there that they do consult with the independent person to ensure the target is suitable and achievable. But it doesn’t prevent them speaking to anyone.”⁸¹

95. The Member in charge however stated that “it’s an area perhaps we need to reflect on further so that we don’t actually remove somebody who could be useful to contribute to it or who the Government might want to consult”.⁸²

96. When asked if he was convinced there was sufficient available data to set meaningful targets, the Member in charge stated:

“... the process for setting targets is clear in section 5(2):

⁸⁰ LJC Committee, 30 January 2023, RoP [114]

⁸¹ LJC Committee, 30 January 2023, RoP [126]

⁸² LJC Committee, 30 January 2023, RoP [128]

'Before making regulations which set a target, the Welsh Ministers must be satisfied that the target can be met.'

So, before they set a target, they have to make sure they've got the appropriate data to be able to set the target. ... I would very much hope if they feel there's a target needed to achieve one of these things but they're not sure if they've quite got the data, then it may be that that target is one that needs further development before they can actually implement it, and they need to get the data to achieve that end result. And I suppose that's where, sometimes, certain parts of the Bill might take longer to put in place than others."⁸³

97. Section 6 of the Bill provides that regulations under section 4 must specify a reporting date for any target that is set. The section also provides that where a target has not been met by the reporting date, the Welsh Ministers must explain in a statement laid before the Senedd why that is the case and set out the steps they intend to take to ensure it is met “as soon as reasonably practicable”. The section does not however impose a deadline for the Welsh Ministers to report on a target.

98. The Bill does not either provide for consequences for failures to achieve the food goals (as discussed in the previous section) or to produce the national food strategy or local food plans (considered later in this report) within the timeframes set out by the Bill. We asked the Member in charge to explain why this was the case; he told us:

“... this is consistent with other Welsh legislation including the Well-being of Future Generations (Wales) Act 2015. Section 8 of that Act requires Welsh Ministers to publish objectives within a specified period without consequences for failure to do so.

What the Food Bill allows for through its framework is for the progress made towards achieving the various goals and targets to be reported to, and scrutinised by, the Senedd. Where appropriate those reviews need to set out the reasons for failing to meet the relevant requirements. Any such failures would be highlighted through this process and can be discussed on the floor of the Senedd.”⁸⁴

⁸³ LJC Committee, 30 January 2023, RoP [118–120]

⁸⁴ Letter from Peter Fox MS, 8 March 2023, response to question 10

99. We also asked the Minister whether she believed the Bill should provide for consequences for failing to adhere to the food targets. Her response was as follows:

*"I think the Senedd has a very good record at holding the Welsh Government to account ... I think the ultimate consequence of anything like that is done at the ballot box. That's where Government is held to account; that's where we as Members are held to account. This Bill would make the Welsh Government lay reviews to the Senedd, for instance, every five years, so there would be plenty of opportunity for that."*⁸⁵

Our view

100. We acknowledge the Member in charge's acceptance that an amendment should be tabled to the Bill to provide that regulations to be made under section 4 of the Bill must be made and come into force within two years of the section coming into force.

Recommendation 6. The Member in charge should table an amendment to section 4(5) of the Bill to provide that the first regulations setting one or more targets for each secondary food goal must be made and come into force within two years of section 4 coming into force.

101. We acknowledge the Member in charge's indication that he may revisit the wording of "other persons the Welsh Ministers consider to be independent and to have relevant expertise" included within section 5(1)(b) of the Bill. We consider that, for the avoidance of doubt, the wording should provide that the Welsh Ministers must consult all stakeholders which they deem to be appropriate to consult.

Recommendation 7. The Member in charge should table an amendment to the Bill to expand the duty within section 5 of the Bill to consult the Welsh Food Commission to also include bodies the Welsh Ministers deem appropriate to consult.

102. We note the Member in charge's comments regarding the reporting mechanisms which are included within the Bill, and note that section 6 of the Bill includes a mechanism for the Welsh Ministers to explain to the Senedd if and why a target has not been met.

⁸⁵ LJC Committee, 23 January 2023, RoP [116]

Sections 8 to 10 and the Schedule (Welsh Food Commission)

103. Section 8 of the Bill provides for the creation of the Welsh Food Commission as a body corporate.

104. Section 9 sets out the objective of the Commission which is to promote and facilitate:

- the advancement of the primary and secondary food goals by public bodies; and
- the achievement of the food targets.

105. Section 10 sets out the Commission's functions, which are:

- to develop, and assist public bodies to develop, policies in relation to food matters;
- to advise, inform and assist public bodies, and other persons, in relation to food matters;
- to keep the public adequately informed about and advised in relation to matters which significantly affect their capacity to make informed decisions about food matters;
- to provide oversight and performance review of the exercise of the functions of public bodies in relation to the food goals and food targets;
- to scrutinise the national food strategy and local food plans;
- to act as a consultee for the Welsh Ministers when the food goals are to be amended; and
- to give advice to the Welsh Ministers in their review of food targets.

106. The Schedule to the Bill sets out the details of how the Welsh Food Commission will operate, including that it is to consist a Chair and between five and seven other members, all appointed by the Welsh Ministers.

107. The Member in charge states in the EM that the Welsh Food Commission will “reset the governance of the food system in Wales, and will co-create and oversee

the delivery of a national food strategy alongside Welsh Ministers and other stakeholders.”⁸⁶

108. The Member in charge told us:

*“... the commission is absolutely fundamental to drive this forward to pull together the expertise, not in just food production, but in health, in education, in all those other areas, to help shape the legislative framework. ... Through our consultation ... you will note that 91.4 per cent of those consulted were in support of a Welsh food commission.”*⁸⁷

109. The Member in charge also drew similarities with the commission established by the *Good Food Nation (Scotland) Act 2022*:

*“[The Scottish Government has] just put in a commission, a chair-and-board commission, actually, to deliver moving forward, recognising that they need the expertise to shape that policy. The commission is designed not to stand in the way of the Government at all, but to assist, to bring the expertise to help shape, to be a critical friend, to challenge where necessary. ... We have got elements of scrutiny, obviously, with our legislature, the Senedd itself, and future committees’ scrutiny, but you’d hope that the Government would welcome the commission in the same way it welcomes a commission for every other, virtually, subject it delivers with one.”*⁸⁸

110. The Minister however set out her concerns that the Welsh Food Commission “would overlap with the Food Standards Agency, as well as the future generations commissioner.”⁸⁹ She elaborated:

“I think what the Bill fails to recognise is that its functions would overlap with existing bodies that have advisory roles relevant to the goals that the Bill is proposing. So, again, looking at section 10 of the Bill, it’s broadly drafted so that the implication here is that the food commission could have functions analogous to the FSA under the Food Standards Act 1999. There are real

⁸⁶ EM, paragraph 220

⁸⁷ LJC Committee, 30 January 2023, RoP [154]

⁸⁸ LJC Committee, 30 January 2023, RoP [154]

⁸⁹ LJC Committee, 23 January 2023, RoP [83]

*issues around the drafting, I think, of that, and I just think it's going to cause confusion.*⁹⁰

111. The Member in charge disagreed with the Minister's assessment of the potential cross-over of functions between those set out in the Bill for the Welsh Food Commission and those of the Food Standards Agency. He said:

*"The functions of the FSA are set out in the Food Standards Act 1999 ... These functions are fairly extensive, but are also very specific in most areas, and focus more directly on areas such as food safety and standards. Their general functions in relation to food (Sections 6 to 8 of the 1999 Act) relate to matters 'connected with food safety or other interests of consumers in relation to food'. The Explanatory Notes to the 1999 Act explain further that the advice, information and assistance the FSA has the function of providing is in relation to improving food safety and standards. For this reason I do not believe there is a cross-over with the proposed functions of the Food Commission as set out in section 10 of the Bill, where food safety does not feature.*⁹¹

Provision of guidance by the Welsh Food Commission

112. We asked the Member in charge to explain why the Bill does not provide for any guidance to be issued by the Welsh Food Commission in relation to achieving the goals and fulfilling the duties under the Bill. He told us:

"In the drafting of the Bill it was not felt necessary to require the Commission to produce guidance for public bodies in relation to local food plan development as it was envisaged that the Commission will proactively be providing public bodies with information in the day to day exercise of its functions. The statutory framework set out in the Bill aims to promote ongoing cooperation between the Commission and the relevant public bodies.

In addition to this, the Bill provides other avenues for the Welsh Ministers and public bodies to interact with the Commission in

⁹⁰ LJC Committee, 23 January 2023, RoP [84]

⁹¹ Letter from Peter Fox MS, 25 January 2023, page 3

the preparation of the national food strategy and local food plans, respectively:

- *when preparing the national food strategy, section 13(1)(a) of the Bill provides that the Welsh Ministers must seek the advice of the Commission; and*
- *when preparing the local food plans, section 18(1)(a) of the Bill provides that a public body may consult with the Commission when preparing a local food plan.*

For the Welsh Ministers, there is a requirement that they seek advice from the Commission. For public bodies, consultation is an option rather than a requirement. This gives public bodies the flexibility to consult the Commission if it is considered necessary, but acknowledges that in some cases a public body may consider that it already has sufficient information to prepare a plan, without further involvement from the Commission.”⁹²

113. We also asked the Minister whether she was of the view that there should be a requirement for the Commission to publish such guidance. In response she said:

“... I don’t think it should. I think it’s very clear in the Bill. The commission can provide advice, it can inform, and it can assist, and there’s already a specific provision in the section that refers to the food commission to provide oversight and performance review of the exercise of the functions of public bodies in relation to the food goals and targets. From my point of view, I think that’s absolutely sufficient.”⁹³

Coming into force of provisions

114. In accordance with section 25 (commencement), the Bill provides that the Welsh Food Commission will be established three months after the date of Royal Assent.

115. The Minister set out her views to us on this proposed timescale:

“... there are two issues: one is the timetable. So, Peter Fox is proposing it’s done within three months. That’s very quick. I

⁹² Letter from Peter Fox MS, 25 January 2023, page 5

⁹³ LJC Committee, 23 January 2023, RoP [82]

think the future generations commissioner, it took two and a half years to set it up. ... And the other is the cost. There is no money. Everybody knows how difficult the budgets are ... I don't think we need it, so I suppose that's the bottom line".⁹⁴

116. The Member in charge, however, argued that the Minister's comments were "misleading". He told us:

"... the commencement provisions set out in the Bill provide that the Act will come into force three months after the date of Royal Assent. At that time (in accordance with Section 8) the Welsh Food Commission will be established as a body corporate. ...

The establishment of a statutory body in law at a certain point (in this case three months after Royal Assent) is not the same as requiring that body to be up and running and fully functional at that same point. There are no timescales within the Bill setting out when the Commission has to be operational."⁹⁵

Our view

117. We note the Member in charge's evidence in respect of the need for provisions creating a Welsh Food Commission. However, we are concerned to hear the Minister's comments that its functions may overlap with those of the Food Standards Agency.

118. We also note the Member in charge's, and the Minister's, comments that the Bill should not provide for the Welsh Food Commission to issue guidance on complying with the Bill's provisions.

119. In addition, while we understand the Minister's concerns in respect of the Bill's provisions to establish the Welsh Food Commission within three months of the Bill's receipt of Royal Assent, we agree with the Member in charge that the Bill only provides for the creation of the Commission as a legal entity. We are therefore content that this provision is appropriate.

Section 12 (National food strategy)

120. Section 12 of the Bill provides that the Welsh Ministers must, within two years of the Bill's coming into force, lay a national food strategy before the Senedd. The

⁹⁴ LJC Committee, 23 January 2023, RoP [71]

⁹⁵ Letter from Peter Fox MS, 25 January 2023, page 3

purpose of the strategy would be to advance the primary and secondary food goals and to achieve the food targets.

121. We asked the Member in charge to explain why the Bill does not require for the Senedd's approval of the national food strategy, in addition to its laying before the Senedd. He told us:

"My understanding is that it is not normal practice for Welsh Government policies / strategies to be approved by the Senedd. Given the number of policies / strategies the Welsh Government is responsible for, I'm not sure it would be workable in practice for these to be approved by the Senedd.

The Bill itself includes provisions to ensure that the Welsh Government takes appropriate advice and consults with independent persons with relevant expertise before making the national food strategy. As set out in Section 13, this includes a requirement to take advice from the Food Commission, and an option to seek the advice of the Future Generations Commissioner for Wales on relevant aspects. I believe that this provides sufficient safeguards to ensure that the strategy includes the views of the sector(s), and that formal approval of the Senedd is not required. This does not, of course, prevent scrutiny of the national food strategy by Senedd Committees if they consider that to be appropriate."⁹⁶

122. The Minister agreed with the Member in charge that the Senedd's approval of the strategy was not necessary:

"... we've got lots of national strategies as a Government that aren't approved by the Senedd, so I wouldn't think that would be an issue, but what the Bill does require is that Welsh Ministers obviously set and report on the targets, then report on periodic reviews. So, I think there's ample opportunity for the Senedd to be able to hold the Welsh Government to account."⁹⁷

⁹⁶ Letter from Peter Fox MS, 8 March 2023, response to question 6

⁹⁷ LJC Committee, 23 January 2023, RoP [89]

Our view

123. We note the comments made by the Member in charge and the Minister that the inclusion of a requirement for the Senedd to approve the national food strategy will set a precedent for other strategies issued by the Welsh Government.

Section 17 (Local food plans)

124. Section 17 of the Bill provides that public bodies (in this context, local authorities and local health boards) must make and publish a local food plan. Similarly to the provisions for the national food strategy, the section requires local food plans to be made and published within two years of the Bill coming into force, and their purpose would be to advance the primary and secondary food goals and to achieve the food targets.

125. We asked the Member in charge whether the Bill's requirement for both the national food strategy and the local food plans to be made within two years of the Bill's coming into force would create a challenging situation for public bodies preparing local food plans, in the event that the national food strategy is not published until late within these timescales. An official accompanying him told us:

"... there are some areas around the timescales where we might reconsider. This is one of those where potentially at Stage 2, for the reasons you've outlined, you may want to move the local food plans to three years, just in case, for whatever reason, the Welsh Ministers haven't been able to develop their strategy further enough into that two years, so you don't have a clash."⁹⁸

126. When asked whether three years would allow sufficient time for public bodies to develop their respective local food plans, the official added:

"I think three years would be appropriate. I think the message from stakeholders, again from a policy perspective, is that there is a real need for this, and it's a case of balancing that, making sure that this is up and running as soon as possible, whilst also giving the Welsh Ministers sufficient time to do it. So, we think the balance between two and three could work well."⁹⁹

127. The Minister however raised with us her concerns about these timescales:

⁹⁸ LJC Committee, 30 January 2023, RoP [134]

⁹⁹ LJC Committee, 30 January 2023, RoP [136]

“The timescale is very blunt. There doesn’t seem to be much flexibility when it comes to the timescale, and I just don’t think there is any flexibility that you really would need to cope with such a complex area where you would then have to plan, you’d have to target set, you’d have to report, you’d have to review activities. I think it would be hard for Government, but I think it would be really hard for other public bodies to fit in with this timescale as well. I really don’t think it’s realistic to think you could do everything within two years, given the complexity.”¹⁰⁰

128. The Member in charge stated it would be “inconceivable that a Government couldn’t put together a food strategy within two years”, but added:

“... we’ve actually got health boards and councils advocating for this and wanting to do it. Indeed, many are already developing local food strategies and have already put a lot of work in on this. ... this is an area where we have to be pragmatic and we have to make sure that we plan for any outcome. If we have to alter some of the time frames, and there is a consequence with altering one time frame, we might then have to review something else as well. But it doesn’t detract from the fundamental purpose of what we’re trying to do, I don’t think.”¹⁰¹

Our view

129. We acknowledge the Member in charge’s indication that an amendment to section 17 of the Bill may be desirable to provide that a public body should publish a local food plan within three years of the Bill coming into force. We are of the view that extending the period in this way will reduce the risk of imposing additional pressures on public bodies if the Welsh Government has, for any reason, been unable to publish the national food plan in good time.

Recommendation 8. The Member in charge should table an amendment to section 17 of the Bill to extend the period of time within which a public body should publish a local food plan, from two years after the Bill coming into force to three years after that date.

¹⁰⁰ LJC Committee, 23 January 2023, RoP [86]

¹⁰¹ LJC Committee, 30 January 2023, RoP [138]

Section 22 (Meaning of public body)

130. Section 22(1) defines, for the purposes of the Bill, public bodies as the Welsh Ministers, a local authority, or a local health board.

131. Section 22(2) provides that the Welsh Ministers may, by regulations subject to the affirmative procedure, amend this list of definitions, either by:

- adding a public body;
- removing a public body, other than the Welsh Ministers;
- amending the description of a public body.

132. We asked the Member in charge to explain why it was necessary to delegate this power to the Welsh Ministers, and who he would anticipate being added to or removed from the list. He told us:

“... the power for the Welsh Ministers to amend the definition by regulations, subject to consultation, allows them the flexibility to add others to the list in future if needed.”¹⁰²

133. We also asked the Minister for her views on this power; she told us that “having that flexibility is good.”¹⁰³

Duty to consult before making regulations

134. Section 22(5) of the Bill provides that, when exercising the regulation-making power under section 22, the Welsh Ministers must consult:

- the Welsh Food Commission;
- a public body which is to be added to the list by the regulations; and
- any other person the Welsh Ministers consider appropriate.

135. We asked the Member in charge to explain why there is no requirement to consult a body that is to be removed from the list, or to have its name or description amended. In response, he said:

“The drafting used in section 22 of the Bill is consistent with other Welsh legislation including section 52(4) of the Well-being of Future Generations (Wales) Act 2015. Adding a body to the

¹⁰² Letter from Peter Fox MS, 8 March 2023, response to question 7

¹⁰³ LJC Committee, 23 January 2023, RoP [91]

*list of public bodies will always require consultation, to inform that body of any additional responsibilities it will be subject to. Whereas removing a body from the list, does not impose any additional responsibilities on that body, only removing those duties, therefore they will not always need to be consulted. However, section 22(5)(c) provides when making such Regulations the Welsh Ministers must consult with any persons they consider appropriate in which will in all likelihood ensure that a body is consulted in any case if they are being removed.*¹⁰⁴

Our view

136. We note the Member in charge’s justification for the regulation-making power within section 22 of the Bill.

137. We also note the reasons the Member in charge has provided for not expanding the duty to consult under section 22(5) of the Bill to also include a public body which is to be removed from the list of public bodies. However, it is unclear to us in which circumstances a public body would be removed from this list. In addition, as the Member in charge told us that public bodies which are to be removed will “in all likelihood” be consulted in any case by virtue of the wording of the Bill, we believe that he should set out the disadvantages of explicitly providing for such consultation.

Recommendation 9. The Member in charge should provide examples of circumstances where a public body may be removed by the Welsh Ministers from the list of public bodies within section 22(1) of the Bill.

Recommendation 10. The Member in charge should set out the disadvantages of providing in section 22(5)(b) of the Bill that the Welsh Ministers must consult with a person which is to be removed from the list of public bodies within section 22(1) of the Bill.

¹⁰⁴ Letter from Peter Fox MS, 8 March 2023, response to question 8