

Report on the Agriculture (Wales) Bill

January 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

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Introduction

On 26 September 2022, Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd (the Minister) introduced the Agriculture (Wales) Bill (the Bill),¹ and accompanying Explanatory Memorandum (the EM).²

1. The Senedd's Business Committee referred the Bill to the Economy, Trade and Rural Affairs (ETRA) Committee on 20 September 2022, and on 4 October 2022 set a deadline of 27 January 2023 for reporting on its general principles.³
2. On 28 September 2022, the Minister issued a statement of policy intent for subordinate legislation to be made under the Bill.⁴

The purpose of the Bill

3. The long title of the Bill is:

"An Act of Senedd Cymru to make provision about sustainable land management; to make provision for and in connection with support for agriculture; to make provision about matters relating to agriculture and agricultural products; to amend the Forestry Act 1967 in connection with tree felling licences; and to amend the Wildlife and Countryside Act 1981 in connection with prohibitions relating to snares and traps etc."

The Committee's remit

4. 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

¹ Agriculture (Wales) Bill, as introduced

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

³ Business Committee, Timetable for consideration: Agriculture (Wales) Bill, October 2022

⁴ Welsh Government, Agriculture (Wales) Bill: Statement of Policy Intent for secondary legislation etc., September 2022

competence of the Senedd or the Welsh Ministers, including the quality of legislation.

5. 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.

6. We took evidence from the Minister on 21 November 2022.⁵ Following our evidence session, we wrote to the Minister on 25 November 2022 with a series of additional questions in relation to the Bill.⁶ The Minister responded on 7 December 2022.⁷

7. On 1 November 2022, the Minister wrote to the Chair of the ETRA Committee highlighting corrections needed to the EM.⁸ The letter was laid in the Table Office on 25 November 2022 and noted by us at our Committee meeting of 12 December 2022.

8. We received a further letter from the Minister about the Bill on 16 December 2022.⁹

⁵ LJC Committee, 21 November 2022

⁶ Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 25 November 2022

⁷ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022

⁸ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd to the Chair of ETRA Committee, 1 November 2022

⁹ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 16 December 2022

1. Legislative competence

The Welsh Government is satisfied that the Bill would be within the legislative competence of the Senedd.¹⁰

General

9. 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”).

10. In her statement on legislative competence, the Llywydd, Elin Jones MS, stated that:

“In my view, the provisions of the Agriculture (Wales) Bill, introduced on 26 September 2022, would be within the legislative competence of the Senedd.”¹¹

11. When the Minister gave evidence to us on 21 November 2022, she confirmed that she was satisfied the Bill is within the Senedd’s legislative competence.¹²

Human rights

12. 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 (the Convention rights).

13. Relevant to our consideration of human rights matters are the provisions in section 11 (Power to make provision about checking eligibility for support, etc.), section 32 (Marketing standards) and section 33 (Carcass classification) of the Bill, which provide for powers of entry. Sections 11(3), 32(5), and 33(3) prevent entry to a private dwelling unless a warrant has been issued by a justice of the peace.

14. The Minister told us:

“Account has been taken of convention rights issues in preparing the Bill, and I’m very satisfied that where provisions of

¹⁰ EM, Member’s Declaration, page 1

¹¹ Presiding Officer’s Statement on Legislative Competence, 26 September 2022

¹² LJC Committee, 21 November 2022, RoP [9-10]

the Bill have engaged with convention rights, any interference with those rights has pursued a legitimate aim. They're very necessary and they're very proportionate."¹³

15. When asked if she had taken specific steps to limit the interference with the human rights of those affected by the Bill, the Minister said:

*"...one example in relation to specific human rights would be the safeguarding around powers of duty. So, if there are any powers of entry into a private dwelling, for instance, that that would require a warrant from a Justice of the Peace."*¹⁴

16. The Minister also confirmed that an assessment of the impact of the Bill on human rights had been undertaken and published as part of a full integrated impact assessment.¹⁵

17. An official accompanying the Minister also told us that:

*"...we've looked at a range of issues in the Bill. As the Minister pointed out, powers of entry, we've taken a particular line with that by inserting an additional safeguard regarding Justice of the Peace warrants. Also, in relation, for example, to section 11 on enforceability, regulations to be made regarding powers of entry could contain rights of appeal, and also those regulations follow the affirmative procedure. So, there are a number of layers of safeguards in the Bill, and we are satisfied as a result that it's fully compliant."*¹⁶

Our view

18. We note the evidence in relation to matters of legislative competence from the Minister. 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.

19. With regards to any potential human rights implications of the Bill, we note the evidence from the Minister and that she is satisfied that, as a whole, the Bill is compatible with the Convention rights. We further note that the consideration of

¹³ LJC Committee, 21 November 2022, RoP [20]

¹⁴ LJC Committee, 21 November 2022, RoP [22]

¹⁵ LJC Committee, 21 November 2022, RoP [24]

¹⁶ LJC Committee, 21 November 2022, RoP [32]

human rights is engaged by the provisions in the Bill which provide powers of entry.

2. General observations

Principles of law-making and the use of skeleton legislation

20. In 2015, the Constitutional and Legislative Affairs Committee, our equivalent Committee in the Fourth Assembly, published its report *Making Laws in Wales*.¹⁷ The report stemmed in part from emerging trends in legislation being proposed by the Welsh Government of the time, including concerns about the amount of detail being placed on the face of Bills and Bills being brought forward before the policy had been fully developed, which left important details to be brought forward at a later date by subordinate legislation.¹⁸ Paragraphs 102 and 103 of that report stated:

“...we have frequently commented in our Bill reports on the Welsh Government’s assertion that there is a need to future-proof Bills and allow for flexibility. Such views have been repeated by the Welsh Government during this inquiry. In our view the need to future-proof Bills and allow for flexibility is becoming a stock argument used by Welsh Ministers to justify what we perceive to be an over-reliance on regulation-making powers in Bills. That is disappointing particularly when there is rarely any context provided about the potential “shelf-life” of a particular Bill or why it needs to be supplemented with subordinate legislation at a later date: simply allowing for the unexpected is too great a degree of abdication of responsibility by the Assembly.

While there may be circumstances in which the need for futureproofing and flexibility is justified, such an argument should not be used to supplement an Act, at some unspecified later date, with significant policy detail in subordinate legislation as it will not be subject to the robust scrutiny it deserves.”

¹⁷ Constitutional and Legislative Affairs Committee, *Making Laws in Wales*, October 2015

¹⁸ Constitutional and Legislative Affairs Committee, *Making Laws in Wales*, October 2015, paragraph 12

21. In its 2018 report, *The Legislative Process: The Delegation of Powers*,¹⁹ the House of Lords Constitution Committee highlighted some important principles around the delegation of powers:

“Delegating power to make provision for minor and technical matters is a necessary part of the legislative process. It is essential that primary legislation is used to legislate for policy and other major objectives. Delegated legislation, which is subject to less parliamentary scrutiny, should only be used to fill in the details. There has been an upward trend in the seeking of delegated powers in recent years and this should cease.

It is constitutionally objectionable for the Government to seek delegated powers simply because substantive policy decisions have not yet been taken. It is our judgement that there has been a significant and unwelcome increase in this phenomenon. (...)

Delegated powers should be sought only when their use can be clearly anticipated and defined. Broad or vague powers, or those sought for the convenience of flexibility for the Government, are inappropriate. (...)

Skeleton bills inhibit parliamentary scrutiny and we find it difficult to envisage any circumstances in which their use is acceptable. The Government must provide an exceptional justification for them ... it cannot rely on generalised assertions of the need for flexibility or future-proofing.”²⁰

22. In April 2022, we published our *Report on the Welsh Tax Acts etc. (Power to Modify) Bill*.²¹ In that report, we noted the concerns being raised across parliaments regarding the extent to which primary legislation is delegating powers to Ministers to make subordinate legislation and, also, at how those powers are being used to make important law but with more limited scrutiny.²² In so doing, we drew attention to two reports by House of Lords’ committees in

¹⁹ House of Lords Constitution Committee, *The Legislative Process: The Delegation of Powers*, 16th Report of Session 2017–19, HL Paper 225, 20 November 2018

²⁰ House of Lords Constitution Committee, *The Legislative Process: The Delegation of Powers*, 16th Report of Session 2017–19, HL Paper 225, 20 November 2018, paragraphs 25, 26, 48 and 58 respectively

²¹ Legislation, Justice and Constitution Committee, *Report on the Welsh Tax Acts etc. (Power to Modify) Bill*, April 2022

²² Legislation, Justice and Constitution Committee, *Report on the Welsh Tax Acts etc. (Power to Modify) Bill*, April 2022, paragraphs 29–34

November 2021, both of which expressed concern about the use of skeleton bills: the Secondary Legislation Scrutiny Committee report entitled *Government by Diktat: A call to return power to Parliament*,²³ and a report by the Delegated Powers and Regulatory Reform Committee (DPRR Committee), entitled *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*.²⁴

The UK Agriculture Act 2020

23. Our predecessor Committee in the Fifth Senedd reported on two legislative consent memoranda related to the UK Government's Agriculture Bill 2017-19, which fell at the dissolution of the UK Parliament in October 2019.²⁵

24. In its report on the 2017-19 Bill, the DPRR Committee expressed dismay at the UK Government's approach to delegated powers and noted that:

- The Agriculture Bill represented a major transfer of powers from the European Union (EU) to Ministers of the Crown, bypassing Parliament and the devolved legislatures in Wales and Northern Ireland.
- Parliament would not be able to debate the merits of the new agriculture regime because the Bill did not contain even an outline of the substantive law that would replace the Common Agricultural Policy (CAP) after the United Kingdom had left the EU. Most debate would centre on delegated powers because most of the Bill is about delegated powers.
- The central purpose of the Agriculture Bill was to provide a framework conferring on Ministers extensive powers to make law in more than two dozen classes of statutory instrument. Extensive powers were being conferred on Ministers with correspondingly few duties.

²³ House of Lords, Secondary Legislation Scrutiny Committee, *Government by Diktat: A call to return power to Parliament*, 20th Report of Session 2021-22, HL Paper 105, 24 November 2021

²⁴ House of Lords, Delegated Powers and Regulatory Reform Committee, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*, 12th Report of Session 2021-22, HL Paper 106, 24 November 2021

²⁵ Constitutional and Legislative Affairs Committee, *The Welsh Government's Legislative Consent Memorandum on the Agriculture Bill*, January 2019; Constitutional and Legislative Affairs Committee, *The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No 2) on the Agriculture Bill*, June 2019

- Significantly, powers were exercisable indefinitely and without sunset clauses.
- Parliamentary scrutiny of the Bill was minimised because most of the Bill concerns a framework for future regulatory changes rather than substantive legislative changes that could be debated at the time.²⁶

25. Our predecessor Committee also reported on two legislative consent memoranda related to the UK Government's Agriculture Bill that became the *Agriculture Act 2020* (the 2020 Act).²⁷ Both the DPRR Committee and the House of Lords Constitution Committee noted improvements in the revised version of this Bill but continued to express concerns, including that it still contained a significant transfer of power from the EU to Ministers of the Crown²⁸ and that it was skeletal in parts.²⁹

Policy background

26. The UK's exit from the EU meant the end of the CAP in Wales, and the funding and regulatory framework that it introduced.

27. The directly applicable EU regulations which governed the CAP were incorporated into domestic law by the *European Union (Withdrawal) Act 2018* and became retained direct EU law, one of the components of retained EU law (see separate section later in this chapter).

28. In order to allow the continuation of payments to farmers after 2020, the Senedd gave consent for the UK Government's Agriculture Bill,³⁰ which became the 2020 Act, to maintain and modify the CAP system of support in Wales.

29. The Bill's EM states that the 2020 Act:

"...contains provisions enabling the Welsh Ministers to continue to provide financial support to the Welsh agricultural sector

²⁶ House of Lords, Delegated Powers and Regulatory Reform Committee, *Agriculture Bill*, 34th Report of Session 2017-2019, HL Paper 194, 17 October 2018, paragraph 4

²⁷ Legislation, Justice and Constitution Committee, *The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No 2) on the Agriculture Bill*, July 2020; Legislation, Justice and Constitution Committee, *The Welsh Government's Legislative Consent Memorandum on the Agriculture Bill*, May 2020

²⁸ House of Lords, Delegated Powers and Regulatory Reform Committee, *Agriculture Bill*, 13th Report of Session 2019-2021, HL Paper 69, 3 June 2020, paragraph 21

²⁹ House of Lords, Constitution Committee, *Agriculture Bill*, 8th Report of Session 2019-2021, HL Paper 80, 23 June 2020, paragraphs 26-29

³⁰ *Plenary, 29 September 2020*, RoP [316-370]

through a domestic version of the CAP's BPS and Rural Development Payment Scheme (RDPS).

The Welsh Government was clear from the outset the relevant powers for Welsh Ministers were intended to be transitional until primary legislation in the form of an Agriculture (Wales) Bill could be brought forward.

To address the concerns of Senedd Committees, the Act includes a 'sunset' date in Section 47 and ensures the expiry of provisions in Schedule 5, along with a small number of related provisions, at the end of 2024 in accordance with that provision. The Bill will repeal and replace those provisions which sunset in the AA 2020."³¹

30. The 2020 Act largely kept the status quo with the aim of providing stability ahead of the transition to a new scheme of agriculture support. It does not, however, include provision to enable new payment schemes to be introduced in Wales.

31. Schedule 5 to the 2020 Act also includes power for the Welsh Ministers to intervene in agricultural markets, for the collection and sharing of data, marketing standards and carcass classification, and includes provisions on data protection.

32. The Minister states in the EM that, because agriculture is a devolved matter, "leaving the EU has presented Wales with the opportunity to create future agricultural policy which is more in tune with the unique challenges and opportunities specific to Wales."³²

33. The Minister also states in the EM that the Bill's overarching policy objective is to provide the Welsh Ministers with the powers to enable and support the delivery of sustainable land management (SLM) principles, through powers to provide support to the agricultural sector, through a support scheme or schemes, or via other forms of support. This includes the Welsh Government's proposals to:

- establish SLM as the overarching framework for agricultural policy in Wales;
- establish a power to provide support to the agricultural sector;

³¹ EM, paragraphs 3.29-3.31

³² EM, paragraph 3.6

- provide support to those parts of the wider industry and supply chain that also support the continued delivery of SLM.³³

34. The EM also states:

“The Bill will allow for Welsh Ministers to continue making agricultural support payments to farmers during a transition period (policy proposals on transition are set out in the Sustainable Farming Scheme (SFS) publication).”³⁴

35. The Welsh Government’s outline proposals for the Sustainable Farming Scheme (SFS) set out its policy thinking on how it will support farmers in the period prior to, and following, the launch of the SFS, identifying two phases, a Prepare and Pilot Phase (2022-2024) and a Transition Period (2025-2029). It says it will consult on these proposals in 2023.³⁵

36. In addition, the Bill will also amend other legislation in relation to agricultural tenancies, forestry, snares and glue traps.³⁶

37. The Minister also states in the EM:

“...the Bill will provide a framework within which the Basic Payment Scheme (BPS) and other EU agri-environment support schemes will be replaced, by support provided under the power to provide support. The proposed Sustainable Farm Scheme (SFS) is intended as the principal scheme to be created under the power to provide support. The SFS will be a scheme aimed at rewarding farmers for the delivery of a range of outcomes alongside, and as a consequence of, food production.

Agricultural reform and responding to the climate and nature emergencies are long term challenges. A sustainable agriculture sector for current and future generations is key to meeting our commitment for Wales to be net zero by 2050 and reversing the decline of biodiversity.

³³ EM, paragraphs 3.19-3.20

³⁴ EM, paragraph 1.2

³⁵ Welsh Government, [Sustainable Farming Scheme Outline Proposals for 2025](#), July 2022, Chapter 6

³⁶ EM, paragraph 3.21

The Bill will be fundamental to delivering these aims, setting our policy direction for the next fifteen to twenty years.”³⁷

38. The Minister told us:

“...there have been three formal consultation exercises; Brexit and our Land (2018), Sustainable Farming and our Land (2019) and the White Paper which focused on future Welsh agricultural policy. In addition, we have recently concluded the survey, workshops and interviews which formed the second round of co-design for the Sustainable Farming Scheme (SFS) and intend to publish a full report in 2023.”³⁸

Overall approach in the Bill including the delegation of powers

39. The Bill contains 20 delegated powers enabling the Welsh Ministers to make regulations on matters such as the establishment of a support scheme and changing the definition of agriculture. The regulation-making powers, and the justification for taking them, are summarised in Table 5.1 of the EM. 14 powers, when exercised, will be subject to the affirmative resolution procedure, and 6 powers will be subject to the negative resolution procedure.

40. Given that the Bill had been in development for a long period of time, we asked the Minister why it contained so many delegated powers. She told us of the need to “futureproof it” in order to provide “the flexibility in the future as well”. The Minister added:

“But what the Bill has been developed to do is to support the agricultural sector now and in the future. So, I think I am satisfied, on balance, with the Bill and the use of the regulation powers that you’ve just referred to. It’s not overly prescriptive, but there is that ability to be able to adapt or react to any future changes that will come, I’m sure, in the agricultural sector in the next couple of decades. I don’t think that, as I said before, it impairs Senedd scrutiny in any way, because we will have the affirmative procedure, so there will be that Senedd scrutiny.”³⁹

³⁷ Memorandum, paragraphs 3.12-3.14

³⁸ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 16 December 2022

³⁹ LJC Committee, 21 November 2022, RoP [56]

41. We challenged the Minister on this point, noting that taking a broad range of regulation-making powers for the future does not afford the same level of scrutiny to the Senedd as if the detail appears on the face of the Bill. We highlighted the nature of the changes that could be made to the basic payment scheme (BPS), suggesting they went beyond technical changes, and asked if the Minister had sympathy with our desire to see less far-ranging regulations to enable futureproofing of policy and more information and detail on the face of the Bill.⁴⁰ The Minister said in response:

*"I do have sympathy, and I hear what you say about balance, and for me it's absolutely about being satisfied about the balance. Now, whether my satisfaction is the same as your satisfaction, of course, yes, I do have sympathy, but it is a significant balancing act, I think."*⁴¹

42. The Minister also told us:

*"So, predominantly it is a framework Bill and, as you say, it's been a long time in being brought forward. So, that's why it's necessary not to have everything on the face of the Bill and to have those regulation-making powers in the Bill, and striking the balance that I suppose I've just been talking about in relation to the Chair."*⁴²

43. An official accompanying the Minister added:

"...to respond to development is the other reason. So, framing sustainable land management around the four objectives enables Welsh Ministers, then, to provide support to the sector for things that we perhaps can't predict now. And I think in trying to develop a Bill that is futureproofed for the next generation, it's important to have some flexibility to respond to events. So, for example, events of the last couple of years around the pandemic, or whether it be the current cost pressures that the agricultural industry are facing, just ensuring that Welsh Ministers have the flexibility in the powers provided by that framework to support the sector in different ways in

⁴⁰ LJC Committee, 21 November 2022, RoP [67]

⁴¹ LJC Committee, 21 November 2022, RoP [68]

⁴² LJC Committee, 21 November 2022, RoP [72]

response to that event. So, we felt that it was important to bring a level of flexibility in.”⁴³

44. The official also told us:

“...the Bill, necessarily I think, gives Welsh Ministers a range of powers. We talked about the UK Agriculture Act and the sunset provisions in that Act where through a consent motion Ministers took powers in that Act, and we are moving those powers out of UK legislation into Welsh domestic legislation, which I think is really important. I’m talking here about marketing standards and carcass classification et cetera. There isn’t a policy intent behind, for example, changes to that at the moment, but if we don’t legislate now, those powers will expire, so Welsh Ministers will no longer have the powers after that sunset provision elapses in the UK. So, I think on the one hand you’ve got those aspects of this Bill. The other aspect—if you like, the flagship—is the significant reform we’re proposing through the framework of sustainable land management. Again, we have put out a significant amount of detail over the course of three consultations and two co-designs about how Ministers intend to use the powers taken through this Bill to change the nature of farming support in Wales.”⁴⁴

45. The Minister also noted:

“When we had the sunset clause in the UK Agriculture Bill, at that time the most overriding concern was that we were able to continue to support our farmers. We knew we would have to bring that legislation forward here, the bespoke legislation, in order to pay our farmers—that’s the crux of it.”⁴⁵

46. In subsequent correspondence, we asked the Minister if, for every regulation-making power in the Bill, she could indicate when she first intends to use that power to make the relevant regulations. In response, the Minister told us she had either no plans to use the powers or no date had been set for when the

⁴³ LJC Committee, 21 November 2022, RoP [73]

⁴⁴ LJC Committee, 21 November 2022, RoP [188]

⁴⁵ LJC Committee, 21 November 2022, RoP [189]

regulation-making powers would be used.⁴⁶ As regards the power in section 22, the Minister told us:

*"The Welsh Ministers are planning to amend these provisions, due to the circumstances explained in the answer to Question 18. The changes planned to retained EU legislation governing public market intervention and private storage aid are due to use powers in the Agriculture Act 2020, as the provisions in the Agriculture (Wales) Bill will not be in force for when they are due to be made."*⁴⁷

Relationship with retained EU law

47. In order to minimise disruption when exiting the EU, EU law was converted to domestic law by the *European Union (Withdrawal) Act 2018*. This law became a distinct category of law known as retained EU law. As a result, EU laws stayed in place with the aim of avoiding gaps in important areas like product standards, animal welfare and employment law.

48. The Retained EU Law (Revocation and Reform) Bill (Retained EU Law Bill), introduced into the UK Parliament on 22 September 2022, is the means by which the UK Government intends to deal with the majority of EU law that remains in force.⁴⁸ If passed as introduced, the Retained EU Law Bill gives the UK and Welsh Ministers powers to save, reform or remove retained EU law before 31 December 2023, when it will automatically expire.

49. When we asked the Minister if the Retained EU Law Bill will impact on the Bill in any shape or form, the Minister said:

"Well, at the current time, we don't know what's in it, so it's very hard to give you a straight answer there, because it could change. Obviously, it's going through its journey through the House of Commons and the House of Lords. We had a very early discussion at our last inter-governmental group meeting. (...) DEFRA are just starting to share some further information on that, so it's something they're obviously going to have to keep a

⁴⁶ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, Response to question 1

⁴⁷ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, Response to question 1

⁴⁸ See Senedd Research, [Retained EU \(Revocation and Reform\) Bill Research Briefing](#), November 2022

very close eye on. But it could change. So, even if we made a decision now, it could change as it goes through its journey."⁴⁹

50. In subsequent correspondence, we asked the Minister if the Welsh Government intends to preserve retained EU law on which the operation of the Bill relies using powers they would be given under the Retained EU Law Bill. She said:

*"The Welsh Government is considering how it will respond to the situation, in effect, imposed by the UK Government on reviewing REUL. In general our position is that retained EU law, like EU law before it, works well and, consequently, beyond gradually amending the law as appropriate over time as with any body of law, we had no intention to repeal, revoke or amend REUL to an arbitrary deadline on ideological grounds."*⁵⁰

51. The Minister also indicated that the Welsh Government is not reliant on the UK Government preserving relevant retained EU law, stating:

*"As currently drafted the REUL Bill has powers which the Welsh Government could exercise to preserve REUL in areas of devolved competence. The Welsh Government is considering how it will respond to this Bill and will work with the UK Government to identify all devolved REUL including those instruments made by the UK Government and Parliament."*⁵¹

52. The Minister added:

*"Some UK Government departments (including DEFRA) have started to share their initial interpretation of the reserved/devolved split of REUL with Welsh Government officials and they are considering how to respond and what further information is required. This work is dynamic as new REUL instruments are being identified as work progresses."*⁵²

53. As indicated earlier, under the Retained EU Law Bill, the retained EU law on which the Bill relies would automatically expire on 31 December 2023 unless

⁴⁹ LJC Committee, 21 November 2022, RoP [191]

⁵⁰ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 14

⁵¹ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 15

⁵² Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 16

action is taken to preserve it by either the Welsh or UK Ministers. We asked how this might impact the ability of the Welsh Government to deliver the objectives of the Bill, specifically in relation to public market intervention or aid for private storage. The Minister replied:

“As I have said previously, we will continue to engage and in parallel are considering how to respond in the coming months as the new UK Government’s position on the Bill is understood. Once we have more clarity, we will then be in a better position to assess how the REUL Bill will impact on public intervention and private storage aid.

We are planning to end Public Intervention and reform Private Storage Aid schemes in Welsh legislation next year.

Public Intervention schemes are an inefficient form of market support and have high associated costs, so we are planning to end their use because they represent poor value for money.

We are also planning to remove the requirements for operators to lodge a security for Private Storage Aid contracts and for the Rural Payments Agency to conduct interim inspections of products in such schemes.”⁵³

54. In December 2022, we raised the issue of the impact of retained EU law on the Bill with Mick Antoniw, MS, the Counsel General and Minister for the Constitution.⁵⁴ In subsequent correspondence he told us:

“...we are considering our response to the situation, in effect, imposed by the UK Government on reviewing REUL. In general our position is that retained EU law, like EU law before it, works well and, consequently, beyond gradually amending the law as appropriate over time as with any body of law, we had no intention to repeal, revoke or amend REUL to an arbitrary deadline on ideological grounds.

Furthermore, there is currently no certainty as to what the final version of the REUL Bill will look like, whether it will actually proceed to Royal Assent, nor what will happen to each piece of

⁵³ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 18

⁵⁴ LJC Committee, 5 December 2022, RoP [332-335]

REUL. As a result, the Agriculture (Wales) Bill is proceeding on the basis of what is currently known. (...)

...we will continue to engage with the UK Government and are considering how to respond as its position is understood. In the meantime, there are no plans to change the executive powers in the Agriculture (Wales) Bill.”⁵⁵

Impact of the United Kingdom Internal Market Act 2020

55. The *United Kingdom Internal Market Act 2020* (“UKIMA”) established the market access principles for the UK internal market, which includes the mutual recognition principle for goods. This principle provides that goods which have been produced in, or imported into, one part of the UK, and which can be sold⁵⁶ there without contravening any legislative restriction, should be able to be supplied in any other part of the UK. To give effect to this principle, section 2(3) of UKIMA disapplies any legislative restrictions that would otherwise apply to the sale of those goods in that other part of the UK.

56. This principle can be explained by use of a hypothetical example: if businesses in England are permitted to sell green chairs, those chairs can be lawfully sold in Wales even if there is a law banning the sale of green chairs in Wales.

57. In a discussion on the impact of UKIMA on the Bill, the Minister said:

“The Counsel General has made it very clear that the UK Internal Market Act cannot and does not cut across Senedd competence to legislate in relation to non-reserved matters, which obviously this is, so I don’t think it will have any impact.”⁵⁷

58. In correspondence we asked the Minister to identify what assessment had been made of the potential impact of UKIMA on the effectiveness of the Bill’s provisions should they be passed by the Senedd and become law. In response, the Minister said:

“Wales will be able to make its own standards with which the agricultural products listed in schedule 1 to the UK Internal Market Act must conform when they are marketed in Wales

⁵⁵ Letter from the Counsel General and Minister for the Constitution, 19 January 2023, response to questions 23 and 27

⁵⁶ In UKIMA, “sale” includes providing something free of charge

⁵⁷ LJC Committee, 21 November 2022, RoP [159]

and the classification, identification and presentation of bovine, pig and sheep carcasses.

Likewise, England, Scotland and Northern Ireland will have the power to make their own provisions in these subject matters.

As is the case in respect of the Environmental Protection (Single-Use Plastics Products) (Wales) Bill, we are clear that the Senedd can legislate free from the requirements of UKIMA.

Therefore, the standards set in respect of agricultural products marketed in Wales will apply regardless of where in the UK those products come from.

The Welsh Government has made its position on UKIMA very clear throughout the passage of the Environmental Protection (Single-Use Plastics Products) (Wales) Bill. This remains our position – In devolved areas, the Senedd continues to be able to legislate free from the requirements of UKIMA.”⁵⁸

Accessibility

59. Under the *Legislation (Wales) Act 2019*, the Welsh Ministers and the Counsel General must prepare and lay before the Senedd a programme to improve the accessibility of Welsh law. Each programme must make provision to consolidate and codify Welsh law, maintain codified law, promote awareness and understanding of Welsh law, and facilitate use of the Welsh language.

60. We asked the Minister if the legislation is easy for farmers to understand and to act upon. In response the Minister said:

“I think that any legislation is quite difficult to understand, isn’t it? We’ve tried to make it as simple as possible. Through the consultations, it has changed a lot. So, from that first consultation back in 2018 to where we are now, I hope that people (...) would see that change and that it was clear to see. (...) Any legislation’s quite hard for the lay person, I would say, and even for myself—it is hard to really drill down, isn’t it, unless

⁵⁸ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 3

you're a lawyer. But I do think the scheme, particularly, has laid things in a very clear manner for farmers.”⁵⁹

61. An official accompanying the Minister added:

“I think what we tried to do with the scheme was to bring the legislation to life for the farmer, in essence, by making the connection between farming management practice, so the actions that a farmer could undertake and that the Government would want to support them for in the future, and the delivery of outcomes that correlate to the purposes of support that we put in the Bill. So, we’ve made a direct link, if you like, between the very specific farm action we’d want to support the farmer to undertake and why we would want them to undertake it to deliver those outcomes. I think, in publishing the scheme, we’ve tried to bring the legislation to life for the farmer themselves.”⁶⁰

Our view

Detail on the face of the Bill

62. At the start of this chapter we drew attention to the longstanding view of our equivalent Committee in the Fourth Assembly that framework (or enabling / skeleton) Bills which create extensive regulation-making powers for the Welsh Ministers, often using the justification of the need for ‘future-proofing’ or ‘flexibility’, are constitutionally inappropriate. As we highlight, this view of enabling Bills is shared by parliamentarians across the UK.

63. We have also commented on such matters in the Sixth Senedd. Our *Report on the Welsh Tax Acts etc. (Power to Modify) Bill* also highlighted, amongst other things, our concern that the Bill was “an enabling Bill which inherently leaves all significant policy development and implementation to be determined by subordinate legislation.”⁶¹

64. Significant elements of Parts 2 and 3 of the Bill fall into the category of an enabling Bill and that is very disappointing for a number of reasons.

⁵⁹ LJC Committee, 21 November 2022, RoP [102]

⁶⁰ LJC Committee, 21 November 2022, RoP [103]

⁶¹ Legislation, Justice and Constitution Committee, Report on the Welsh Tax Acts etc. (Power to Modify) Bill, April 2022, paragraph 88

65. The Minister has been open in stating that this is a framework Bill and has cited the need for futureproofing and flexibility. Against the backdrop of repeated statements that we, and our predecessor Committees, have made that this approach does not represent good legislative practice and is not one that should be followed, we find these statements unfortunate.

66. Our concern is compounded by the Minister's justification for the approach on grounds that the Bill will be in place "for several decades". We consider that such a view does not respect constitutional norms. Further, the Minister's justification does not appear to recognise that any future government could use the powers in the Bill in a way that was not on the radar of the Senedd which scrutinised the Bill. This issue is of particular significance given that the powers in the Bill have been drawn very broadly (see chapter 4 of the report).

67. Of most importance when a legislature is asked to delegate powers to the executive is consideration as to how those powers could be used in the future, rather than how the current Minister intends to use them at the time they are taken. Despite this, the Minister has acknowledged that she has not set any timeframe for the use of the delegated powers. It is a statement of fact that, if passed, the Bill will delegate broad powers to future governments in Wales, which could be used to develop significant policy on agriculture with limited democratic input and decision-making by the Senedd as the legislature.

68. Certain provisions in Parts 2 and 3 of the Bill will mean that powers previously exercised at an EU level will be transferred to the Welsh Ministers and in so doing, will have bypassed, all but momentarily, the Senedd as the legislature. We do not consider this to be appropriate or acceptable.

69. We acknowledge that Parts 2 and 3 of the Bill, in part, reflect provisions in the 2020 Act which itself had elements that made it a framework Bill and to which the Senedd gave its consent. However, we do not consider that this legitimises the Welsh Government bringing forward similar enabling provisions in Wales-specific legislation. We also note that the Welsh Government has not transferred limitations on the exercise of some regulation-making powers (for example under sections 15, 16 and 22) that were originally included in the 2020 Act (see chapter 4 of the report).

70. The Welsh Government has had the opportunity over several years to draft a Bill which included more policy detail on its face about the relevant purposes, principles and criteria underpinning agriculture policy in Wales that will replace the provisions and powers being returned from the EU, not least since the decision to leave the EU was taken by the electorate in 2016. Moreover, the Welsh

Government has been heavily involved in discussing relevant policy as part of the development of the 2020 Act.

71. As has happened too frequently with EU-exit related legislation at Westminster, the Bill provides extensive powers to the Welsh Ministers and in so doing enables the Welsh Ministers to avoid detailed scrutiny by the Senedd of substantive and significant policy decisions on agriculture potentially for “decades”.

72. We also note that as currently drafted, while Part 1 and chapters 1 and 2 of Part 2 will be commenced two months after Royal Assent, there will be no legal obligation to transition to use the new provisions to provide support under chapter 1 of Part 2 in the absence of a sunset provision or detail about an end date by which transition should be completed. As such, a future government could potentially use powers to provide support to farmers indefinitely through continual modification of legislation relating to the existing BPS and CAP.

73. Part 6 of the Bill includes powers to amend the meaning of agriculture. These powers are exceptionally broad and could potentially be used to change significantly the extent and scope of the Bill, with limited democratic input from the Senedd as the legislature. We consider these powers in more detail in chapter 4 but highlight them here as they are relevant to our overall assessment of the Bill.

74. We also note that *The Co-operation Agreement Annual Report 2021-2022*,⁶² published in December 2022 by the Welsh Government, draws attention to the introduction of the Bill and states that work is “ongoing on further amendments which we will publish jointly during Stage 1.”⁶³ Given that this statement was made before Senedd committees had reported on the Bill, this could suggest that such amendments could relate to new policy. If so, this would represent poor legislative practice because it would mean potentially important issues bypassing Stage 1 scrutiny. All provisions of the Bill should be considered collectively, given the potential for provisions to relate to (and / or impact upon) each other, unless of course new provisions arise in response to concerns raised by stakeholders or a Committee during scrutiny. As we highlight above, our equivalent Committee in the Fourth Assembly expressed concern at incomplete Bills being introduced to the Senedd. We share the view set out in their report *Making Laws in Wales*:

“...the process of amending Bills at Stages 2 and 3 should be used as a means to debate and suggest improvements to a Bill

⁶² Welsh Government, *The Co-operation Agreement Annual Report 2021-2022*, December 2022

⁶³ Welsh Government, *The Co-operation Agreement Annual Report 2021-2022*, December 2022, page 2

that has been introduced. It should not be used (except in exceptional circumstances or to deliver a committee recommendation made at Stage 1) to introduce large and significant amounts of legislative text that were, for whatever reason, not ready or unavailable at the time the Bill was introduced."⁶⁴

75. We are unable to form a clear view on this matter because at the time we had agreed our report, the proposed amendments referred to in the annual report had not been shared with the Committee. If the draft proposed amendments are published after Stage 1 has been completed, we expect Committees to be given the time and opportunity to consider them in detail before the disposal of the amendments at Stage 2 (subject to them being accepted for tabling).

76. We would also highlight that the Bill is quite disparate in nature; while Parts 1, 2 and 3 are related and clearly associated with agriculture, Part 4 on forestry and Part 5 on wildlife are, although narrow in focus, perhaps tenuously linked to the agriculture subject matter.

77. Overall, we do not consider that the Bill adopts a sensible and constitutionally appropriate approach to legislating.

Conclusion 1. The Bill as drafted has significant shortcomings and once again it is disappointing to report on a Bill proposed by the Welsh Government that in places does not demonstrate good legislative practice.

78. In reaching this view, we note the views of the Counsel General when he said:

*"Setting out the laws of a country is vital to provide certainty and protection for citizens and their environment, to prevent arbitrary decisions and to ensure people know their rights and their obligations."*⁶⁵

79. We agree with the Counsel General and believe the points he made should influence choices around the balance that should be achieved when considering what law to place on the face of the Bill and what should be left to subordinate legislation. Placing excessive amounts of law in subordinate legislation rather than

⁶⁴ Constitutional and Legislative Affairs Committee, Making Laws in Wales, October 2015, paragraph 114

⁶⁵ Plenary, 21 September 2021, RoP [211]

on the face of the Bill, as well as bypassing the legislative function of the Senedd, risks making the law less coherent and more inaccessible.

80. We also note the possibility of another Agriculture Bill being introduced during the Sixth Senedd, potentially focused around national minimum standards.⁶⁶

Recommendation 1. Any subsequent Agriculture Bill introduced by the Welsh Government should not be a framework Bill and as such, should not contain extensive delegated powers for the Welsh Ministers that would set out in regulations policy details that should appear on the face of the Bill.

Recommendation 2. The Minister should state clearly what policy she intends to cover in the next Agriculture Bill to be introduced into the Senedd and the likely date of introduction.

Delegated powers

81. We wish to make some general comments regarding the justification included in the EM for the delegation of powers and also some of the statements made by the Minister regarding the use of the affirmative procedure.

82. Table 5.1 of the EM includes a column “Appropriateness of delegated power”. However, the content of this column in relation to each power, on too many occasions, tends to be more of a description of the power itself rather than a justification for its inclusion in the Bill. For example, in relation to the power under section 11(1) to make provision about checking eligibility for support, etc, the entry states:

“Regulations to make provision for ensuring that eligibility for support has been met and compliance and enforcement measures are in place This power may confer powers of entry, the withholding of support and the recovery of support already paid.

Regulations under this power may not authorise entry to a private dwelling without a warrant issued by a justice of the peace.”⁶⁷

⁶⁶ LJC Committee, 21 November 2022, RoP [paragraphs 176-1841]

⁶⁷ EM, chapter 5, page 94

Conclusion 2. The justification provided by the Minister for the inclusion of delegated powers in the Bill is, in many cases, weak.

83. As we highlight in chapter 4 of the report, the Minister refers to the use of the affirmative procedure as providing the Senedd with the opportunity for “significant scrutiny” or “full scrutiny”. The EM also states that the affirmative procedure has a “high level” of scrutiny.⁶⁸

84. It remains unclear to us why the Welsh Government persists with arguments that suggest the affirmative procedure enables the Senedd to undertake significant, and therefore detailed, scrutiny. It does not and such inaccurate statements should not be used. This is particularly true in the case of this Bill because the delegated powers are broad and could be used to make significant policy changes.

85. Under the Senedd’s Standing Order 21, subordinate legislation is subject to scrutiny by this Committee but it must report, against set criteria, within 20 days. We do not consider policy matters, and subject committees have little opportunity to consider such subordinate legislation within that time period. We acknowledge that subordinate legislation subject to the affirmative procedure requires approval by the Senedd before it is made and becomes law and it is, therefore, subject to the consideration of all Members of the Senedd.

86. However, as we consistently remind the Welsh Government, subordinate legislation is not amendable and does not offer anything remotely like the level of scrutiny given to a Bill. The Senedd is given a take it or leave it option. However, Stage 1 scrutiny of a Bill allows a Senedd committee to engage with stakeholders on the Committee’s terms, while Stages 2 and 3 provide Members with the ability to table amendments to a Bill to test, challenge and influence the Minister, often on the basis of evidence obtained at Stage 1. Subordinate legislation should then, once a Bill has become law, be used to fill in detail rather than as a means of developing significant policy which is not then subject to this full and detailed scrutiny. Subordinate legislation that contains significant policy detail also means that such policy tends to be considered in isolation rather than as part of the wider policy framework set out in the Bill.

87. Therefore, we take this opportunity to draw the Minister’s attention to evidence received by the Finance Committee on the Welsh Tax Acts etc. (Power to Modify) Bill, which we included in our report on that Bill. The principle advocated in that evidence is just as relevant to this Bill:

⁶⁸ EM, chapter 5, page 93

"It may be objected that it does not matter that changes to the law will be made by Welsh Ministers, because to have full effect they must be approved by the Senedd, (...)

*That is factually correct, but the end point of that reasoning is that there is no need for any laws to be made by the Senedd, so long as the Senedd has power of approval over secondary legislation."*⁶⁹

Retained EU law

88. The Bill as drafted makes some of its provisions by reference to retained EU law. By virtue of the Retained EU Law Bill, this law may be saved, reformed or removed by the Welsh Ministers or UK Ministers, or it will disappear if no action is taken by government. It was for this reason that we asked the Minister and the Counsel General what impact the Retained EU Law Bill will have on the Bill.

89. In our view their responses – essentially to express dissatisfaction with the UK Government's approach as provided for in the Retained EU Law Bill and to state that final decisions have yet to be taken by the Welsh Ministers – are not sufficient.

90. Notwithstanding our own emerging concerns about the Retained EU Law Bill, we are concerned that the Minister's evidence (and that of the Counsel General) suggests little work has been done by the Welsh Government on how the Bill will be affected by this UK legislation. We accept that the lack of prior notice about the Retained EU Law Bill from the UK Government will have impacted on how the Bill was drafted. However, it is now some four months since the Retained EU Law Bill received its first reading in the UK Parliament and we would have expected the Minister and the Welsh Government to have given greater consideration to this matter than appears to have been the case. We consider the approach on this issue to be regrettable. We do not think it is appropriate to ask the Senedd to pass the Bill without knowing how its provisions could be affected by the Retained EU Law Bill or how decisions taken in the UK Parliament could impact on its effectiveness and status.

Recommendation 3. The Minister must provide a more definitive view of how the Bill will be impacted by the Retained EU Law (Revocation and Reform) Bill by the start of Stage 3 proceedings (subject to the Senedd agreeing the general principles).

⁶⁹ LJC Committee, Report on the Welsh Tax Acts etc. (Power to Modify) Bill, April 2022, paragraph 104

91. It would also be helpful to know why it was not possible to use the Bill as a vehicle to save, reform or remove law – whichever is required – in the field of agriculture that is currently contained in retained EU law. This would also have ensured that there was more detail on the face of the Bill, giving a more comprehensive picture of law in the field of agriculture. It would also have made the law more accessible to Welsh stakeholders.

Recommendation 4. The Minister should explain why the Welsh Government did not take the opportunity, on the face of the Bill, to save, reform or remove law in the field of agriculture that is currently contained in retained EU law.

United Kingdom Internal Market Act 2020

92. A key matter of concern to the Committee is the impact of UKIMA on the effectiveness of laws passed by the Senedd.

93. We consider that a number of sections in this Bill (particularly sections 32 and 33) engage the mutual recognition principle in UKIMA. This is the principle that a good which complies with regulation permitting its sale in the part of the UK it is produced in or imported into, can be sold in other parts of the UK, without complying with equivalent regulation there.

94. In our letter of 25 November 2022, we asked the Minister to identify what assessment the Welsh Government has made of the potential impact of UKIMA on the effectiveness of the provisions of the Bill should they be passed by the Senedd.

95. The Minister’s response was drafted in the context of section 32 of the Bill, which concerns marketing standards for agricultural products, stating:

“As is the case in respect of the Environmental Protection (Single-Use Plastics Products) (Wales) Bill, we are clear that the Senedd can legislate free from the requirements of UKIMA.

Therefore, the standards set in respect of agricultural products marketed in Wales will apply regardless of where in the UK those products come from.” [Our emphasis].

96. Whilst we accept that UKIMA does not generally prevent the Senedd from legislating in devolved areas, it is unclear to us how the second sentence (in bold) is compatible with the mutual recognition principle in UKIMA.

97. Our understanding is that if there is future divergence in marketing standards as between Wales and the rest of the UK, the mutual recognition

principle in UKIMA will be engaged. The effect of this would be that certain agricultural products could be freely sold in Wales, notwithstanding that they did not comply with the standards in Wales.

98. Whilst the Senedd may have the competence to legislate for such standards, this contention is irrelevant if those standards cannot be effectively enforced.

99. The position outlined by the Minister in relation to this Bill on the effect of UKIMA appears at odds with that set out by the Welsh Government in its own legislative consent memorandum on the Genetic Technology (Precision Breeding) Bill.⁷⁰

100. We do not think it is appropriate to ask the Senedd to pass the Bill without knowing how its provisions could be affected by UKIMA.

Recommendation 5. The Minister should state clearly whether the effectiveness in Wales of any of the Bill's provisions (should it be passed and enacted) will be dependent on, or affected by, any of the requirements of the *United Kingdom Internal Market Act 2020*.

Accessibility

101. We have already indicated above that a different approach to the Bill, with more detail on its face, would have made the Bill more accessible. We have also noted that Parts 4 and 5 of the Bill on forestry and wildlife do not appear to be clearly linked to agriculture.

102. We do however note that Parts 4 and 5 contain overview sections describing how existing primary legislation is being amended by the Bill. While we have some concerns about the accessibility of these Parts generally, which we consider later in chapter 4 of this report, we nevertheless consider the use of the overview sections to be helpful.

103. Parts 1 to 3 of the Bill concern the transition to a new system of providing support payments to farmers and in doing so provide a mechanism to move away from a reliance on EU legislation as the basis for the law that applies in Wales. Notwithstanding our concerns about how this is being achieved, we do not believe that this point is easily discernible to the lay reader of this piece of legislation. We are therefore surprised that the opportunity was not taken to use overview sections for Parts 1 to 3 to describe what each part is seeking to achieve and how they relate to each other (particularly when such sections have been

⁷⁰ Welsh Government, *Legislative Consent Memorandum The Genetic Technology (Precision Breeding) Bill*, 8 December 2022

used for Parts 4 and 5). We believe that this would be helpful to the reader and provide a clearer, more accessible picture of what the legislation is seeking to achieve.

Recommendation 6. The Minister should table amendments to the Bill to insert overview sections into Parts 1, 2 and 3 of the Bill as a means of explaining clearly the purpose of each Part and what it is seeking to achieve.

104. We note that the Minister wrote to the ETRA Committee on 1 November 2022 about corrections to the EM. We considered the letter at our meeting on 12 December 2022, although it was not formally provided to us. Such letters should as a matter of routine also be copied to us.

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

105. The Bill comprises 54 sections and 3 Schedules and is split into 6 parts:

- Part 1 – Sustainable land management
- Part 2 – Support for agriculture etc
- Part 3 – Matters relating to agriculture and agricultural products
- Part 4 – Forestry
- Part 5 – Wildlife
- Part 6 – General

106. Our consideration below focuses on specific sections and regulation-making powers within those sections that we wish to highlight and, accordingly, draw to the attention of the Senedd.

Part 1 – Sustainable Land Management

107. Part 1 of the Bill concerns SLM. Section 1 sets out the objectives of SLM. Section 2 specifies the Welsh Ministers' duty in relation to the objectives, namely requiring the Welsh Ministers to exercise certain of their functions in the way they consider best contributes to achieving the SLM objectives (so far as is consistent with the proper exercise of the function), with exceptions set out in section 3. Section 4 requires the Welsh Ministers to prepare and publish indicators and targets to measure progress towards achieving the SLM objectives. Section 5 sets out the steps that must be undertaken in preparing or revising indicators and targets. Section 6 requires the Welsh Ministers to prepare and publish SLM reports within a timeframe set by subsection (9). Subsection (10) permits subsection (9) to be amended by regulations subject to the affirmative procedure. Section 7 sets out the reports, policies and other matters that the Welsh Ministers must have regard to in preparing SLM reports.

108. We asked the Minister if she had considered including an express definition of SLM on the face of the Bill and if the lack of a definition for this purpose leaves

it open to interpretation, consequently making the legislation less precise. She replied by saying:

“No, not at all. No, not at all do I think the Bill is less precise. The Welsh Government defined ‘sustainable land management’ within the context of this Bill through four SLM objectives in section 1. What this Bill is about is made-in-Wales agricultural policy, and the SLM objectives take account of the specific policy and the specific legislative objectives that we have, going forward. And obviously, we’ve got very specific legislation that we have to incorporate, and that’s the Well-being of Future Generations (Wales) Act 2015, and, of course, the Environment (Wales) Act 2016 as well.

As you know, we’ve done several consultations, and we’ve had those three consultation exercises and also the White Paper. And one of the things that we took into account was the definition of SLM from the United Nations definition of SLM, so we’ve incorporated that, and we’ve developed the objectives around that. I think presenting the SLM objectives in the way that we have gives us a very clear framework. This legislation is going to be here for several decades, and I think it’s important that we have an agricultural policy that’s fit for purpose here in Wales. And I think that’s absolutely what this Bill does.”⁷¹

109. We sought further clarity around the definition of SLM, asking specifically why existing definitions had not been used.⁷² An official accompanying the Minister noted that, in evidence to the ETRA Committee, different stakeholders were citing different definitions from for example the UN, the World Bank or those relating to agroecology. He added:

“What I think we’ve tried to do in our policy development is translate—starting with the UN definition, (...) that into something that is meaningful, to provide support and future powers for the Minister to support the sector in the future. And I think that’s where we, during the drafting process of the Bill, settled on defining it, effectively, as those four objectives around supporting farmers for sustainable production of food, action to mitigate and adapt to climate change, respond to the nature

⁷¹ LJC Committee, 21 November 2022, RoP [37–38]

⁷² LJC Committee, 21 November 2022, RoP [51]

emergency. And also, I think really importantly, which perhaps doesn't feature so much in the UN definition, for example, is the social and cultural aspects of sustainable land management, as we see it, particularly around the Welsh language."⁷³

110. We also asked the Minister whether section 2 (which places a duty on the Welsh Ministers to exercise certain functions in the way they consider best contributes to achieving the SLM objectives) gives the Minister too much power without setting out clearly what is expected from those in the agricultural sector. The Minister replied:

*"No, I don't think it does, and I think one of the things that we've worked very hard on with the sustainable land management objectives is making sure that everything's complementary. There's no hierarchy with those objectives. I think it was really important to make that point, that there is no hierarchy and they're complementary. And no, I don't think it does give the Minister too many powers."*⁷⁴

111. The Minister also highlighted that targets and indicators will be published to ensure openness and transparency.⁷⁵ An official accompanying the Minister also told us:

"...when the Welsh Ministers come to apply that SLM duty, exercising the functions, they must consider all the objectives, and as the Minister says, there needs to be a process of setting sustainable land management indicators and targets, there's a full consultation process in relation to that, and that will lay a basis for when Welsh Ministers exercise those functions in accordance with section 2. And if there are issues that people may have with the exercise of those functions, well, they can refer to all of the information that we've put out there in the public domain in terms of indicators, targets and the objectives, and they could challenge the Welsh Ministers on that basis. So, it's not a complete free-for-all, and they're only functions exercisable by the Welsh Ministers that are subject to the SLM duty as well (...) There will be a lot of measurements by which

⁷³ LJC Committee, 21 November 2022, RoP [53]

⁷⁴ LJC Committee, 21 November 2022, RoP [77]

⁷⁵ LJC Committee, 21 November 2022, RoP [84]

the public can challenge and scrutinise the Welsh Ministers when they're exercising their duty under section 2.”⁷⁶

112. The official added:

“There are specific requirements that the Welsh Ministers must prepare the indicators and targets, and there’s a lot of detail there on what they must do and what they must publish, and there will be engagement with the public as part of that process.

And then, as part of that process, it’s not just so simple as that; the Welsh Ministers must also have regard to national indicators in the Well-being of Future Generations (Wales) Act 2015, the ‘State of Natural Resources Report’, and the natural resources policy published under the Environment (Wales) Act 2016, so there are lots of checks and balances that will have an impact on what the Welsh Ministers can do and how they undertake their SLM decision making.”⁷⁷

113. The official also noted that section 5(3) of the Bill places a statutory duty on the Welsh Ministers to consult in relation to SLM indicators and targets.⁷⁸

114. In subsequent correspondence, the Minister provided further detail:

“The SLM duty and objectives are supplemented by detailed monitoring and reporting provisions, which include provision for indicators and targets to be prepared, published and laid before the Senedd. The indicators and targets will enable progress to be measured, which in turn will be used to assess and report on the progress made towards achieving the SLM objectives. In preparing or revising indicators and targets, the Welsh Ministers must consult the Future Generations Commissioner for Wales and any other persons they consider appropriate. The first report must be published and laid before the Senedd no later than 31 December 2026, and subsequent reports must be published and laid before the Senedd at least every 5 years. Together, these monitoring and reporting provisions are intended to provide important evidence for policy

⁷⁶ LJC Committee, 21 November 2022, RoP [90]

⁷⁷ LJC Committee, 21 November 2022, RoP [94-95]

⁷⁸ LJC Committee, 21 November 2022, RoP [195]

development, and effective participation and scrutiny by the Senedd, stakeholders and the wider public.

I would also re-iterate the ‘made in Wales’ legislation which has informed the development of SLM (in particular, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016), and the policy response to the climate and nature emergencies declared by the Senedd.

Further, to clarify for the committee, the SLM provisions provide a framework for the exercise of certain functions, and those functions, including the power to provide support, must be exercised in a way that is consistent with the SLM duty, but the SLM provisions are not the basis on which support would be provided.”⁷⁹

Our view

115. We note that the Minister is not in favour of including an explicit definition of SLM in section 1 of the Bill. Instead she referred to it being defined “within the context of this Bill through four SLM objectives in section 1”.

116. It is not, in our view, appropriate or adequate to define a term by a set of objectives, which may or may not be achieved. Such an approach does not provide the certainty that would come with a definition. We believe therefore that a precise definition of SLM should be included in section 1 of the Bill.

Recommendation 7. The Minister should table an amendment to section 1 of the Bill to provide a Wales-specific definition of sustainable land management,.

117. As a general observation, we have found it difficult to understand how the new system of SLM and farm support in Parts 1 and 2 will operate in practice from a reading of the Bill. We welcome the extensive consultation that has taken place but this does not justify the lack of detail on the face of the Bill that could make the operation of the legislation easier to understand. The legislation itself should be clear and stakeholders should not have to resort to looking at previous consultation papers (and their outcomes) or policy documents in order to understand what it means, particularly given the Minister’s expectation that the consequent Act will last for “decades”. We also highlight that making legislation is

⁷⁹ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 16 December 2022

a process that should involve the Senedd as well as the Welsh Government and stakeholders.

118. We also note that the monitoring provisions in sections 4 and 5 are intended partly to provide evidence to facilitate scrutiny of the Welsh Government by the Senedd, stakeholders and the wider public.

119. While the inclusion of overview sections would help, as we recommend earlier in the report, the Bill would benefit from more detail on its face.

Recommendation 8. The Minister should review Part 1 of the Bill to consider whether it would benefit from more detail explaining how the new system of sustainable land management will operate in practice and in conjunction with Part 2, with a view to tabling amendments that will make the legislation more accessible to stakeholders.

120. Recommendation 8 should be considered with recommendations relevant to Part 2 of the Bill.

121. Specifically, as regards to the duty to consult in section 5(3), we are not clear why the Future Generations Commissioner for Wales is the only named mandatory consultee. We recognise that the Welsh Ministers must also consult “any other persons they consider appropriate” but we believe it would be helpful if an indication could be given of who they are likely to be.

Recommendation 9. The Minister should, before the start of Stage 3 proceedings, provide to this Committee and the Economy, Trade and Rural Affairs Committee a list of the organisations she would intend to consult regularly under section 5(3)(b) of the Bill.

Part 2 – Support for Agriculture etc.

122. Part 2 of the Bill deals with support for agriculture and related matters.

Chapter 1 – Welsh Ministers’ power to provide support

123. Chapter 1 of Part 2 of the Bill concerns the Welsh Minister’s powers to provide support. As regards section 8 to the Bill, the Explanatory Notes state:

“Section 8 provides the Welsh Ministers with the power to provide support for, or in connection with, agriculture and ancillary activities that take place in Wales. Support may be financial, or non-financial, for example the Welsh Ministers

might choose to exercise the power to make payment for actions or to provide instructional assistance and advice.

Section 8(2) sets out a list of (non-exhaustive) purposes for or in connection with which the Welsh Ministers may provide support in Wales. The Welsh Ministers are not constrained by the listed purposes at section 8(2) and may provide support for other purposes, so long as the other purposes are for or in connection with agriculture and/or ancillary activities in Wales. The purposes listed at section 8(2) provide context in terms of the policy aims for which support is envisaged. The purposes support the achievement of the SLM objectives detailed in section 1.”⁸⁰

124. Section 8 also provides the Welsh Ministers with the power to make regulations to provide the Welsh Ministers with the power to amend the list of purposes by regulations (by adding a new purpose, removing a purpose, or altering the description of a purpose). Section 9 provides that support provided under the power of support in section 8 may be given financially or otherwise, while section 10 confers a power on the Welsh Ministers to make regulations about the publication of information about support. Section 11 provides the Welsh Ministers with regulation-making powers to make provision about checking whether eligibility criteria for support are met, but may not authorise entry to a private dwelling without a warrant issued by a justice of the peace. Section 12 places a duty on the Welsh Ministers to prepare an annual report in relation to support. Section 13 places a duty on the Welsh Ministers to prepare an Impact Report to set timeframes, although that timeframe may be changed by regulations. Further provisions on the steps to be taken in preparing the report set are out in section 14.

125. Regulations made under sections 8(4) and 13(7) are Henry VIII powers which would enable the amending of primary legislation, and such regulations would be subject to the affirmative procedure.

126. The section 10(1) power to make regulations is also subject to the affirmative procedure. In the EM, the Minister notes that this is because:

“The power may involve the publication of data relating to businesses and individuals that receive support under the power to provide support. The power is also far reaching in its

⁸⁰ EM, Annex 1 – Explanatory Notes to the Agriculture Bill, paragraphs 65-66

applicability. Due to transparency in the application of public funds the Affirmative Resolution Procedure, and its high level of scrutiny, is felt to be appropriate. Information is also protected under GDPR.”⁸¹

127. The use of the affirmative procedure for the regulation-making power in section 11(1) is justified on grounds that:

“Due to the reach of these powers and the need for them to be justified and appropriate in relation to what they are establishing (eligibility for payments and compliance to support conditions) the affirmative resolution procedure is felt to give sufficient checks to ensure that the power is used appropriately and fairly.”⁸²

Chapter 2 – Powers to modify legislation relating to financial and other support

128. Chapter 2 of Part 2 of the Bill provides regulation-making powers to modify existing legislation (which is currently classified as retained EU law) relating to financial and other support, including the legislation governing the BPS (section 15), legislation relating to the CAP (section 16), the legislation relating to the support for apiculture (section 17) and legislation relating to support for rural development (section 18). Section 19 makes provision about the relationship with other powers to modify legislation.

129. The regulation-making powers delegated to the Welsh Ministers in sections 15(1), 16(1) and 18(1) are subject to the negative procedure and the justification provided in the EM is the same for each provision, namely that the regulations:

“...will largely be technical / procedural in nature and will only be used where necessary to make changes to current detailed scheme rules, contained in retained EU Law.”⁸³

130. The regulation-making power delegated to the Welsh Ministers in section 17(1) is also subject to the negative procedure and the justification provided in the EM is as follows:

⁸¹ Memorandum, Chapter 5, page 93

⁸² Memorandum, Chapter 5, page 94

⁸³ Memorandum, Chapter 5, pages 95-96

*"This power is required to modify the apiculture scheme and adapt to changes in order to support beekeeping."*⁸⁴

Chapter 3 – Intervention in agricultural markets

131. Chapter 3 of Part 2 of the Bill provides powers for the Welsh Ministers to intervene in agricultural markets. Section 20 makes provision for circumstances in which the Welsh Ministers may make a declaration relating to exceptional market conditions, while section 21 specifies the powers that are available to the Welsh Ministers while a declaration of exceptional market condition has effect.

132. Section 22 provides the Welsh Ministers with a regulation-making power to modify retained direct EU legislation relating to public market intervention and private storage aid, so far as it has effect in relation to Wales. The justification provided in the EM for the use of the negative procedure under section 22(1) is that:

*"Any changes will largely be technical / procedural in nature and will only be used where changes to the detail contained in retained EU Law are necessary."*⁸⁵

133. An official accompanying the Minister explained how the Bill would operate including the timetable for replacing the BPS with the SFS:

*"I think in publishing the scheme proposals, it set out a really clear signal of intent to start the process of phasing out the basic payment scheme in Wales at the same time as introducing the sustainable farming scheme over an extended period of time. So, in that publication we talked about a multi-year transition period that would take us up towards the end of the decade, so we'd be working with the new powers in the Bill to provide support for farmers through the sustainable farming scheme and using the existing powers, essentially, to continue running the basic payment scheme."*⁸⁶

134. He added:

"...subject to passage of the Bill, the Minister's proposed to consult on the final sustainable farming scheme that is currently going through co-design at the moment, in 2023, and,

⁸⁴ Memorandum, Chapter 5, page 95

⁸⁵ Memorandum, Chapter 5, page 96

⁸⁶ LJC Committee, 21 November 2022, RoP [69]

*alongside that, to publish our economic analysis of the scheme, with a view to then making a decision on bringing the scheme into effect from 2025. So, there's quite a lead-in time, if you like, to the primary purpose, if you like, of some of this legislation, which is to reform agricultural support, and a very clearly articulated process about how we get from Senedd scrutiny now of the Bill to introducing a scheme in 2025."*⁸⁷

135. We highlighted the breadth of the power in section 15(1) which enables the Welsh Ministers to modify the BPS, and we asked the Minister why the Bill contained so little information about how the power will be exercised and what the regulations could be used for, given we believe they could be used to bring about fundamental change. In response the Minister said:

"I've announced my intention to continue with the basic scheme, as you know, until 2023, because obviously we need to provide support to our farmers as we work together to transition to the sustainable farming scheme. I've made it very clear that we won't transition to that scheme until that scheme is absolutely ready. You've just heard what I said about the sustainable farming scheme, so we're a little way out yet.

*We've gathered a lot of evidence through the co-design scheme, I think it's fair to say. That's going to feed into the wider evidence base that we have, alongside other evidence work streams, and I mentioned earlier that we'll be consulting next year on that."*⁸⁸

136. We asked the Minister to explain why regulations that modify retained direct EU legislation should be subject to the negative procedure. She said:

*"They're largely technical and procedural, so that's why we think that the negative procedure is correct there. They'll only be used, where necessary, to make changes to current detailed scheme rules that are currently contained in retained EU law."*⁸⁹

137. We also asked about placing a duty to consult on the face of the Bill.⁹⁰

⁸⁷ LJC Committee, 21 November 2022, RoP [119]

⁸⁸ LJC Committee, 21 November 2022, RoP [63-65]

⁸⁹ LJC Committee, 21 November 2022, RoP [62]

⁹⁰ LJC Committee, 21 November 2022, RoP [96]

138. We asked the Minister if she had considered introducing a sunset provision into the Bill to prevent the CAP continuation powers being used indefinitely and to ensure transition to the SFS. She said:

“So, we did consider it, I think it’s fair to say, but we decided on balance the Bill already contains the relevant powers to modify legislation that relates to CAP. And, obviously, (...), we’ll exercise those powers when the sustainable farming scheme is ready, which we hope will be by 2025. So, we don’t have any plans to sunset either the BPS or the CAP continuation powers at this stage.”⁹¹

139. We pursued this point in correspondence and asked the Minister why she did not have plans to sunset either the BPS or the CAP continuation powers. The Minister told us:

“We will not make changes until we can demonstrate a new system is adequately designed, we have undertaken the relevant impact assessments and we are confident it is administratively practicable. (...)”

A final decision on the proposals and, therefore, regulations which form the scheme will be made after ... consultation in 2023.”⁹²

140. As regards section 22 of the Bill, the Minister told us:

“The Welsh Ministers are planning to amend these provisions, due to the circumstances explained in the answer to Question 18. The changes planned to retained EU legislation governing public market intervention and private storage aid are due to use powers in the Agriculture Act 2020, as the provisions in the Agriculture (Wales) Bill will not be in force for when they are due to be made. No date has been set for when the powers in the Agriculture (Wales) Bill will first be used.”⁹³

141. The Minister’s response to question 18 of our letter of 25 November 2022 is set out above in paragraph 53 of chapter 3 relating to retained EU law.

⁹¹ LJC Committee, 21 November 2022, RoP [122]

⁹² Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 2

⁹³ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 202, response to question 1

Our view

142. We have already commented on the lack of detail on the face of the Bill and this is particularly relevant to Part 2.

143. As regards section 8, we note that section 8(2) provides a (non-exhaustive) list of the purposes for which support can be provided in connection with agriculture or ancillary activities, and the commentary provided in the explanatory notes. In her letter of 16 December 2022, the Minister said that:

*“...the SLM provisions provide a framework for the exercise of certain functions, and those functions, **including the power to provide support**, must be exercised in a way that is consistent with the SLM duty, **but the SLM provisions are not the basis on which support would be provided.**” [Our emphasis]*

144. The text we have emphasised in bold appears to indicate a wider basis on which support can be provided than is described in the explanatory notes to section 8. As such, the basis on which support will (or could) be provided for agriculture and ancillary activities under section 8 is not clear to us. Also, while we note that section 8(2) lists what support can be provided for, that is different from providing details about what objectives the support is designed to deliver and therefore the purpose of providing that support. This makes for a lack of clarity on the face of the Bill about how the Welsh Ministers are intending to act, which we believe needs to be addressed.

145. As we indicate earlier, it is not entirely clear to us how Parts 1 and 2 of the Bill are connected and work together (see recommendation 8).

Recommendation 10. The Minister should table an amendment to section 8 of the Bill setting out the full basis on which support would be provided and the objectives she is aiming to meet in providing that support.

146. As regards the regulation-making power in section 10(1) there is little to explain the purpose of requiring information to be provided and no criteria or limitations that apply to the ability of the Welsh Ministers to “impose a requirement on any person” (under section 10(2)). We believe that section 10 would benefit from including such information.

Recommendation 11. The Minister should table an amendment to section 10 of the Bill, setting out the purpose of requiring specified information to be provided and the criteria or limitations that apply to exercising the regulation-making power.

147. Section 11 contains a wide regulation-making power, with little policy detail on checking eligibility for support and related matters under section 11(1), or the other matters that are listed in section 11(2), which include for example powers of entry and monetary penalties. On the matter of monetary penalties, we note that section 31(3)(a) sets out in more explicit detail what regulations made under section 31 may do as regards the imposition of monetary penalties when compared with the provision in section 11(2)(i).

Recommendation 12. The Minister should explain why more detail is included on the face of the Bill about regulations to be made in respect of monetary penalties under section 31 than is contained in respect of the regulations to be made about monetary penalties under section 11.

Recommendation 13. The Minister should table amendments to the Bill to provide more detail about the policies that underpin the subject matter of section 11 (including, setting out the purpose of checking eligibility for support), as well as any criteria or limitations that should apply to the making of regulations (including for example in respect of powers of entry and monetary penalties).

148. We also believe it is important for there to be a duty on the Welsh Ministers to consult in respect of the making of regulations under sections 6, 8, 10, 11 and 13 of the Bill.

Recommendation 14. The Minister should table amendments to sections 6, 8, 10, 11 and 13 of the Bill to include a duty on the Welsh Ministers to consult on the making of regulations in each case.

149. Chapter 2 of Part 2 concerns powers to modify legislation relating to financial assistance and other support. It includes five sections, four of which (sections 15 to 18) provide the Welsh Ministers with powers to make regulations that amend direct retained EU law and that are subject to the negative procedure.

150. The Minister told us that the negative procedure was appropriate because “any changes will largely be technical / procedural in nature”. However, such limitations do not appear on the face of the Bill in any of the sections. On this point, we also note that in respect of the regulation-making power under section 15(1) of the Bill, the EM states:

“This is a power to make modifications to the legislation governing the basic payment scheme. It is a wide power not linked to a specific purpose.”⁹⁴

151. Annex 3 of the EM identifies that provisions in the Bill have been derived from the 2020 Act. As we highlight in chapter 3 of the report, as regards to sections 15 and 16, limitations on the exercise of regulation-making powers, included in paragraphs that were originally included in Schedule 5 to the 2020 Act, do not appear to have been transferred to the Bill. We summarise the changes we have identified in respect of sections 15 and 16 in Table 1.

Table 1

Bill provision	Corresponding 2020 Act provision	Provisions contained in the 2020 Act but not included in the Bill
Section 15	Schedule 5, paragraphs 2 and 3	Paragraphs 2(1)(a)-(e), 2(2) and 2(3) Paragraph 3
Section 16	Schedule 5, paragraph 4	Paragraphs 4(2), 4(3) and 4(4)

152. The regulation-making powers provided in sections 15 and 16 are not limited to technical or procedural matters as suggested by the Minister, and for which reason the negative procedure is being applied. They allow the Welsh Ministers to make regulations to modify direct retained EU law “so far as it has effect in relation to Wales”, without any constraint on how they are to be exercised. As such, these powers are exceptionally broad and in our view unacceptably so, given that they could potentially be used to make significant policy changes

153. Also, we note that the regulation-making power under paragraph 6(1) of Schedule 5 to the 2020 Act to modify legislation relating to support for rural development is subject to the affirmative procedure but the equivalent provision in section 18 of the Bill is subject to the negative procedure.⁹⁵

Recommendation 15. The Minister should explain, in respect of sections 15 and 16, why the provisions identified as being part of the *Agriculture Act 2020* in Table 1 have not been included in the Bill. The explanation should set out what could be achieved by the Welsh Ministers under the regulation-making powers in

⁹⁴ EM, Chapter 5, page 95

⁹⁵ This point appears to have been missed from the “Substantive change” column in Annex 3 of the EM (Table of Derivations)

section 15 and 16 that could not be achieved using the powers in paragraphs 2, 3 and 4 of the Schedule 5 to the 2020 Act.

Recommendation 16. The Minister should explain why the regulation-making power under section 18 of the Bill is subject to the negative procedure, when the equivalent power under paragraph 6 of Schedule 5 to the *Agriculture Act 2020* is subject to the affirmative procedure.

Recommendation 17. The Minister should table amendments to the Bill setting out the purposes for which the regulation-making powers under sections 15, 16, 17 and 18 of the Bill are to be exercised.

Recommendation 18. If recommendation 17 is not accepted and / or limitations are not applied to the exercise of the regulation-making powers in sections 15, 16, 17 or 18 of the Bill, the Minister should table an amendment applying the affirmative procedure to the regulation-making powers in these sections.

Recommendation 19. Recommendations 17 and 18 should be read as applying to each section individually.

Recommendation 20. The Minister should confirm whether there are any circumstances in which regulations under sections 15, 16, 17 and 18 of the Bill could amend primary legislation and, if so, why the affirmative procedure should therefore not apply.

154. We also believe that, given the importance of potential changes to existing legislation that enables financial support to be provided, the Bill must include a duty to consult stakeholders before any such changes are made.

Recommendation 21. The Minister should table amendments to sections 15, 16, 17 and 18 of the Bill requiring a duty on the Welsh Ministers to consult on the making of regulations in each case.

155. As we highlighted in chapter 3 of the report, in the absence of any sunset provision for transition to a new system of agricultural support, changes could be made on an indefinite basis to the existing system of support. While we accept that it is the Minister's intention to transition to the SFS and a new system of support, as currently drafted, the Bill places no obligation to do so on the current or any future government. We believe it would be appropriate to include a sunset provision in the Bill, in order to provide an end date for transition away from the use of the BPS and CAP to the new system of support identified in Chapter 1 of Part 2. If it is considered advantageous for a sunset provision to be amendable to

allow for a longer transition period where necessary, we believe this should follow the affirmative procedure to allow the Senedd to have the final say on this matter.

Recommendation 22. The Minister should table an amendment to the Bill to include an end date for transitioning to the new system of agricultural support under chapter 1 of Part 2 of the Bill. If provision is included to allow an end date to be amended by regulations, such regulations should be subject to the affirmative procedure.

156. As we highlight in chapter 3 of the report, as regards section 22, limitations on the exercise of regulation-making powers by the Welsh Ministers under this section that were originally included in Schedule 5 to the 2020 Act appear not to have been transferred,⁹⁶ namely those included in paragraphs 9(1), 9(2) and 9(3).

157. We have also referred to comments made by the Minister about section 22 in her letter of 7 December 2022 in paragraphs 46, 53 and 141 of the report and would welcome clarity about the specific amendments she intends to table to section 22.

158. The powers provided to the Welsh Ministers in section 22 are also not limited to technical or procedural matters as suggested by the Minister (and for which reason the negative procedure is being applied). They allow the Welsh Ministers to make regulations to modify direct retained EU law “so far as it has effect in relation to Wales”, without any constraint on how the powers are to be exercised.

Recommendation 23. The Minister should clarify:

- how she intends to amend section 22 and commit to ensuring relevant policy detail is included on the face of the Bill regarding changes she proposes in relation to the ending of public intervention and reform of private storage aid schemes;
- why it was not possible for this detail to be included in the Bill on its introduction.

Recommendation 24. The Minister should explain why provisions contained in paragraphs 9(1), 9(2) and 9(3) of Schedule 5 to the *Agriculture Act 2020* have not been transferred to section 22 of the Bill and, as a consequence, what effect this has on the exercise of the regulation-making power in that section.

⁹⁶ This point appears to have been missed from the “Substantive change” column in Annex 3 of the EM (Table of Derivations)

Recommendation 25. The Minister should table an amendment to the Bill setting out the purposes for which the regulation-making power under section 22 is to be exercised.

Recommendation 26. If recommendation 25 is not accepted and / or limitations are not applied to the exercise of the regulation-making power, the Minister should table an amendment to the Bill applying the affirmative procedure to the regulation-making power under section 22.

159. In line with our comments elsewhere in this report, there should be a duty on the Welsh Minister to consult before making regulations under section 22 of the Bill.

Recommendation 27. The Minister should table an amendment to section 22 of the Bill to include a duty on the Welsh Ministers to consult on the making of regulations under that section.

Part 3 – Matters relating to Agriculture and Agricultural Products

160. Part 3 of the Bill deals with matters relating to agriculture and agricultural products.

Chapter 1 – Collection and sharing of data

161. Chapter 1 of Part 3 of the Bill makes provision about the collection and sharing of data. Section 24 confers power on the Welsh Ministers to make regulations requiring certain persons to provide information about certain matters connected to the agri-food supply chains. Section 25 defines the meaning of an agri-food supply chain for the purposes of section 24. Section 26 confers a regulation-making power on the Welsh Ministers to require a person who carries on a relevant activity to provide information about matters connected with the activity, so far as it takes place in Wales, and section 27 defines the meaning of relevant activity for these purposes. Section 28 relates to the requirement to specify purposes for which information may be processed. Section 29 provides the duty on the Welsh Ministers to publish, in draft, requirements under section 24(1) or 26(1). Section 30 makes provision that information provided in response to a requirement may only be processed for the purposes specified in a requirement. Section 31 sets out the enforcement provisions relating to information requirements.

162. As regards the procedure attached to the regulation-making powers in sections 24(2) and 26(2), the EM states:

“Requiring a person to provide information has the potential to be onerous on that individual and due consideration of a range of factors is required including the necessity of collecting the information and its use. The affirmative procedure is seen as necessary.”⁹⁷

163. As regards the making of regulations under section 31, in the EM the Minister says:

“This power could result in a person being subject to a financial penalty for failing to comply. The affirmative procedure is seen as appropriate to ensure scrutiny in the use of this power.”⁹⁸

164. The Minister told us that the requirements and privacy notices for data collection and sharing required by sections 24 and 26 will be published on the Welsh Government website and will be available bilingually.⁹⁹

165. We asked the Minister about the safeguards provided in the Bill to protect individuals’ personal data. In response the Minister told us that:

“The Bill’s data collection provisions are compliant with the UK GDPR and overarching data protection legislation.

The Bill’s data sharing provisions are very detailed and include several limitations and safeguards, such as the purposes for which data can be collected and how the data is to be processed.

Data can only be collected in furtherance of one or more of a specific and limited list of purposes which are set out in the Bill, such as helping to increase productivity, promoting transparency or fairness in agri-food supply chains or monitoring supply sources for food.

Furthermore, any regulations under the Bill made by the Welsh Ministers introducing obligations to provide information can only be made using the affirmative Senedd procedure, which provides significant scrutiny powers to Senedd members in relation to the information being collected.

⁹⁷ EM, Chapter 5, pages 96-97

⁹⁸ EM, Chapter 5, page 97

⁹⁹ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 5

There are further safeguards in place. As per our statutory obligation to consult with the Information Commissioners Office (ICO), as the UK Regulator (Article 36(4) of the General Data Protection Regulation) when drafting legislation which impacts upon the processing of personal data, my officials have consulted with the ICO on the data provisions within the Bill.

This is an area of ongoing engagement on all aspects of data collection and data protection regarding the Bill. The ICO ensures the provisions are compliant with the data protection principles enshrined in the UK GDPR and the Data Protection Act 2018. Consequently, the Welsh Government cannot put in place legislation which overrides these principles and which does not respect UK GDPR.”¹⁰⁰

166. We also asked about the measures that the Welsh Government will put in place to ensure that individuals clearly understand how their information will be used and processed. The Minister told us:

“In advance of any data being collected, we will publish our intent on the type of data to be collected, the purpose for the collection, how the data will be collected and used, as well as the frequency for collecting data under the requirement.

The Bill requires the Welsh Ministers to have published their proposed draft requirements for at least four weeks, for comment, prior to information requirements being introduced. These requirements must set out the purposes for which the information will be processed and the processing of the information cannot breach the set requirements.

Individuals will be provided with clear privacy information about how their data will be used by Welsh Government and any partners.”¹⁰¹

167. As regards whether individuals, including farmers, will be required to consent to the processing of their data, the Minister said:

¹⁰⁰ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 10

¹⁰¹ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 11

“Where data is collected from farmers on a voluntary basis, for example, the Annual Farm Business Survey, their consent is required to the processing of the data.

The Bill also contains statutory mechanisms which can require specific types of data to be provided by farmers for limited and particular purposes and whilst farmers’ consent will not be required where these mechanisms are used, farmers will be able to influence those requirements by making representations themselves, via stakeholder representatives or Senedd members about the nature, effect and practical impact of the proposed requirements.

As previously stated, individuals including farmers will be provided with clear privacy information about how their data will be used by Welsh Government and any partners.”¹⁰²

168. We asked the Minister whether she would consider amending the Bill to expressly prohibit the sale of any data collected under the Bill. She replied:

“Whilst there is no provision within the Bill which specifically prevents the sale of collected information to third parties, it is not the policy nor wider intent of the Welsh Government to sell data onto third parties, therefore I do not think it is necessary to expressly prohibit the selling of data.

Under UK GDPR it is only necessary to state what will be done with any data, and, therefore, it is not a requirement to state what will not be done. We only state what can be done with the data within the Bill and accompanying regulations.

Including a provision to expressly prohibit the selling of data, would result in also needing to consider implementing further provisions to address all areas for which data will not be used.”¹⁰³

¹⁰² Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 12

¹⁰³ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 13

169. We asked the Minister why detail about enforcement had not been included on the face of the Bill in relation to section 31 (and also section 33 in Chapter 2). In response she said:

“So, providing a power to make the regulations enables consultation and scrutiny to take place on the relevant provisions as and when they’re required. So, before any enforcement provisions are made, they will be subject to the affirmative procedure again, so there’ll be full Senedd scrutiny. And, as these areas develop, it might be necessary to make different enforcement provisions for different matters, so, again, the regulation-making powers provide flexibility for that to happen.”¹⁰⁴

Chapter 2 – Marketing standards: agricultural products and Chapter 3 – Classification of certain carcasses etc.

170. Chapter 2 of Part 3 of the Bill concerns marketing standards for agricultural products. Section 32 provides that the Welsh Ministers may, by regulations, make provision about the standards with which certain agricultural products must conform when marketed in Wales. Schedule 1 is introduced by section 32. It contains the list of agricultural products in respect of which the Welsh Ministers may make regulations under section 32.

171. The EM states in relation to the regulation-making power in section 32(1):

“Marketing standards provisions will enable Welsh Ministers to make changes to standards for the listed produce marketed in Wales to keep in line with modernisation, to best suit the domestic sector and to align with changes elsewhere in the UK.

The affirmative procedure is required as the enforcement provisions allow for power of entry.”¹⁰⁵

172. Regulations made under section 32(6) are also subject to the affirmative procedure given that they “would amend primary legislation”.¹⁰⁶

173. Section 33 in Chapter 3 of Part 3 of the Bill provides for the Welsh Ministers to make provision in regulations about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales, and

¹⁰⁴ LJC Committee, 21 November 2022, RoP [87]

¹⁰⁵ EM, Chapter 5, pages 97-98

¹⁰⁶ EM, Chapter 5, page 98

about enforcement. The affirmative procedure is considered necessary because “the enforcement provisions allow for power of entry”.¹⁰⁷

174. As regards section 32, we asked why there is no provision about marketing standards on the face of the Bill, why matters of enforcement are again left to regulations, and whether policy in this area had yet been formulated. The Minister said:

“As with data sharing or the carcass classification, for instance, the marketing standards again provide a framework for a marketing standards regime that, again, will allow Welsh Ministers to make provisions within the scope of those powers that can be consulted upon and will be subject to the affirmative procedure. I think it’s fair to say that the requirements for specific marketing standards will change over time, so, therefore, again, to have that flexibility around making regulations, I think, will be necessary, rather than placing provisions on the face of the Bill. It allows for that bit of futureproofing that I referred to before, and also to keep pace with developments, because it is a sector that does develop quickly

*Regulation-making powers mirror the powers that are available under the EU regulations now, so, again, you’ve got the ability to add or take away from the specific requirements. Currently, we don’t have any specific plans to amend agricultural marketing standards legislation using these powers, but, as I say, we do believe that it’s good to have them there for the future.”*¹⁰⁸

175. An official accompanying the Minister added:

“...this is one of the areas where we took time-limited powers though the UK Agriculture Act in 2020, so it’s an area of devolved competence, but, because of the nature of the Act, it was important for Welsh Ministers to have some continuity in case things changed across the UK. So, these are one of the, if you like, sunset provisions that we’ve taken from the Act, and so, in essence here, we’re ensuring, through putting these provisions in the agriculture Bill, in the Bill before you, that Ministers have

¹⁰⁷ EM, Chapter 5, page 98

¹⁰⁸ LJC Committee, 21 November 2022, RoP [106-107]

those continuity powers even though, at this stage, there's no policy intention to vary marketing standards.”¹⁰⁹

176. In subsequent correspondence, the Minister said:

“Some examples of current enforcement regulations which have been made using powers previously contained within European legislation include:

- *Eggs and Chicks Marketing (Wales) Regulations 2010*
- *The Poultrymeat (Wales) Regulations 2011*
- *The Beef and Veal Labelling (Wales) Regulations 2011*

These are all very different product types and represent only a few of those product types for which the provisions within the bill will provide the powers to marketing standards for. It is my view the provisions would be overly long on the face of the Bill to provide regulation for all of the products for which specific marketing standards apply.

The Schedule to the Bill provides a list of products for which marketing standards can be made, and although this list of products can be amended, this would be by way of regulations made under the affirmative procedure allowing for full Senedd scrutiny, as will the making of regulations setting out the enforcement regime for the specific subject matters.

Therefore, we have arrived at a framework which does contain a significant amount of detail, and a list of products for which enforcement regimes can be made as well as the flexibility to tailor that regime to the product type, with the scrutiny of the Senedd through the use of the affirmative procedure.

Likewise, carcass classification considers pigs, bovine and sheep. But these carcasses comply to different standards and so could potentially have different enforcement regimes around them.”¹¹⁰

¹⁰⁹ LJC Committee, 21 November 2022, RoP [108]

¹¹⁰ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 16 December 2022

Our view

177. We note the provisions regarding the collection and sharing of data and that the regulation-making powers in sections 24 and 26 of the Bill are subject to the affirmative procedure.

178. We believe that section 29 of the Bill, which provides a duty on the Welsh Ministers to publish a draft of the requirement to be imposed under section 24(1) or 26(1), would benefit from including more detail about what a person can expect to be contained within a draft requirement. In reaching this view, we note the Minister's comments that, in advance of any data being collected, the Welsh Government will publish its intent on the type of data to be collected, the purpose for the collection, how the data will be collected and used, as well as the frequency for collecting data under the requirement. We see no reason why these commitments should not be reflected on the face of the Bill.

Recommendation 28. The Minister should table an amendment to section 29 of the Bill to set out an indication of what a person can expect to be included in a draft of the requirement referred to in section 29(1)(a)(i).

179. As regards section 31 of the Bill, and in line with our general observations about the Bill in chapter 3 of the report, we would have expected to see much more detail on the face of the Bill regarding the policy underpinning the enforcement of information requirements, rather than leaving the policy to regulations.

Recommendation 29. The Minister should table amendments to section 31 of the Bill to provide more detail about the policies that underpin the enforcement of information requirements, as well as any limitations or criteria that should apply to the making of regulations under this section.

180. We note the Minister's comments regarding the sale of data but we do not find her reasons for not including a provision to expressly prohibit the selling of data to be persuasive. We are unclear what the Minister means when she said that the inclusion of such a provision would require further provisions to address all areas for which data will not be used and if such further provisions are necessary, why this would be problematic to deliver. While we recognise that that Minister does not intend to sell the data, there will be no restriction on any future Minister from doing so, as the Bill is currently drafted.

Recommendation 30. The Minister should table an amendment to the Bill expressly prohibiting the selling of data which is provided in accordance with the requirements of the Bill.

181. We note that paragraph 19 of Schedule 5 to the 2020 Act includes a general provision about data protection. We are unclear why this provision does not appear in the Bill but believe its inclusion will provide reassurance for those subject to data collection requirements and who are not familiar with existing data protection legislation.

Recommendation 31. The Minister should table an amendment to the Bill replicating the provision about data protection contained in paragraph 19 of Schedule 5 to the *Agriculture Act 2020*.

182. We note the Minister's arguments for not placing information on the face of the Bill in relation to section 32, namely on grounds that the requirements "will change over time", there is a need for "flexibility", and the approach "allows for that bit of futureproofing... to keep pace with developments...". We do not consider that these arguments provide an acceptable justification for using a regulation-making power at the expense of including information on the face of the Bill.

183. We disagree with the Minister that the framework contains a lot of detail. We believe there should be more detail on the face of the Bill about the policy that underpins the subject matter of section 32 (Marketing standards) (and also section 33 (Carcass classification)).

184. The approach adopted in the Bill bypasses the Senedd's legislative function and provides little scope to challenge or influence policy in this area.

Recommendation 32. The Minister should table amendments to the Bill to provide more detail about the policy that underpins the subject matter of section 32 (Marketing standards) and section 33 (Carcass classification), as well as any limitations or criteria that should apply to the making of regulations (including for example in respect of powers of entry and monetary penalties).

185. In reaching this view we note that, in its report on the 2017-2019 UK Agriculture Bill, the DPRR Committee noted, in respect of clause 20 on marketing standards and carcass classification, that "We would ordinarily expect a clause of this exceptional range to be a bill in its own right."¹¹¹ It concluded that clause 20 contained an inappropriately wide delegation of power to Ministers and

¹¹¹ House of Lords, Delegated Powers and Regulatory Reform Committee, Agriculture Bill, 34th Report of Session 2017-2019, HL Paper 194, 17 October 2018, paragraph 17

recommended more detail on the face of the Bill, a point it repeated in its report on the UK Agriculture Bill introduced after the 2019 UK general election.¹¹²

186. We note that section 31(3)(a) sets out in more explicit detail what regulations made under section 31 may do as regards the imposition of monetary penalties when compared with the provision in sections 32(4)(e) and 33(2)(e).

Recommendation 33. The Minister should explain why more detail is included on the face of the Bill about regulations to be made in respect of monetary penalties under section 31 than is contained in respect of the regulations to be made about monetary penalties under sections 32 and 33.

187. In line with our comments elsewhere in this report, there should be a duty on the Welsh Minister to consult before making regulations under sections 32 and 33.

Recommendation 34. The Minister should table amendments to sections 32 and 33 to include a duty on the Welsh Ministers to consult on the making of regulations under each section.

188. We also wish to highlight another point regarding the accessibility of Schedule 1 to the Bill, which is introduced by section 32. Under each paragraph heading, reference is made to products falling within various tables in Annexes of the CMO Regulation.¹¹³ For example in relation to Eggs and Egg Products, paragraph 5 of Schedule 1 states “Products falling within the table in Part XIX of Annex 1 of the CMO Regulation”. The table is reproduced below:

PART XIX
Eggs

The eggs sector shall cover the products listed in the following table:

CN code		Description
(a)	0407 11 00 0407 19 11 0407 19 19 0407 21 00 0407 29 10 0407 90 10	Poultry eggs, in shell, fresh, preserved or cooked

¹¹² House of Lords, Delegated Powers and Regulatory Reform Committee, Agriculture Bill, 13th Report of Session 2019-2021, HL Paper 69, 3 June 2020, paragraph 19

¹¹³ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007

CN code		Description
(b)	0408 11 80	Bird's eggs, not in shell, and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter, other than unfit for human consumption
	0408 19 81	
	0408 19 89	
	0408 91 80	
	0408 99 80	

189. It remains unclear why the various tables or products could not have been included within Schedule 1. By not doing so, the legislation is less accessible than it could have been and requires the reader to refer to material contained elsewhere (and on the legislation.gov.uk website, rather than the EUR-Lex website).

Recommendation 35. The Minister should explain why Schedule 1 to the Bill makes cross-references to tables included in Annexes to the CMO Regulation, rather than replicating the tables themselves.

Recommendation 36. The Minister should table amendments to Schedule 1 to the Bill to include the relevant detail of the tables currently referred to in that Schedule, in order to aid accessibility for readers of the Bill.

Part 4 – Forestry

190. Part 4 of the Bill deals with forestry. Section 34 is an overview section, which outlines amendments to Part 2 of the *Forestry Act 1967* (the 1967 Act) in relation to Wales. Section 35 amends section 10 of the 1967 Act to enable the Natural Resources Wales (NRW), to impose conditions on the grant of a tree felling licence in order to conserve or enhance natural beauty or conserve flora, fauna, geological or physiographical features, or natural habitats. Section 36 inserts a new subsection to the 1967 Act to enable NRW and the holder of a licence granted under that section to agree at any time to amend the felling licence. Section 37 inserts two new sections into the 1967 Act to vary, suspend and revoke a tree felling licence in certain circumstances. Section 38 provides for compensation to be payable in some circumstances. Section 39 inserts a new subsection to the 1967 Act relating to appeals. Section 40 sets out the penalty for felling without a licence and section 41 makes a series of consequential amendments to the 1967 Act.

191. We asked how the powers to allow NRW to amend, suspend or revoke a tree felling licence it has issued are appropriate and proportionate, and how the Welsh

Government will ensure that NRW are using these powers appropriately. The Minister told us:

“Officials have issued non-statutory guidance to NRW on how these powers are to be implemented to ensure appropriate and proportionate use.

NRW have developed a high level approaches paper reflecting this guidance. These documents have been published on the Welsh Government website as part of the Statement of Policy Intent which supports the Bill.

NRW are now developing full internal and external guidance to ensure a consistent and proportionate approach to implementing these powers. These will be published to align with commencement of the provisions.

My officials will conduct a post implementation review of the legislation within 3 years of commencement of amendments to the Forestry Act 1967.

We will work with NRW and stakeholders to agree a collection of relevant data following commencement in order to monitor the impact of the forestry provision within the Bill.”¹¹⁴

192. In the event that NRW were found not to be using their powers appropriately, the Minister noted that the Welsh Government has powers to give a direction to NRW in respect of the implementation of these powers if necessary.¹¹⁵

193. Section 17 of the 1967 Act (Penalty for felling without licence) is amended by section 40 of the Bill to increase the maximum fine for illegal felling from a level 4 fine (£2,500) to a level 5 fine (unlimited). We asked the Minister to explain why this increase in monetary penalty is proportionate and justified. She told us:

“As the Forestry Act 1967 currently stands, a person can be fined less for illegal felling than for being in breach of a felling licence condition.

This anomaly is addressed by increasing the monetary penalty for illegal felling in line with the existing enforcement penalty

¹¹⁴ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 7

¹¹⁵ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 8

for non-compliance with felling conditions. Leaving this anomaly unresolved would potentially undermine the new powers set out in the forestry provision.

It also gives the Courts flexibility to impose a higher fine in the event of a major incident and should also serve as a better deterrent for illegal felling.

This is in line with England, where the limit on these fines was removed by the 2021 Environment Act Schedule 16 para 2. (not yet commenced).¹¹⁶

194. The approach taken to Part 4 is to amend the *Forestry Act 1967*, which as an older piece of UK legislation in English only. A similar approach is taken for Part 5, which amends the *Wildlife and Countryside Act 1981*. We asked if the Minister had considered making provision on the face of the Bill, rather than amending other legislation, so as to enable the provisions to be fully bilingual and to improve the accessibility of the law for the people of Wales. The Minister replied:

“The Bill amends some well-established statutory regimes, such as those set out in the Forestry Act 1967 and the Wildlife and Countryside Act 1981.

Achieving the policy by way of freestanding provisions in a Senedd Bill would have resulted in inaccessibility issues and undesirable complexity.

If what is being suggested is that the Bill could have been used to remove all Welsh provision from the 1967 Act, and re-state it subject to any necessary revisions, then this would have been a significant piece of work and faced with that and refocussing the Bill at the expense of agricultural reforms, or making the amendments that I consider necessary to implement my important policies in this area, I chose the route set out in the Bill.”¹¹⁷

¹¹⁶ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 9

¹¹⁷ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 6

Our view

195. We welcome the use of an overview section (section 34), but do have some concerns around the accessibility of sections 35, 36, 39, 40 and 41. In our view, it is difficult to understand the changes proposed by these sections simply by reading the Bill; it is necessary to have access to other online materials to build a picture of what the law says and to be familiar with where and how those materials can be accessed. We do however note that in accordance with Standing Order 26.6C, Annex 4 to the EM includes a schedule of amendments made by the Bill to existing legislation.

Recommendation 37. In order to ensure the accessibility of Part 4 of the Bill, we recommend that the equivalent of Annex 4 to the Explanatory Memorandum is re-published, and amended if required, if and when the Bill is passed by the Senedd and receives Royal Assent.

196. We note the Minister's view regarding the issue of freestanding provisions, although it is not clear to us why the Minister has suggested that such an approach would have resulted in inaccessibility issues and undesirable complexity.

197. As we also indicate in our general observations under chapter 3 of the report, it is not clear to us how the provisions in Part 4 sit easily under the subject matter of "Agriculture".

Recommendation 38. The Minister should clarify whether a free-standing 'forestry-related' Bill was considered and why such an approach was not adopted.

198. We note that the Minister intends to conduct a post-implementation review of amendments to the 1967 Act within three years of the commencement of the relevant provisions. We welcome this commitment and see no reason why it should not be included on the face of the Bill (particularly to ensure that the commitment applies to any future Minister).

Recommendation 39. The Minister should table an amendment to the Bill to require a review of Part 4 of the Bill to be undertaken by the Welsh Government within three years of its commencement.

Part 5 - Wildlife

199. Part 5 of the Bill deals with wildlife. Section 42 sets out how this part of the Bill amends the *Wildlife and Countryside Act 1981* (the "1981 Act"). Section 43 amends section 11(1) of the 1981 Act to make it an offence to use certain devices in

order to kill or take certain animals, or to use those devices where it is likely that they will catch certain animals or cause injury to them. A person guilty of an offence is liable upon summary conviction to up to six months' imprisonment or an unlimited fine.

200. Section 44 modifies the prohibitions on setting in position any trap or snare, or any electrical device for killing or stunning, or any poisonous, poisoned or stupefying substance. Section 45 makes a series of consequential amendments to the 1981 Act.

201. We asked whether the penalty under section 43 is proportionate, whether the Minister foresaw risks with this approach, and why the Bill did not provide a minimum fine for the first offence and then multipliers in terms of fines for future offences (for example, as for people who engage in fly tipping). In response the Minister said she thought the penalties are in line and proportionate with the other offences that are in the 1981 Act.¹¹⁸

202. While the Bill prohibits the use of snares, glue traps and other cable restraints, it does not extend to their possession. The Minister said it had been looked at and noted:

*"...it's very easy to make a snare, so would we then have to ban the materials that would be used to make one, for instance? That would be incredibly difficult to do. I've seen some that have been handmade with just a piece of wire, but they can still cause a great deal of pain and suffering to an animal. Obviously, we couldn't ban wire, because that's used for lots of other reasons as well, and glue traps the same. They can be made with a very simple piece of card and some non-drying adhesive. So, I think we have to be very careful about that, and that's the reason why we didn't do it in the way that you've just suggested."*¹¹⁹

203. An official accompanying the Minister added:

"I think one of the reasons behind the decision was the difficulties that there would be with enforcing a ban on possession. Clearly, someone who's got pre-made snares, that would be quite straightforward, but if someone was stopped with a reel of wire and a pair of pliers, it may well seem likely

¹¹⁸ LJC Committee, 22 November 2022, RoP [126]

¹¹⁹ LJC Committee, 22 November 2022, RoP [128]

*that they are about to produce some snares to use for themselves, but it would be very, very difficult to prove that and to enforce it. So, I think the decision was taken on that basis not to include it.*¹²⁰

204. In terms of enforcement, the Minister explained that wildlife crime officers will “remain the primary enforcers of snare-related offences”, and she highlighted the views of these officers and the wildlife crime commissioner, that “a clear ban on snares and glue traps will really help ... with enforcement.”¹²¹

Our view

205. We note the provisions contained in Part 5 of the Bill.

206. Our comments on Part 4 in relation to accessibility apply equally to Part 5. Again, while we welcome the use of an overview section (section 42), our concern centres on the difficulty in understanding the changes proposed by sections 43 to 45, simply by reading the Bill.

Recommendation 40. In order to ensure the accessibility of Part 5 of the Bill, we recommend that the equivalent of Annex 4 to the Explanatory Memorandum is re-published, and amended if required, if the Bill is passed by the Senedd and receives Royal Assent.

207. As with Part 4, we believe that the provisions in Part 5 do not sit easily under the subject matter of “Agriculture”.

Recommendation 41. The Minister should clarify whether a free-standing ‘wildlife-related’ Bill was considered and why such an approach was not adopted.

Part 6 – General

208. Part 6 of the Bill contains general provisions. Section 46(1) provides a regulation-making power to make consequential, transitional provisions etc, which is subject to the negative procedure. According to the EM:

“Where regulations are not modifying primary legislation, negative procedure is considered appropriate.”¹²²

209. Part 6 also makes general provision about regulations, and includes the definitions of agriculture and related references (section 48) and ancillary activities

¹²⁰ LJC Committee, 22 November 2022, RoP [133]

¹²¹ LJC Committee, 22 November 2022, RoP [138]

¹²² EM, Chapter 5, page 99

(section 49) used in the Bill. Section 50 permits the Welsh Ministers to amend the definitions by regulations and this power is justified on grounds that it:

“...ensures that the definitions can be amended to reflect any changes that may be required in the future and to ensure they remain fit for purpose.”¹²³

210. The power in section 50 is subject to the affirmative procedure. The justification set out in the EM is that:

“These regulations could amend primary legislation, and, specifically, two definitions that go to the heart of the Bill.”¹²⁴

211. Given the Minister’s comment that the legislation will be here for a long time, we asked whether section 50 provides a mechanism for any future Welsh Government to fundamentally change the nature of the Bill without the Senedd (and future Seneddau) having any meaningful scrutiny. In response the Minister said:

“So, the short answer to your question is ‘No’. Obviously, there’ll be affirmative procedures, so it’ll have to have significant scrutiny by the Senedd. I think what’s important to note here is that, unlike the UK Government’s Agriculture Act 2020, the Bill’s definition that we have here builds on the last significant definition that was used in agricultural legislation and that goes back to 1947. So, that reflects farming practices that have evolved more recently, and I think it’s about futureproofing as well, because obviously farming practices are going to evolve as we go forward. So, we did consult with all policy areas within the confines of the Bill, to ensure that all provisions in the Bill operate in the way that captures that range of innovative practices that we have here in Wales and that will obviously come in the future.”¹²⁵

212. The Minister also told us:

“Section 50 - Provides the power to amend the meaning of “agriculture” (section 48) and “ancillary activity” (section 49). There are no plans to amend these definitions at present. The power to amend has been developed alongside an exhaustive

¹²³ EM, Chapter 5, page 99

¹²⁴ EM, Chapter 5, page 99

¹²⁵ LJC Committee, 22 November 2022, RoP [40]

definition of Agriculture and Ancillary Activities, and is there to ensure that the Bill, and the powers and functions within, are able to adapt to reflect any changes to agricultural practices as a result of land management or technological changes in the future and remain in pace with the sector.”¹²⁶

Our view

213. We note that the power to make regulations under section 46(2) is a Henry VIII power which specifically permits the amendment of primary legislation. The EM suggests that this power should be subject to the affirmative procedure - a position we agree with - but, in fact, this is not provided for in the Bill. We believe this could therefore be an oversight.

Recommendation 42. The Minister should table an amendment to the Bill to apply the affirmative procedure to regulations made under section 46 which modify primary legislation (as permitted by section 46(2)).

214. We have already highlighted our concerns with the breadth of some of the regulation-making powers in the Bill, noting in particular section 50 which permits the amendment of the definition of agriculture in section 48 and of ancillary activity in section 49. We note also the Minister’s statement in the EM highlighting that the two definitions “go to the heart of the Bill”.

215. The Minister told us that the power did not allow the Welsh Government (and by implication any future Welsh Government) to fundamentally change the nature of this Bill without it going through any significant Senedd scrutiny. We disagree with the Minister.

216. In justifying her view the Minister referred to the use of the affirmative procedure, “so it’ll have to have significant scrutiny by the Senedd.” As we indicate earlier in chapter 3 of the report, it is not accurate to say that the affirmative procedure amounts to the enabling of significant scrutiny by Members of the Senedd. We believe that the correct approach to make the kind of changes that would be permitted by the breadth and scope of the regulation-making power in section 50 would be to bring forward another Bill. That would be the only proper way to provide the Senedd with the ability to undertake full and meaningful scrutiny of the proposals.

¹²⁶ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022, response to question 1

Recommendation 43. In respect of section 50 of the Bill, the Minister should:

- clarify why the power is needed;
- clarify why an exceptionally broad power is being taken when the Welsh Government has no plans to use it at present;
- provide specific examples of how the definition of agriculture and ancillary activities could be amended;
- clarify why regulations would be a more appropriate vehicle for a future government to make potentially significant policy changes rather than primary legislation.

Recommendation 44. If the Minister decides to retain section 50, she should table an amendment to the Bill applying a super-affirmative procedure to the regulation-making power to include a requirement:

- for consultation (and a minimum period for that consultation), including with Senedd committees, and
- to make a statement before any such Regulations are made, detailing the outcome of the consultation (including areas of agreement and disagreement with stakeholders) and accordingly how the Regulations have taken account of engagement with stakeholders.