

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 4)**

### **Agriculture Bill**

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

<https://publications.parliament.uk/pa/bills/lbill/58-01/134/5801134.pdf>

3. The Bill completed its passage through the House of Lords Report stage on 22 September and will now move to the House of Lords 3<sup>rd</sup> Reading on 1 October 2020.

### **Policy Objective(s)**

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

### **Summary of the Bill**

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

sharing of data and marketing standards and carcass classification. At the request of the Welsh Government, these powers will be available to the Welsh Ministers in relation to Wales under the provisions of Schedule 5 to the Bill. The provisions in Schedule 5 (and a small number of related provisions) are time-limited to expire at the end of 2024 in accordance with the expiry provision at clause 51 (formerly clause 44) (duration of provision in relation to Wales), as explained at paragraphs 57 and 58 of the Legislative Consent Memorandum laid on 12 February.

9. The Bill also includes provisions that apply in Wales on organic products; the identification and traceability of animals; fair dealing and producer organisations; matters relating to farming and the countryside, including red meat levy redistribution and agricultural tenancy reforms; a requirement for the Secretary of State to report to the UK Parliament on food security; and regulation-making powers for the Secretary of State to secure the UK's compliance with WTO Agreement on Agriculture. These are not subject to the expiry provision (clause 51).
10. The Welsh Government laid a Legislative Consent Memorandum in relation to the Agriculture Bill (as introduced on 16 January 2020) on 12 February 2020, a Supplementary Legislative Consent Memorandum on 11 June 2020 and a further Supplementary Legislative Consent Memorandum on 24 September 2020.

### **Supplementary provisions in the Bill for which consent is required**

11. Since the publication of the first memorandum and supplementary memoranda, the Bill has been amended during the House of Lords Report stage.
12. This supplementary memorandum (memorandum no.4) sets out those changes to the Bill made at House of Lords Report Stage which require the consent of the Senedd. The first and supplementary memoranda laid respectively on 12 February, 11 June and 25 September must be considered together with this memorandum (and with any further supplementary memoranda which may be laid before the Senedd to cover any future amendments when deciding on consent).
13. Consent is required for the following amendments to provisions of the Bill because they make provision with regard to devolved matters. Clause numbers below relate to the version of the Bill ordered to be printed on 25 September 2020 (the version as amended in House of Lords Report stage).

### **Clause 17 (Continuing EU programmes: power to provide financial assistance)**

14. Clause 17 permits an "appropriate national authority" to give financial assistance to:

- a) a person who is a party to an agreement entered into in accordance with:
  - i. Regulation (EU) No 1305/2013 on support for Rural Development;
  - ii. any legacy rural development provision (as defined in clause 17(2));
  - iii. Articles 32 to 35 of Regulation (EU) No 1303/2013 (community-led local development) so far as relating to support for rural development

where the agreement has not concluded, or

- (b) a producer organisation implementing an operational programme approved in accordance with the producer organisations aid provisions (as defined in clause 17(2)).

15. “Appropriate national authority” is defined as the Welsh Ministers in cases of an agreement entered into or operational programme approved in accordance with any provision so far as having effect in relation to Wales. There are equivalent definitions for England and Northern Ireland.

16. Due to the effect of Article 138 of the Withdrawal Agreement, existing, ongoing agreements remain subject to EU Law until the end of the relevant programme. It is likely that the EU funding allocated to the ongoing programmes will be exhausted before the programmes come to an end. This provision will allow the Welsh Ministers to continue making payments in relation to existing agreements relating to rural development or fruit and vegetable producer organisations, once the EU funding for the agreement/programme has been exhausted.

17. It is the Welsh Government’s view that these amendments require consent because they make provision with regard to devolved matters in so far as they apply to Wales.

#### Clause 18 (Retained direct EU legislation)

18. Clause 18 ensures that legislation relating to support for rural development, fruit and vegetable producer organisations and apiculture that has direct effect under the Withdrawal Agreement in relation to existing programmes and activities will also become retained direct EU legislation.

19. Clause 18 confirms that the EU legislation listed in subparagraphs (3), (4) and (5) will become retained EU law on IP completion day.

20. It is the Welsh Government’s view that this amendment requires consent because it makes provision with regard to devolved matters in so far as they apply to Wales.

#### Clause 19 (Duty to report to Parliament on UK food security)

21. This clause places a duty on the Secretary of State to report to Parliament on data relevant to UK food security. The clause includes five factors which are considered as a policy matter to cover the main aspects that inform the UK's food security.
22. The clause previously required the Secretary of State to report to Parliament at least once every five years (clause 19(1)). That provision is amended to insert a requirement that the Secretary of State must prepare and lay the first report under clause 19 on or before the "relevant day". A definition of "relevant day" is inserted by a related amendment to mean the last day before 25 December 2021 which is a sitting day for both Houses of Parliament (clause 19(3)).
23. The clause is also amended to require the Secretary of State to prepare and lay reports under clause 19 at least once every three years, instead of at least once every five years (clause 19(1)).
24. A minor amendment is made to clause 19(2) to refer to "a report under this section", instead of "the report".
25. It is the Welsh Government's view that these amendments require consent because they make provision with regard to a range of devolved matters insofar as they apply to Wales, including food, food production and availability, food safety and agriculture.

#### Clause 55 (interpretation)

26. The amendment to Clause 55 is consequential on the amendments above, new Clauses 17 and 18. The amendment provides that the terms "EU Regulation", "EU decision" and "EU Tertiary legislation" are defined by reference to section 20 of the European Union (Withdrawal) Act 2018.
27. It is the Welsh Government's view that this amendment requires consent because it makes changes consequential on devolved provisions in the Bill, and therefore makes provision with regard to devolved matters.

#### Clause 57 (power to make consequential etc. provision) and clause 58 (power to make transitional etc. provision)

28. Clause 50 of the Bill provided for a power by regulations to make supplementary, incidental or consequential provision in connection with any provision of the Bill (including powers to modify primary legislation, retained direct EU legislation or subordinate legislation) (clause 50(1) and (2) of the Bill as amended in Committee).
29. Clause 50 also included separate powers by regulations to make transitional, transitory or saving provision in connection with the coming into force of any provision of the Bill (clause 50(5) of the Bill as amended in Committee).
30. The clause is divided to create two new provisions from clause 50 (clauses 57 and 58), and amended at Report stage. Clause 57 deals with supplementary,

incidental or consequential provision (and comprises what was section 50(1) to (4), as amended at House of Lords Report stage), the clause 58 deals with transitional etc., provision (and comprises what was section 50(5) and (6), as amended at House of Lords Report stage).

*Power to make consequential etc provision*

31. The Welsh Ministers' powers to make by regulations supplementary, incidental or consequential provision are amended so that certain additional provisions now fall within the scope of the Welsh Ministers' powers, as set out at clause 57(2). Those provisions are section 34 (fertilisers), section 36 (red meat levy), section 37 and Schedule 3 (agricultural tenancies), and sections 40 and 41 (organic products), so far as relating to Wales. The whole of section 35 (identification and traceability of animals), so far as relating to Wales (not just section 35(3) and (4)) now also falls within the scope of the Welsh Ministers' powers.

32. It remains the case that section 50 and Schedule 5 (Wales), section 51 (duration of provision in relation to Wales), and section 56 and Schedule 7 (the CMO regulation: consequential amendments) so far as they apply in relation to Wales, also fall within the Welsh Ministers' regulation-making powers (clause 57(2)). Provision is also made in respect of Scotland and Northern Ireland, but that is not considered further here.

33. Clause 57(1) is amended so that the Secretary of State may by regulations make supplementary, incidental or consequential provision under clause 57(1) in connection with any provision of the Bill, subject to clause 57(5) and (6), which are added to the Bill. The effect of clause 57(5) is that the Secretary of State cannot make regulations under clause 57(1) which could be made by the Welsh Ministers under clause 57(2) (clause 57(5)(a)). There is one exception to this. A new clause 57(6) provides that the Secretary of State may make regulations under clause 57(1) containing provision which could be made by the Welsh Ministers under subsection (2)(c), if the Secretary of State has first consulted the Welsh Ministers. Subsection (2)(c) refers to the Welsh Ministers' powers to make supplementary, incidental or consequential provision in connection with sections 40 and 41 (organic products), so far as relating to Wales. This means that the Secretary of State and the Welsh Ministers have concurrent powers to make provision in that respect.

34. Provision is also made in respect of Scotland and Northern Ireland, but that is not considered further here.

35. A small number of consequential amendments are made as a result of dividing the clause into two clauses.

*Power to make transitional etc provision*

36. The Welsh Ministers' powers to make by regulations transitional, transitory or saving provision in connection with the coming into force of certain provisions of the Bill are amended so that certain additional provisions now fall within

scope of the Welsh Ministers' powers. Those provisions are section 34 (fertilisers), section 36 (red meat levy), section 37 and Schedule 3 (agricultural tenancies), and sections 40 and 41 (organic products), so far as relating to Wales. The whole of section 35 (identification and traceability of animals), so far as relating to Wales (not just section 35(3) and (4)) now also falls within the scope of the Welsh Ministers' powers.

37. It remains the case that section 50 and Schedule 5 (Wales), section 51 (duration of provision in relation to Wales), and section 56 and Schedule 7 (the CMO regulation: consequential amendments) so far as they apply in relation to Wales, also fall within the Welsh Ministers' regulation-making powers (clause 58(1) and (2)(a)). Provision is also made in respect of Scotland and Northern Ireland, but that is not considered further here.

38. Clause 58(2)(d) is amended so that the Secretary of State may make transitional, transitory or saving provision in relation to the coming into force of any provision in the Bill other than in connection with the powers available to the Welsh Ministers, as set out at clause 58(2)(a) and described above, (and other than in connection with certain powers available to the Scottish Ministers and DAERA, not considered further here).

39. It is the Welsh Government's view these amendments require consent because they relate to provisions in the Bill that are considered to make provision with regard to devolved matters (to the extent described in previous memoranda).

#### Clause 60 (extent)

40. The amendments to Clause 60 are consequential on the insertion of Clauses 17 and 18. The amendments confirm that Part 1 of the Agriculture Bill (*aside from Clauses 17 and 18*) extends to England and Wales only. A further amendment is made to clarify that Clause 17 extends to England, Wales and Northern Ireland. Clause 18 extends to England, Wales, Scotland and Northern Ireland.

41. It is the Welsh Government's view that this amendment requires consent because it makes changes consequential on devolved provisions in the Bill, and therefore makes provision with regard to devolved matters.

#### Clause 61 (commencement)

42. Clause 61 is being amended to provide that Clauses 17 and 18 come into force on the day on which the Act is passed.

43. It is the Welsh Government's view that this amendment requires consent because it makes changes consequential on devolved provisions in the Bill, and therefore makes provision with regard to devolved matters.

#### Schedule 5

44. Paragraph 5 is being inserted into Schedule 5 to provide the Welsh Ministers with a regulation-making power to amend retained direct EU legislation relating to apiculture. There is equivalent provision for Northern Ireland in Schedule 6.
45. A technical amendment is due to be brought forward at Third Reading to clarify that this regulation-making power is subject to the negative procedure, unless clause 54(5) applies.
46. It is the Welsh Government's view that this amendment requires consent because it makes provision with regard to devolved matters in so far as they apply to Wales.

### **Powers to create subordinate legislation**

47. The Annex describes a list of regulation-making powers conferred on the Welsh Ministers, updated slightly from the Supplementary Memorandum laid on 25 September to take account of amendments made at House of Lords Report stage as described in this Memorandum. 'Affirmative resolution procedure' and 'negative resolution procedure' are defined in clause 54(6)(c) and (7)(c) of the Bill respectively as those terms apply to subordinate legislation made by the Welsh Ministers under the Bill.

### **Reasons for making these provisions for Wales in the Agriculture Bill**

48. As set out in the first Memorandum and reaffirmed in the Minister for Environment, Energy and Rural Affairs' oral statement to the Senedd on 8 July, it is the Welsh Government's intention to publish a White Paper before the end of 2020 which will set out the scope of an Agriculture (Wales) Bill to be introduced in the next Senedd term (2021/22).
49. Detailed proposals are dependent on the outcome of policy and operational decisions which cannot be made until analysis of responses from both the SFaOL consultation and the White Paper has been completed and all relevant considerations are taken into account.
50. Making provision for Wales in the UK Agriculture Bill will enable the continued provision of existing agricultural subsidies beyond 2020 and ensure the effective operation of agricultural markets following the UK's departure from the EU.

### **Welsh Government's position on the Bill as amended**

51. The Welsh Government is content with the relevant amendments to clauses 17, 18, 19, 55, 57, 58, 60, 61 and Schedule 5 tabled by UK Government Ministers during House of Lords Report Stage and described in this memorandum.

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

### **Financial implications**

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

### **Conclusion**

54. This supplementary memorandum describes the relevant changes made to the Bill at the House of Lords Report Stage which require the consent of the Senedd. The Welsh Government is content with the Bill as drafted.

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



## Annex

### SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM No 4): AGRICULTURE BILL – CONSOLIDATED LIST OF PROVISIONS WHICH CONTAIN POWERS FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION AS AMENDED AT HOUSE OF LORDS REPORT STAGE

<u>Bill provision</u>	<u>Description of Power</u>	<u>Legislative procedure</u>
34 (fertilisers)	Clause 34(4) amends section 74A of the Agriculture Act 1970 and allows for regulations made by the Welsh Ministers in relation to Wales (and the Secretary of State, Scottish Ministers and a Northern Ireland Department in respect of other parts of the UK) to set out an assessment, monitoring and enforcement regime for ensuring the compliance of fertilisers with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers.	The first regulations made by the Welsh Ministers under section 74A(1A) to (1E) of the Agriculture Act 1970 are subject to the affirmative resolution procedure. Subsequent regulations made by the Welsh Ministers, under section 74A(1A)(b) (conferring on a public authority functions relating to market surveillance and regulation) or (1E)(a)(i) or (ii) (amending and repealing retained EU law relating to fertilisers) are also subject to the affirmative resolution procedure (clause 34(5), amending section 84 of the Agriculture Act 1970). Otherwise the negative resolution procedure applies (see section 84(2), Agriculture Act 1970).
36 (red meat levy)	Powers for the Welsh Ministers (acting jointly with the Secretary of State and/or the Scottish Ministers) to make a scheme to make provision for amounts of red meat levy collected by the levy body for one country in Great Britain to be paid to the levy body for another such country.	No procedure
40 and 41 (organic products)	Powers for the Welsh Ministers in respect of the certification of organic products and import and export controls (if and to the extent that provision made by the regulations would be within the legislative competence of the Senedd if contained in an Act of the Senedd (ignoring any requirement for the consent of any person) (clause 41(1)(c)).	Affirmative resolution procedure where— (a) the regulations are made under section 40(1) and contain provision referred to in section 40(3), or (b) the regulations are made under subsection (1), (5) or (7) of section 40 and they are the first regulations to be made under that subsection by the authority making them. Otherwise, regulations under clause 40 are subject to

		negative resolution procedure (unless section 54(5) applies, in which case affirmative resolution procedure).
51 (duration of provision in relation to Wales)	Powers for the Welsh Ministers to make transitional, transitory or saving provision in connection with this section.	Regulations under this clause which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure. Other regulations under this clause are subject to negative resolution procedure.
57(2) (power to make consequential etc. provision)	The Welsh Ministers may by regulations make supplementary, incidental or consequential provision in connection with— (i) sections 34 to 36, so far as relating to Wales, (ii) section 37 and Schedule 3, so far as relating to Wales, (iii) sections 40 and 41, so far as relating to Wales, (iv) section 50 and Schedule 5, (v) section 51, and (vi) section 56 and Schedule 7 so far as they apply in relation to Wales.	Regulations under section 57(2) which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure. Other regulations under section 57(2) are subject to negative resolution procedure.
58(1) and (2)(a) (power to make transitional etc. provision)	The appropriate authority may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of the Act. The Welsh Ministers are the appropriate authority, for provision in connection with— (i) sections 34 to 36, so far as relating to Wales, (ii) section 37 and Schedule 3, so far as relating to Wales, (iii) sections 40 and 41, so far as relating to Wales, (iv) section 50 and Schedule 5, (iii) section 51, and (iv) section 56 and Schedule 7 so far as they apply in relation to Wales.	No procedure
61(3) (commencement)	Powers, so far as not brought into force by subsection (1)(a) or (b), for the Welsh Ministers, by regulations made by statutory instrument to appoint— (a) so far as relating to Wales— (i) section 35(3) and (4), (ii) paragraphs 10 to 16 and 18 of Schedule 3, and (iii) section 37 so far as relating to those paragraphs, (b) Part 2 of Schedule 5, and section 50 so far as relating to that Part, and (c) Parts 2 and 4 of Schedule 7, and section 56 so far as relating to those Parts.	No procedure

Schedule 3, para 6(7)	Powers for the Welsh Ministers by regulations made in a statutory instrument to amend section 84 of the Agricultural Holdings Act 1986 so as to- a) include a person in, or remove a person from, the definition of "professional authority"; b) reflect changes in the name or internal organisation of any body mentioned in that definition.	Negative procedure
Schedule 3, para 7	Powers for the Welsh Ministers by regulations to make provision for the tenant of an agricultural holding to refer for arbitration requests made by the tenant for landlord's consent or variation of terms	Negative procedure
Schedule 3, para 17	Paragraph 17 amends section 39(8) of the Agricultural Holdings Act 1986 to confer a power on the Welsh Ministers, in relation to Wales, to make regulations specifying the criteria that must be considered when determining a person's suitability to become a tenant of the holding.	Negative procedure
Sch 5, para 2(1)	Powers for the Welsh Ministers to modify legislation governing the basic payment scheme	Negative resolution procedure (unless clause 54(5) applies, in which case affirmative resolution procedure)
Sch 5, para 3(1)	Powers for the Welsh Ministers to provide for the continuation of the basic payment scheme beyond 2020, including power to provide for the direct payments ceiling for Wales to be made by Welsh Ministers	Affirmative resolution procedure
Sch 5, para 4(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation.	Negative resolution procedure (unless clause 54(5) applies, in which case affirmative resolution procedure)
Sch 5, para 5(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to apiculture, and subordinate legislation relating to that legislation.	No procedure
Sch 5, para 6(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation.	Affirmative resolution procedure
Sch 5, para 9(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for the purposes of altering the operation of provisions of such legislation, so far as they have effect in relation to Wales in connection with exceptional market conditions which are the subject of a declaration under paragraph 7 of Schedule 5 (declaration relating to exceptional market conditions).	Negative resolution procedure (unless clause 54(5) applies, in which case affirmative resolution procedure)
Sch 5, para 9(2)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for specified purposes	Negative resolution procedure (unless clause 54(5) applies, in which case affirmative resolution

		procedure)
Sch 5, para 10(2)	Powers for the Welsh Ministers to make regulations requiring persons in or closely connected with an agri-food supply chain to provide information about matters connected with any of the person's activities connected with the supply chain so far as the activities are in Wales.	Affirmative resolution procedure
Sch 5, para 15(1)	Powers for the Welsh Ministers to make provision for enforcement of a requirement imposed under paragraph 10(1) or (2) of Schedule 5 (agri-food supply chains: requirement to provide information)	Affirmative resolution procedure
Sch 5, para 16(1)	Powers for the Welsh Ministers by regulations, in relation to products which fall within a specified sector and are marketed in Wales, to make provisions about the standards with which those products must conform	Affirmative resolution procedure
Sch 5, para 17(3)	Powers for the Welsh Ministers to amend paragraphs 16 and 17 for or in connection with the purpose of— (a) adding or removing an agricultural product from paragraph 17(1); (b) altering the description of an agricultural product in paragraph 17(1).	Affirmative resolution procedure
Sch 5, para 18(1)	Powers for the Welsh Ministers to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales	Affirmative resolution procedure