

EXPLANATORY MEMORANDUM AND EXPLANATORY NOTE

**Explanatory Memorandum to the Proposed Red Meat Industry (Wales) Measure**

This Explanatory Memorandum has been prepared by the Department for Rural Affairs and is laid before the National Assembly for Wales.

Member's Declaration on Legislative Competence

In my view the provisions of the proposed Red Meat Industry (Wales) Measure introduced by me on XXXXXXX 2009 would be within the legislative competence of the National Assembly for Wales.

Elin Jones AM

Minister for Rural Affairs

Assembly Member in charge of the proposed Measure

XXXXXXX 2009

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### **Section 1: Description**

- 1.1. The purpose of this Measure is to make statutory provision, through a legislative framework, for the development and promotion of the Welsh red meat industry.
- 1.2 The Measure defines the basic scope of the proposed activities as;
  - Increasing efficiency and productivity in the industry
  - Improving marketing in the industry
  - Improving or developing services that the industry provides or could provide to the community
  - Improving the ways in which the industry contributes to sustainable development

### **Section 2: Legislative Background**

2.1 The powers to make such a Measure are contained in Matter 1.1 of Schedule 5 of the Government of Wales Act 2006.

#### 2.2 Matter 1.1

The red meat industry, in relation to:

- (a) Increasing efficiency and productivity in the industry;
- (b) Improving marketing in the industry;
- (c) Improving or developing services that the industry provides or could provide to the community;
- (d) Improving the ways in which the industry contributes to sustainable development

2.3 No alternative arrangements were considered because this Measure aims to replace an existing arrangement with a new mechanism.

### **Section 3: Purpose and intended effect of the legislation**

3.1 The fundamental purpose of the Measure is to remove the need for an Assembly Sponsored Public Body to be in place for the purposes of managing the development and promotion of the Welsh red meat industry. The Measure will make Welsh Ministers directly accountable for the Red Meat Industry. The intention is to continue with the existing operational management arrangements with the introduction of a new delegation agreement between Welsh Ministers and Hybu Cig Cymru - Meat Promotion Wales (HCC) such that HCC is able to continue on its current basis.

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- 3.2 There is general consensus among the farming industry and key stakeholders of significant risk with the existing arrangements where the levy is raised and collected principally at the point of slaughter and so it is necessary to have the capacity by which different mechanisms or options might be introduced over time in order to be able to react to future changes and challenges within the industry. The Measure therefore is required to provide a flexible framework which would be capable of supporting alternative mechanisms for the determination and collection of the red meat levy.
- 3.3 A further issue within the red meat industry is its vulnerability to unexpected external crises, for example the dioxin contamination of pork from Ireland and food safety scares such as the recent E Coli outbreaks. By their very nature such problems cannot be planned for since they may happen at any time and the consequences to the industry can be devastating. A further purpose of the Measure is to provide a flexible framework which has clear boundaries but within which Welsh Ministers have the ability to be able to bring forward new initiatives within a limited amount of time that could address challenges of this kind.
- 3.4 It is important that the Measure has a framework that will accommodate the current arrangements continuing without change but yet contains sufficient scope and flexibility to allow for the future introduction of alternative mechanisms should that be required.

### **Legislative Background**

- 3.5 Prior to 2008 several UK or Great Britain wide bodies collected and distributed levy in specific agricultural and horticultural sectors. One such body was the Meat and Livestock Commission (“the MLC”), established under the Agriculture Act 1967 which raised and collected levy from the red meat sector in Great Britain. Following a 2005 review of the agricultural and horticultural levy boards in the UK and Great Britain by Rosemary Radcliffe (“the Radcliffe Review”), the UK administrations agreed in principle to establish a single UK levy board, which would be a non departmental public body and would act as a holding company for six sectoral companies covering beef and lamb, pigs, horticulture, cereals, dairy and potatoes respectively.
- 3.6 The purposes of the new UK levy board and its sector companies (according to the Radcliffe Review) were to include increasing efficiency, productivity, marketing, development and sustainability in the UK agriculture sector, and such purposes were to be funded from industry levies. The Radcliffe Review suggested a UK board with subsidiary sector companies or, in relation to specific demands from Wales, Scotland or Northern Ireland, the ability for devolved administrations to create levy and promotional boards to operate within their own territories.
- 3.7 The Welsh Assembly Government consulted on the Radcliffe Review and on how the provisions of the Natural Environment and Rural Communities Act 2006 (“the NERC Act”) should be implemented in Wales during the early passage of the Bill through Parliament. The consultation results concluded that the agricultural industry in Wales wanted to have a separate red meat levy and promotion board,

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but to be a part of the UK levy board in all other commodities.

- 3.8 The Assembly Government accepted these conclusions but decided that it would be preferable for the power to raise levy from and promote, market and develop the red meat sector in Wales to be conferred directly upon the National Assembly for Wales (now Welsh Ministers), rather than by the creation of a separate statutory levy and promotion board. However, the timing of the consultation meant that it was not possible for the Welsh Assembly Government's policy requirement to be reflected in the Bill and subsequent NERC Act.
- 3.9 Consequently the NERC Act conferred powers on the Secretary of State to dissolve existing levy bodies or boards and to create new ones with cross-border functions by means of secondary legislation. It also conferred powers on the National Assembly for Wales (now the Welsh Ministers), the Scottish Ministers and the relevant Northern Ireland department in relation to matters which only concerned their respective territories, to create boards to promote marketing, development and sustainability in their respective agricultural industries.
- 3.10 The Welsh Assembly Government's general policy is that where functions are governmental, either policy or delivery, then they should remain in-house with the focus on working directly with clients and customers and placing front line service delivery at the heart of the Assembly Government's culture. Retaining functions in-house ensures Government is more democratically accountable and streamlined. As a result, the option conferred upon the Welsh Assembly Government by the NERC Act to create a separate levy and promotional/development body, rather than undertake those functions itself, was unsatisfactory.
- 3.11 As a result, the Welsh Ministers sought the conferral of legislative competence in this area upon the National Assembly for Wales through the National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2009.

### **General Background to the Measure**

- 3.12 In the Measure, "cattle" and "pigs" are precisely defined in order to provide clarity. As the term "cattle" has a variety of definitions in existing legislation, leaving this term undefined could cause ambiguity regarding the animals that the term is intended to cover. Additionally, because the term "cattle" has been defined, without further definition, an inference could be drawn that the term "pigs" is meant to be limited to common domestic pigs whilst, in reality, the term is meant to include wild boar and other feral pigs.
- 3.13 For the purposes of the definition, "cattle" means bovine animals, including bison and buffalo, and "pigs" means porcine animals, including wild boar and other feral pigs. These definitions seek to capture the Welsh Assembly Government's red meat policy and so have the necessary scope to deal fully with the substance in the Measure.

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3.14 The red meat industry is defined in the proposed Measure as;

- (a) activities comprised in breeding, keeping, processing, marketing and distributing any of the following animals - cattle, sheep and pigs, and
- (b) activities comprised in producing, processing, marketing, manufacturing and distributing products derived to any substantial extent from those animals (apart from milk and milk products, fleece wool and hides), and
- (c) slaughterhouses, auctions and markets used wholly or partly for activities falling within paragraphs (a) or (b).

Any references in the Measure to 'animals' means references to animals that are dead where the context requires it.

3.15 The wording, "products derived to any substantial extent from those animals" has been chosen to reflect the wording of the NERC Act closely. The term "breeding" also reflects the NERC Act (which refers to "breeding and keeping").

3.16 In the same way, the term "manufacturing" used in the Measure has been chosen so that it more closely reflects the wording of the NERC Act.

3.17 The Measure states clearly that fleece wool and hides are specifically excluded so as to avoid any doubt. The British Wool Marketing Board administers a separate marketing scheme for fleece wool.

3.18 The Measure is consistent with the wider legislative framework set out in the NERC Act. It would confer sufficient powers on Welsh Ministers to carry out the activities currently carried out by the Welsh Levy Board (namely raising a levy in the red meat sector), apart from any activities involving fleece wool and hides. The primary intention is to confer those powers on the Welsh Ministers and to dissolve the Welsh Levy Board.

### **Background to Hybu Cig Cymru – Meat Promotion Wales (HCC)**

3.19 Hybu Cig Cymru – Meat Promotion Wales ("HCC") is the industry-led red meat authority for Wales. It seeks to develop profitable and sustainable markets for Welsh red meat for the benefit of all stakeholders in the supply chain. HCC was formed as a result of the strategy outlined in the Welsh Assembly Government's visionary document published in November 2001 entitled "Farming for the Future: A New Direction for Farming in Wales". As a consequence of this document the Welsh Assembly Government undertook an extensive consultation exercise on the proposal to set up HCC.

3.20 HCC has pan-Wales industry representation and draws on the strengths and experience of its non-executive Board of Directors. The HCC Board has a maximum of 12 members, comprising both industry and independent representatives. The Board represents the whole supply chain and consists of more than 50 percent levy payers (i.e. members representing the interests of Welsh producers and processors).

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- 3.21 HCC commenced work on behalf of the sheep, cattle and pig industries in April 2003 under the terms of a delegation agreement between the then MLC and HCC in respect of the MLC's statutory functions for Wales. (Initially HCC entered into an agreement with the British Pig Executive ["BPEX"] to undertake activities on behalf of Welsh pig levy payers, however it was agreed that HCC would take direct responsibility for the marketing, promotion and development of the Welsh pig sector from 01 April 2008). HCC's work has been a positive response to devolutionary needs, bringing strategy and intervention closer and more accountable to stakeholders.
- 3.22 HCC's strategic plan is to support the development of a profitable, efficient, sustainable and innovative Welsh red meat industry, which responds competitively to ever changing market trends and benefits the people of Wales. In line with the Strategic Action Plan for the Welsh Red Meat Industry the strategic aims of HCC are as follows:
- To improve the industry's level of understanding of market trends and influence consumer behaviour;
  - To foster innovation and improve supply chain linkages;
  - To improve the business performance of processors in response to changing market conditions, environmental requirements, climate change and consumer demands; and
  - To improve the business performance of primary producers in response to changing market conditions, environmental requirements, climate change and consumer demands.
- 3.23 Following the Radcliffe Review new mechanisms were put in place and as part of those new arrangements the MLC was abolished on 31 March 2008 and it was replaced by a red meat sector company under the control of the new Agriculture and Horticulture Development Board ("AHDB") as it was finally named on 1 April 2008. This posed a problem for Wales because the only way in which we could have a separate red meat company that was responsible for the development and promotion of the Welsh red meat industry that also has responsibility for the levy fund arrangements was to create a public body under the NERC Act.
- 3.24 This was done and the Welsh Levy Board was created that undertook this role from 1 April 2008. The corporate arrangement of HCC had already changed on 1 April 2007 such that it became a company wholly owned by the Welsh Assembly Government.
- 3.25 A delegation agreement is in place between the Welsh Levy Board and HCC (a company limited by guarantee and wholly owned by the Welsh Ministers) that will allow HCC to continue to collect red meat levy from slaughters and exporters in Wales and then to distribute those funds. Once powers for the development and promotion of the red meat industry in Wales are conferred directly upon the Welsh Ministers a similar delegation will be put in place to allow these arrangements to continue.
- 3.26 In evidence given to the Legislation Committee of the National Assembly for Wales during the scrutiny of the Legislative Competence Order NFU Cymru, The

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National Beef Association, the National Sheep Association and HCC themselves drew attention to the importance of retaining a separate red meat body in Wales to support the development and promotion of the industry. The point that made was that ;

“Apart from Welsh Ministers HCC is also accountable to the industry, both producers and processors, who pay the levy which enables HCC to carry out its duties.”

3.27 The Minister herself explained that the work undertaken by HCC on behalf of the industry was “an appropriate way of ensuring that the industry feels that it owns the plans for the future support of the industry” and she confirmed “I have no intention of absorbing Hybu Cig Cymru into the Welsh Assembly Government.”

### **Background on Cross Border Issues**

3.28 The Radcliffe Review of 2005 acknowledged the importance of a compulsory levy on the red meat industry to be used to address market failure such as structural issues, industry problems and combined promotion of red meat products. This levy is paid by primary producers and processors and is to be used by the red meat promotional bodies for the benefit of primary producers and processors. However, it is critical that the interests of all members of the supply chain are represented by the work of the bodies.

3.29 In looking to the future the Radcliffe Review highlighted the following:

- The statutory levy for red meat should continue.
- Levy money should be used to primarily benefit those who pay it i.e. the primary producers.
- The levy distribution system based on place of slaughter may not best serve the interests of producers.
- There is the option for a ‘fresh start’ to calculating the levy amounts.

3.30 Over the next 10 years the expected trends in the UK red meat industry are likely to result in the following:

- Continuing reduction in total stock numbers, especially in more fragile locations.
- Increasing specialisation of producers, trend to amalgamation of units and improved performance at the top end.
- Reduction in the number of poor performing producers who will no longer be protected by subsidy payments.
- Increased competition and increased imports from Eastern Europe and other parts of the world. As quality of imported meat increases, differentiating UK products will continue to be challenging but necessary for the benefit of the sector.
- Increased focus on quality attributes of UK product making maximum use of the PGI status.



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- Further rationalisation in the abattoir/processor sector with continued pressure to be larger, more efficient and closer to main markets in the south of England and abroad.
- Continuing emphasis of animal welfare issues with the possibility of reductions in stock transport times.

- 3.31 These trends will have significant implications for the distribution of levy in serving the needs of primary producers and there are two particular issues. Firstly, it is likely that unless a more equitable distribution mechanism can be developed that the levy will become increasingly concentrated in the large abattoirs in England. The Scottish Protected Geographical Indicators (PGIs) are tied to Scottish slaughter while the Welsh PGIs can be slaughtered anywhere as long as the abattoirs are approved by HCC. Whilst the Scottish PGIs may act as a brake on the loss of stock from Scottish abattoirs, Wales will be more at risk in this regard. Secondly, given the restructuring of primary production that will take place over the next few years it is vital that the allocation of funds continues to reflect the geographical distribution of stock rearing.
- 3.32 In the scenario above the amounts of levy available to all of the devolved bodies will potentially continue to decline hampering the efforts of the levy boards to deliver their remit. On this basis it is appropriate to ensure that Wales has the flexibility within the legal framework of the Measure to be able to offer alternative methods for the determination of how the levy is raised according to the needs of primary producers who are the main levy payers.
- 3.33 Historically (pre 2003) the then MLC retained all general levy collected on cattle and sheep and distributed percentages of the GB promotional levy to Wales (at 9% sheep and 5% beef levy). According to MLC these figures were calculated on indigenous production in these regions and agreed upon by the farming unions at the time.
- 3.34 Between 2003 and 2008 the levy distribution mechanism for GB consisted of levy funds being collected by abattoirs on behalf of MLC based on the number of head slaughtered and redistributed to HCC, Quality Meat Scotland (QMS) and English Beef and Lamb Executive (EBLEX) on the basis of geography of the abattoirs. Therefore the current distribution mechanism of levy is entirely dependent on the geography of the abattoir and it is for this reason there is an imbalance between English, Scottish and Welsh breeding numbers and the amount of levy EBLEX, QMS and HCC receive. For example the 2007 June agricultural survey showed that the Welsh beef cow herd was responsible for 16.7% of the total GB beef cow herd but in the 2007/08 financial year HCC only received 5.9% of the total GB beef levy and between 2003/04 and 2007/08 total GB levy for beef and sheep increased by 15% whereas HCC's levy income during this time increased by only 7%.

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Figure 1 gives a graphical representation of the difference between the distributions of cattle levy in GB for the 2007/08 financial year with the distribution of beef cows in the GB countries for 2007.

**Figure 1: Percentage distribution of cattle levy and beef cows for GB countries, 2007**

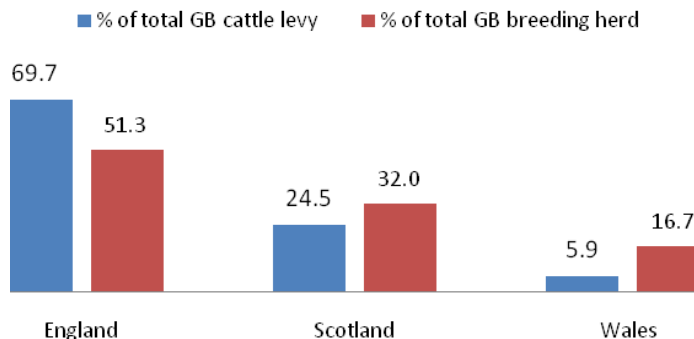
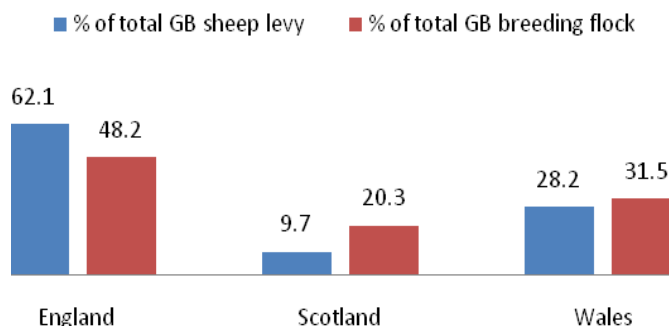


Figure 2 gives a graphical representation of the difference between the distributions of sheep levy in GB for the 2007/08 financial year with the distribution of breeding sheep in the GB countries for 2007.

**Figure 2: Percentage distribution of sheep levy and breeding ewes for GB countries, 2007**



3.35 The issues arising from the effect of cross border trading and transport of animals for slaughter were highlighted in the evidence given to the to the Legislation Committee of the National Assembly for Wales during the scrutiny of the Legislative Competence Order by The Welsh Lamb and Beef Producers Ltd. They were of the view that the fragility of the red meat industry within Wales and the significant cross border trade that does take place is such that it would be preferable for the levy in Wales to be based on production rather than point of slaughter.

3.36 They went on to comment that if Wales should lose just one of the major slaughter facilities then the levy income might collapse by as much as 70% and they suggested that a change to the way in which the levy was determined and collected would not only bring in additional revenue but it would also bring

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additional financial security and stability to HCC which they did not feel was the case at present. HCC also supported this view and added that the additional levy income could be more than £1 million per annum.

- 3.37 In summary the historical picture has been that the levy has been seen as a charge on livestock which enter the food chain and the primary function of the levy monies has been for the promotion of the final product as a means of supporting the whole production chain. However this may not be to the longer term benefit of primary producers in Wales as highlighted above and one of the intended effects of this legislation is to produce a regulatory framework that is sufficiently flexible such that it would be possible to change the way at which the levy charge is determined and raised.
- 3.38 Two illustrative examples of alternative mechanisms for the determination and raising of the levy are; a transactional levy; where the levy is raised at each point of change of ownership in the supply chain analogous to the way that VAT works, or; a producer levy where the levy is based on the numbers of breeding stock in the herds and flocks kept by the primary producer.
- 3.39 There would need to be engagement and consultation with the primary producers, other stakeholders and even possibly other devolved administrations before any options such as those described above can be evaluated. It is important that the Measure has a framework that will accommodate the current arrangements continuing without change but yet contains sufficient scope and flexibility to allow for the future introduction of alternative mechanisms should that be required.

### **Section 4: Consultation**

- 4.1. The recommendation in the report on the Radcliffe Review of the levy bodies were subject to wide consultation. Respondents from the meat sector were wholly supportive of the idea of having a Welsh red meat levy-raising body directly accountable to the Welsh Assembly Government rather than directly accountable to the UK Levy Board - AHDB. The idea was accepted by all the main players including NFU Cymru, HCC, Welsh Lamb & Beef Producers Ltd. and Farmers' Union of Wales.
- 4.2 A six week public consultation on the draft affirmative instrument (SI) for the Welsh Levy Board Order 2007 closed on 24 August 2007 and 6 substantive responses were received by the Welsh Assembly Government.
- 4.3. Responses to the consultation were broadly supportive with varying degrees of acceptance of the need for a structure that raises and collects levy in Wales. The majority of respondents acknowledged that there was a need for the new Welsh Levy Board to work closely with HCC to ensure HCC remains the body to deliver strategy and undertake both industry development and red meat promotion activities. However there were a number of respondents who favoured making future changes to the way in which the levy was determined and collected so that

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it more accurately reflects the needs of Wales as discussed in Section 3.

- 4.4 It is for these reasons that respondents to the consultation favoured making changes to the way in which the levy was determined and collected so that it more accurately reflects the needs of Wales. The proposed Measure will permit the current arrangements to be continued for the foreseeable future but yet will provide the scope to offer the flexibility such that alternative mechanisms for the determination and collection of the levy might be developed in the future.

### **Section 5: Powers to make subordinate legislation**

- 5.1. This section provides details of each provision to make subordinate legislation within the Measure. In each case, such powers allow the Welsh Ministers to make amendments to the details of the Measure to cover matters or developments which are not known at this stage. This avoids the need to bring forward an amending Measure each time there is a need to deal with future changes in the red meat industry.
- 5.2. One of the recommendations of the report of the Radcliffe Review was to suggest that the nature of the activities undertaken by the different levy bodies ought to be defined in the constitution of the new companies. There is a need to have some limits to what the levy bodies can do but in responding to the Welsh Assembly Government consultation on the Report HCC commented that “these parameters should not be too woodenly defined.”
- 5.3 HCC proposed that the role undertaken by the levy bodies should be based on an ongoing, evidenced based assessment of industry needs, for example, promotional campaigns have been shown to have real value in re-building consumer confidence following major publicity of scares or concerns about the safety of red meat.
- 5.4 HCC would prefer to see broad parameters laid down within the legislative framework rather than prescriptive defined activities. Since Wales has Protected Geographical Indication status for Welsh Beef and Welsh Lamb there is great potential to capitalise on this for the benefit of the Welsh red meat industry as a whole and that could involve a range of new activities in the future depending on what needs might be identified. For these reasons it is essential that the scope of the Measure is sufficiently broad to allow future activities that are reactive to the needs of the time.
- 5.5 Under the Measure, the Welsh Ministers will have powers to make orders to:
- 5.5.1 amend, omit or add to their functions as set out in Schedule 1 (section 3). Schedule 1 contains a list of functions that can be undertaken by the Welsh Ministers. As the industry develops, further functions may be identified or some may become defunct and the power to add or remove a function by order would obviate the need for an amending Measure. As the adding, modification or removal of functions is likely to fundamentally reshape the Welsh Ministers’

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powers in this area, we consider that a subordinate legislation power using the affirmative procedure is appropriate;

5.5.2 impose a levy on any of the following: slaughterers, exporters and persons engaged in designated primary or secondary activities (section 4). Slaughterers and exporters are liable to pay the levy under current legislation and they will be designated as liable to pay levy under subordinate legislation made as soon as the Measure comes into force. However, because of the changing nature of the industry, it may be necessary in the future to designate other persons as liable to pay the levy and the Measure provides that such persons can be designated by subordinate legislation. This would avoid the need for an amending Measure. As an additional safeguard, if the Welsh Ministers wish to designate as liable to pay levy persons who are engaged in a “designated secondary activity” (which may be considered slightly removed from the mainstream red meat industry), that designation by order can only take place if the affirmative procedure is followed;

5.5.3 amend, omit or add provisions in Schedule 2 dealing with the operation of the levy and the maximum levy rates (section 5) Over time, it is likely that the maximum levy rates and the administrative means of collecting levy will need to change to adapt to changes in the industry. As such changes could be fundamental, it is proposed that Schedule 2 can be amended by subordinate legislation. Such changes would not be so fundamental as to require an amending Measure;

5.5.4 make provision about levies imposed in respect of persons carrying out a designated primary or secondary activity (section 6). As the power to make the changes contemplated by section 6 are generally administrative by nature, it is considered that subordinate legislation would be more efficient than an amending Measure. To keep up with changes in the industry, which could occur quickly and with little notice, subordinate legislation would be a much more efficient way to adapt to such changes than going through Assembly procedures to obtain an amending Measure.

- 5.6 All of the orders referred to in 5.5 will be made in accordance with the negative procedure, except for orders made under sections 3(3), 4(5), 5(4) and 6(3) which are subject to the affirmative procedure. Orders made under section 18 (commencement), which are not subject to any procedure.
- 5.7 It is intended that simultaneously with the Measure coming into force, the Welsh Ministers will make an order designating slaughters and exporters as being subject to the levy.

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### **Section 6: Regulatory Impact Assessment**

- 6.1. A Regulatory Impact Assessment is not required for this Measure.
- 6.2. The draft Measure aims to provide a mechanism by which the Welsh Ministers have the powers necessary to develop and promote the Welsh red meat industry and that will include the setting, collecting and spending of levy funds raised from operators within the red meat industry. Currently these functions are undertaken by the Welsh Levy Board who has in place a delegation agreement with HCC who collect the levy funds and then use those funds to develop and promote the industry. HCC is wholly owned by the Welsh Assembly Government.
- 6.3 Once the Welsh Ministers have the necessary powers the intention is that a new delegation agreement would be put in place between Welsh Ministers and HCC so that the current arrangements could continue.
- 6.4 In these circumstances there would be no change to the costs to the industry, no changes to the costs incurred by HCC for the collection and accounting for the levy funds and no change to the governance arrangements necessary. There will be some small savings in that the costs necessary for the operation of the Welsh Levy Board, currently being met by HCC, will not be incurred in future.
- 6.5 The proposed Measure would not give rise to any other administrative, compliance and/or other costs.

END

## **Explanatory Notes**

### **Introduction**

1. These Explanatory Notes relate to the proposed Red Meat Industry (Wales) Measure as introduced in to the National Assembly for Wales on September 2008.
2. The Welsh Assembly Government's Department for Rural Affairs has prepared them in order to assist the reader of the proposed Measure and to help inform debate on it. They do not form part of the draft Measure and have not been endorsed by the National Assembly for Wales.
3. The Explanatory Notes should be read in conjunction with the proposed Measure. They are not, and are not meant to be, a comprehensive description of the Measure. So where a section or part of a section does not seem to require any explanation or comment, none is given.
4. These Explanatory Notes are for an Assembly Measure to make provision about imposing a levy in relation to the red meat industry in Wales and the connected purposes of developing and promoting that industry in Wales, the UK and the rest of Europe. The powers to make such a Measure are contained in Matter 1.1 of Schedule 5 to the Government of Wales Act 2006, as inserted by the Legislative Competence Order.

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### **Commentary on Sections**

#### **Section 1 – Meaning of the “red meat industry”**

This section defines what is meant by the term ‘red meat industry’ as it applies in this context, that is, breeding, keeping, processing, marketing and distribution of cattle, sheep and pigs and any products substantially derived from such animals.

Some activities are not covered by this Measure because there are separate arrangements for the support and development of those products such as milk and milk products and fleece wool which are under the responsibility of Dairy UK and the Wool Marketing Board respectively. Hides are not covered as these have never considered to be part of the red meat industry but to be one element of the knackery trade which is not subject to levy.

The Measure provides that the scope of the application of the powers available under the Measure to be applied differently to the three key sectors.

#### **Section 2 – Objectives**

The objectives of the Measure are ;

- To increase efficiency or productivity in the red meat industry
- To improve marketing in the industry
- To improve or develop services that the industry provides or could provide to the community
- To improve ways in which the industry contributes to sustainable development

These objectives are the same as those of the current Welsh Levy Board and also mirror the objectives set out in the NERC Act which is the main defining legal framework for the promotion and development of the major agricultural sectors in the UK.

#### **Section 3 – Functions**

The functions of the Measure are to provide the means and mechanisms by which Welsh Ministers have the power to be able to amend the detail of the Measure by being able to change the wording, add new descriptions or delete existing descriptions of the activities that can be undertaken to develop and promote the red meat industry. The detailed explanation is given in Schedule 1.

Welsh Ministers also have the power to create a reserve fund if necessary for the purposes of assisting with financing of these activities.

#### **Section 4 – Imposing a levy : designation of persons liable**

The principle mechanism by which the red meat industry is supported financially is by the raising of funds from within that industry which can then be spent in the development and promotion of the various activities set out in Schedule 1.



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The Measure sets some basic parameters in respect of the levy.

Money raised in each sector (cattle, sheep and pigs) must be spent for the benefit of that sector and so the promotion of the sector will be proportionate to its importance to the agriculture industry in Wales.

The money raised can only be spent on the development and promotion of these three sectors in the red meat industry, for example, it cannot be spent on the promotion of general agricultural produce from Wales nor could it be spent on general research and development.

The Measure provides flexibility so that the levy could be required to be paid by everyone in the whole supply chain from the farmer who keeps the stock and breeds and rears the animals through to the butcher who sells meat and other products to the final consumer. Slaughter house operators, exporters, livestock auction markets and companies involved all forms of further processing may become eligible to have a levy fee charged on them.

The Measure sets out four categories of persons who may be eligible to have a levy fee charged on them, that is;

- Those engaged in designated primary activity
- Those engaged in designated secondary activity
- Slaughterers
- Exporters

The terms primary and secondary activity are defined in this section in paragraph 6.

These definitions are given in broad rather than specific terms so that that Measure can provide a flexible framework within which different parts of the industry might be used as the point of determination for the levy to be charged. The same flexibility is given in respect of the point or points where the levy might be collected.

This flexibility is important in a Measure such as this because Welsh Ministers need to have powers such that they are able to develop the industry according to medium and long term strategies based on the assessment and evaluation of future market demands and opportunities. Those projections about the future are certainly going to change and so this Measure aims to provide the mechanisms through which the support to the industry can be adapted to react to and reflect those changes.

### **Section 5 - Levies imposed on slaughterers or exporters: calculating the levy and payment**

This section sets out the framework within which the current, existing arrangements for the determination and collection of the levy at the point of slaughter or the point of live export can continue without interruption or major amendments.

The way in which the current levy is calculated and paid is set out in Schedule 2.

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### **Section 6 – Power to make provision about levies imposed in respect of persons carrying out a designated primary activity or a designated secondary activity**

This section sets out the framework within which Welsh Ministers may set arrangements for the determination and collection of levy at other points within the supply chain. Any such arrangements must be made by order.

### **Section 7 – Delegation and subsidiaries**

This section sets out the framework within which Welsh Ministers have the power to be able to delegate all or some of their responsibilities to third parties. It also provides the framework within which Welsh Ministers have the power to be able to acquire or establish subsidiaries to carry out any of their functions.

This section makes it possible for Welsh Ministers to set up and enter into arrangements with bodies such as Hybu Cig Cymru – Meat Promotion Wales (HCC) such that HCC may take on some or all of the responsibilities and deliver some or all of the functions. It provides flexibility so that other options could be used in future and/or current arrangements could be changed or amended.

This section makes it clear that Welsh Ministers cannot delegate the responsibility for making regulations or orders nor for making directions to any one else.

### **Section 8 – Returns and Estimates**

This section sets out the arrangements by which persons liable to pay a levy must submit returns stating the number of chargeable cattle, sheep and pigs giving whatever information is required and in whatever format is required as might be determined by the direction of Welsh Ministers.

The section provides that the nature, timing and content of any such returns can be altered and amended as necessary.

It also provides for situations where returns are due from persons liable to pay levy but they do not submit them, in this case any such persons may be given an estimate (in writing) of the expected number of animals that levy must be paid on. They then have 28 days to provide a correct and accurate return in the required format otherwise they must pay whatever levy is necessary based on the estimate they have been given.

### **Section 9 – Provision of information**

This section provides the framework that requires that people who must pay the levy must keep proper records about the animals that levy is based on and that they must produce those records for inspection when required to do so.

If people do not keep such records and/or fail to produce the records when asked then this is an offence and this section sets out the nature of that offence and the scale of the penalty.

## EXPLANATORY MEMORANDUM AND EXPLANATORY NOTE

### **Section 10 – Inspection**

This section sets out the powers that Welsh Ministers have for the appointment of inspectors (appointed person) who can go out and check the animals, the records and the payment information to make sure that the requirement to account for and pay the levy has been met.

### **Section 11 - Powers of entry**

This section sets out the general and specific conditions that need to be met before an inspector (appointed person) can apply for a warrant to enter land and/or premises for the purposes of enforcing the Measure.

### **Section 12 – Offences committed by bodies or partnerships**

This section sets out the framework by which individuals such as directors, managers, secretaries or other officers of corporate bodies such as limited companies or other forms of legal entity have personal responsibility within the terms of this Measure and action may taken against them if they have committed any offences under this Measure.

Similar conditions are set out for incorporated bodies, partnerships and Scottish partnerships so that it is clear how this Measure would apply to the different operators within the red meat industry supply chain.

### **Section 13 – Time limits for bringing proceedings**

This section sets time limits for bringing proceedings under this Measure which are within 6 months of the date at which there is sufficient evidence to that an offence may have been committed but proceedings cannot be started more than 2 years after the date on which the offence was committed.

### **Section 14 - Definitions**

This section defines the main terms as necessary within the context of this Measure.

### **Section 15 – Dissolution of the Welsh Levy Board**

This section provides the powers by which the Welsh Levy Board is abolished. The Welsh Levy Board is an Assembly Sponsored Public Body set up under the terms of the NERC Act and the Welsh Levy Board Order for the purposes of setting, raising and spending levy monies raised from the Welsh red meat industry.

### **Section 16 – Directions**

This section simply states that under this Measure any directions given by Welsh Ministers must be given in writing but that they may be varied or revoked by any later direction.

## EXPLANATORY MEMORANDUM AND EXPLANATORY NOTE

### **Section 17 – Orders and regulations**

This section makes provision relating to the order and regulation making powers under the Measure. These powers are subject to negative resolution procedures, with the exception of any order made under section 3(3) (amending Schedule 1), 4(5) (designation of a secondary activity), section 5(4) (amending Schedule 2) and section 6(3) (amending the Measure where it is necessary or expedient) which are subject to affirmative procedure. Further, any order made under section 18(2) (commencement), is not subject to any procedure.

### **Section 18 – Commencement**

This section sets out when the powers under this Measure would come into force.

### **Section 19 – Short title**

The short description of the Measure is Red Meat Industry (Wales) Measure 2010.

### **Schedule 1**

This Schedule gives a detailed description and explanation of the nature of the activities that can be undertaken for the purposes of developing and promoting the red meat industry.

### **Schedule 2**

This Schedule explains how the levy is calculated and paid by slaughterers and exporters.