

National Assembly for Wales

Legislation Committee No.3

Proposed Red Meat Industry (Wales) Measure

December 2009

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Legislation Committee No.3

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National Assembly for Wales

Legislation Committee No.3

Proposed Red Meat Industry (Wales) Measure

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Legislation Committee No.3

Legislation Committee No.3 was established by the National Assembly for Wales to consider and report on legislation introduced into the Assembly, particularly by the Welsh Government. The Committee is also able to consider and report on non-government legislation, as appropriate.

Powers

The Committee was established on 9 December 2008 as one of the Assembly's legislation Committees. Its powers are set out in the National Assembly for Wales' Standing Orders, particularly SO 10, 22 and 23. These are available at www.assemblywales.org

List of Reports published by Legislation Committee

<i>Report title</i>	<i>Date of publication</i>
Proposed Welsh Red Meat Industry LCO Committee Report on the National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008	10 December 2008

All previous committee reports can be found at www.assemblywales.org

Committee membership

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Dai Lloyd (Chair)	Plaid Cymru	South Wales West
Peter Black	Welsh Liberal Democrats	South Wales West
Christine Chapman	Labour	Cynon Valley
William Graham	Welsh Conservative Party	South Wales East
Janice Gregory	Labour	Ogmore
Helen Mary Jones	Plaid Cymru	Llanelli

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Summary of Conclusions and Recommendations

The report outlines the findings of Legislation Committee No.3's Stage 1 scrutiny of the proposed Red Meat Industry (Wales) Measure.

We agree with the general principles of the proposed Measure and the need for legislation. Both of which were clearly demonstrated and supported in evidence received by the Committee.

Witnesses welcomed the breadth and flexibility of sections 2, 3 and 4, which enable Welsh Ministers to address issues facing the Welsh red meat industry, as they arise, in an appropriate and timely manner. We also support the need for such flexibility and are content with these sections.

Witnesses supported the framework set out in section 7 of the proposed Measure and we are also content with this section.

We also undertook detailed scrutiny of sections 8, 9, 10, 11 and 12. Whilst there was general consensus in support of these sections, the evidence raised a number of issues for further consideration. As a result we have made a number of recommendations to the Minister for Rural Affairs, which are detailed below.

Recommendation 1 Having carefully considered the evidence we recognise the views of witnesses in emphasising the importance of consultation. Therefore, we recommend that the proposed Measure should contain a requirement for considerable consultation with the industry should any changes to the levy mechanism be undertaken. For that reason, we ask that the Minister give consideration to bringing forward an amendment to this effect.

Recommendation 2 We have considered the Minister's evidence in relation to section 4 (4) of the proposed Measure and the procedure that would apply should farmers be designated as persons liable to pay a levy. The Minister has informed us that such a designation would take the form of a negative procedure order in accordance with section 4 (4) and the levy would be imposed upon farmers in the same order. We note that the Minister has stated that the government is considering whether the affirmative procedure would apply to such an

order. In light of this evidence, we recommend that the Minister give consideration to bringing forward an amendment to ensure that such an order would be subject to the affirmative procedure.

Recommendation 3 We note the inconsistency between the drafting of sections 11 (12) and sections 8 (8) of the proposed Measure, which creates an absolute offence in one case and not the other. We note that the Minister in giving evidence has confirmed that this inconsistency would be taken into account when considering amendments to the proposed Measure at the next stage. We recommend that the Minister brings forward an amendment to address this inconsistency at the next stage.

1. Introduction

1. On 19 October 2009, the Minister for Rural Affairs, Elin Jones AM (“the Minister”), introduced the Proposed Red Meat Industry (Wales) Measure and made a statement in plenary¹ the following day.²
2. At its meeting on 20 October 2009, the National Assembly’s Business Committee agreed to refer the proposed Measure to Legislation Committee No.3 for consideration of the general principles (Stage 1), in accordance with Standing Order 23.21. It also agreed that the Committee must report on the proposed Measure no later than 18 December 2009.

Terms of scrutiny

3. At our first meeting on 22 October 2009, we agreed the following framework within which to scrutinise the general principles of the proposed Measure:

To consider:

- (i) the need for a proposed Measure to deliver its purposes of:
 - making statutory provision, through a legislative framework, for the development and promotion of the Welsh red meat industry;
- (ii) whether the proposed Measure achieves its purposes;
- (iii) the key provisions set out in the proposed Measure and whether they are appropriate to deliver its purposes;
- (iv) potential barriers to the implementation of the key provisions and whether the proposed Measure takes account of them; and
- (v) the views of stakeholders who will have to work with the new arrangements.

¹ A full meeting of the National Assembly for Wales

² RoP, 20 October 2009, available at:

<http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=148570&ds=10/2009#5>.

(NB: unless otherwise stated, subsequent references in this report to RoP refer to the proceedings of the Legislation Committee No.3.)

The Committee's approach

4. We issued a general call for evidence and invited key stakeholders, primarily from within the red meat industry in Wales, to submit written evidence to inform our work. A list of consultation responses is available on page 41.
5. We took oral evidence from a number of witnesses, details of which are available on page 40.
6. The following report represents the conclusions and recommendations we have reached based on the evidence received during the course of our work. We would like to thank all those who have contributed.

2. Background

The National Assembly's legislative competence to make the proposed Measure

7. The principal power enabling the National Assembly to make a Measure in relation to the development and promotion of the Welsh red meat industry is contained in section 93 of the Government of Wales Act 2006 (the 2006 Act), which gives the National Assembly for Wales the power to make Assembly Measures in relation to “matters” listed in field 1 of Part 1 of Schedule 5 of that Act. Specifically this matter is 1.1 which is detailed below.

Matter 1.1 of Schedule 5 to the Government of Wales Act 2006:

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.

Interpretation of this field:

In this field “the red meat industry” means all of the activities comprised in-

- (a) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and
- (b) 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).

For the purposes of this definition-

“cattle” means bovine animals, including bison and buffalo;

“pigs” means porcine animals, including wild boar and other feral pigs

The Explanatory Memorandum

8. The Explanatory Memorandum accompanying the proposed Measure states that:

“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”³.

9. The Explanatory Memorandum explains that the “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”⁴.

10. The Explanatory Memorandum further states that, “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”⁵.

11. The Explanatory Memorandum refers to the nature of the red meat industry and explains that purpose of the proposed Measure is to address the vulnerability of the industry to unexpected crisis. It states that “a further purpose... 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”⁶.

12. The Explanatory Memorandum also outlines “the Measure has a framework that will accommodate the current arrangements...yet contains sufficient scope and flexibility to allow for the future introduction of alternative mechanisms should that be required”⁷.

³ Welsh Assembly Government, *Explanatory Memorandum to the Proposed Red Meat Industry (Wales) Measure*, October 2009

⁴ Explanatory Memorandum, paragraph 3.1

⁵ Ibid, paragraph 3.2

⁶ Ibid, paragraph 3.3

⁷ Ibid, paragraph 3.4

3. General principles and the need for legislation

Background

13. The purpose of the proposed Measure is to make statutory provision, through a legislative framework, for the development and promotion of the Welsh Red Meat Industry⁸. The Measure will make Welsh Ministers directly accountable for the Welsh red meat industry. It is intended that the existing operational management arrangements will continue through the introduction of a new delegation agreement between Welsh Ministers and Hybu Cig Cymru – Meat Promotion Wales (HCC)⁹.

Evidence from Witnesses - General Principles

14. All witnesses agreed with the general principles of the proposed Measure and the need for a legislative framework to promote and market of the Welsh red meat sector. A number of witnesses were particularly supportive of the principle of Welsh Ministers becoming directly accountable for the Welsh red meat industry.

15. In written evidence HCC commented that:

“The proposed Measure will enable Welsh Ministers to oversee the development, promotion and marketing of the Welsh red meat industry in order to better ensure that the specific needs of the Welsh industry are addressed appropriately, while maintaining full accountability and control at a Welsh level”¹⁰.

16. This was a view shared by the Farmers Union Wales (FUW)¹¹ and the Welsh Lamb and Beef Producers (WLBP), who in written evidence stated that:

“Value for money, effectiveness, efficiency, robust and transparent governance are essential “ingredients” for the success of the measure, WLBP considers that these “ingredients” will improve under this proposed Measure, as

⁸Welsh Assembly Government, Explanatory Memorandum to the proposed Red Meat Industry (Wales) Measure, October 2009, paragraph 1.1

⁹ Explanatory Memorandum, paragraph 3.1

¹⁰ RM1, Written Evidence

¹¹ RM 2, Written Evidence

Welsh Ministers will become directly and visibly responsible and accountable for the levy”¹².

17. Witnesses also welcomed the flexibility of the proposed Measure in providing a framework that enables Welsh Ministers to respond to the needs of the red meat sector. In oral evidence, HCC said that:

“A flexible Measure is crucially important. We are dealing with a large and important industry. Issues frequently arise and we do not know what those will be from week to week or month to month. We need sufficient flexibility in the Measure to enable not only our response and delivery to our levy payers, but also to enable Hybu Cig Cymru to have a coherent approach and relationship with Welsh Ministers so that we can ensure a joined-up approach to policy and delivery on behalf of the industry”¹³.

18. The National Farmers Union (NFU) – Wales supported this view, in stating that:

“We need total flexibility and, as long as the industry is fully consulted on this, and as long as the board as it is of HCC represents the industry, we want to see this taken forward”¹⁴.

19. Similarly the Association of British Abattoir Operators emphasised that, “It needs to be flexibility with a capital ‘F’ so that the Minister can take charge of what goes on”¹⁵.

Evidence from Witnesses – The Need for Legislation

20. Witnesses also commented that the need for legislation arose from the need to address disparity within the current system of raising levy monies, whereby the number of animals produced in Wales exceed the number actually slaughtered. In written evidence, HCC informed us that:

“With the current system, Wales are losing levy income to England and Scotland, as animals born and reared in Wales are travelling over the border to England/Scotland for slaughter”¹⁶.

¹² RM 4, Written Evidence

¹³ RoP, paragraph 13, 5 November 2009

¹⁴ RoP, paragraph 20, 12 November 2009

¹⁵ RoP, paragraph 16, 19 November 2009

¹⁶ RM 1, Written Evidence

21. They further stated that:

“The flexibility to be able to offer alternative methods for the determination of how the levy is raised and collected according to the needs of primary producers, who are the main levy payers, is an essential element of the proposed Measure”¹⁷.

22. When questioned HCC further commented that:

“a statutory levy is needed in the red meat industry as a result of what economists call ‘market failure’, namely the fact that most businesses within the red meat chain are too small to, for example, undertake research and development work, compile market intelligence, or promote and market their produce as individuals. We therefore need a levy to be collected on behalf of the entire industry in order to help in that respect. It is for this reason we need the legislation and the framework that we are discussing”¹⁸.

23. With further reference to issues within current system of raising levies NFU Cymru stated that “we are pleased that the proposed Measure will allow Welsh Ministers to address this issue”¹⁹. This view was also supported in written evidence from the WLBP who stated that it:

“welcomes the opportunity to have Welsh Ministers exclusively responsible and accountable for the levy collected in Wales”²⁰.

Evidence from the Minister – General Principles and the Need for Legislation

24. The Minister informed us that it was necessary to make a statutory provision through a legislative framework to promote and market the red meat sector in Wales as “Welsh Ministers do not have the power to raise a levy directly”²¹.

¹⁷ RM 1, Written Evidence

¹⁸ RoP, paragraph 7, 5 November 2009

¹⁹ RM3, Written Evidence

²⁰ RM4, Written Evidence

²¹ RoP, paragraph 95, 12 November 2009

25. We were also informed that:

“the fundamental shortcoming is that Welsh Ministers are unable to raise a levy directly, and therefore we have had to establish an Assembly Government sponsored body to raise that levy for us. It is the Welsh Government’s policy to undertake functions within Government, rather than set up AGSBs. By enabling us to directly raise the levy, it will obviate the need for a Welsh Levy Board. Therefore, on passing of the proposed Measure, the Welsh Levy Board will no longer exist”²².

Our View – General Principles and the Need for Legislation

26. We note that all witnesses are in favour of the principle and need for the proposed Measure, and that many witnesses welcome Welsh Ministers becoming directly accountable for the Welsh red meat industry. We also note the support from witnesses regarding the flexibility of the proposed Measure in enabling Welsh Ministers to respond to the needs of the red meat sector and manage the levy collection mechanism.

27. Having taken these views into account we agree with the general principles of the proposed Measure and the need for Legislation.

28. Our views on some of the specific sections of the proposed Measure are set out in section 4.

²² RoP, paragraph 98, 12 November 2009

4. Specific Comments on Sections

Section 2: Objectives

Background

29. The objectives of the proposed Measure are contained in section 2 and include:

- 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 development²³

30. These objectives are the same as those of the current Welsh Levy Board and also mirror the objectives set out in the *Natural Environment and Communities Act 2006*, which is the main defining legal framework for the promotion and development of the major agricultural sectors in the UK²⁴.

Evidence from Witnesses – Section 2: Objectives

31. Most witnesses supported the objectives outlined in section 2 of the proposed Measure. When asked for their views on the objectives of the proposed Measure²⁵, HCC stated that these are:

“sufficiently broad and appropriate at this time to help the industry over the forthcoming years”²⁶.

32. The Farmers Union Wales (FUW) also agreed that the objectives of the proposed measure are sufficiently broad to enable Welsh Ministers to achieve their policy objectives and respond to the needs of the red meat sector²⁷.

33. NFU Cymru expressed a view that the objectives of the proposed Measure needed to be broadly drafted and explained that this was

²³ Explanatory Memorandum, paragraph 1.2

²⁴ Explanatory Memorandum

²⁵ RoP, paragraph 14, 5 November 2009

²⁶ *ibid* paragraph 15

²⁷ *ibid*, paragraph 32

required to:

“ensure that it covers the wide range of issues that the industry will encounter, both now and in the future. We have to look at how we can support the industry in its development and by giving practical help to farmers on the ground. We have to look at research and development to tackle the major issues that we are talking about now, such as consumer trends in how people eat, and climate change mitigation, which is a big issue for the future”²⁸.

Evidence from the Minister - Section 2: Objectives

34. During oral evidence the Minister clarified her policy objectives for the red meat industry and explained how proposed Measure would enable her to achieve those objectives. She informed us that:

“My policy objective is to raise the levy directly and to enable and delegate the raising of the levy to Hybu Cig Cymru, and to allow Hybu Cig Cymru to undertake and continue the work that is currently does to promote and develop the red meat sector in Wales”²⁹.

35. The Minister informed us that the proposed Measure needed to be broadly drafted in order to respond to the unpredictable nature of the red meat industry. She informed us that:

“The industry is subject to shocks, and they may be shocks that result from animal diseases or particular food scares. There is a requirement for the proposed Measure to be drafted in such a way to allow, if particular issues affect the industry—I hope that they do not—for us to put in place policies within a short time to respond to them”³⁰.

Our View - Section 2: Objectives

36. We have considered the views of witnesses on the objectives of the proposed Measure and recognise the level of support in favour of those objectives. We are therefore content with section 2 of the proposed Measure as drafted.

²⁸ RoP, paragraph 15, 12 November 2009

²⁹ *ibid*, paragraph 101

³⁰ *ibid*, paragraph 108

37. We also note the support in favour of the breadth and flexibility of the objectives detailed in section 2 and their support for the need for such breath and flexibility. We share these views and agree it is important to ensure that the objectives of the proposed Measure are sufficiently broad to enable Welsh Ministers to respond to issues, as they arise, in an appropriate and timely manner.

Section 3: Functions

Background

38. Section 3 details the functions of the proposed Measure, which are to provide the means and mechanisms by which Welsh Ministers have the power to be able to amend the detail of the proposed Measure. These include the ability 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.

39. Schedule 1 of the proposed Measure lists specific activities, including promotional, marketing and research activities.

Evidence from Witnesses – Section 3: Functions

40. Most witnesses welcomed the powers outlined in section 3 and Schedule 1 of the proposed Measure. HCC stated that:

“The functions are comprehensive, including everything from research and development, marketing and promotion to helping the industry to become more efficient. They would certainly be in line with the strategic plan that we announced on behalf of the industry back in April 2009, which seeks to achieve a profitable and sustainable industry for all in the supply chain going forward”³¹.

41. All witnesses were content with the breadth of the powers, outlined in section 3 (1) of the proposed Measure, which confer powers on the Welsh Ministers to ‘do anything’ they consider appropriate to further the objectives outlined in section 2.

³¹ RoP, paragraph 17, 5 November 2009

42. In supporting these powers, the Association of British Abattoir Operators stated that:

“the term ‘anything’ is a broad one and gives a tremendous amount of scope, but I would be willing, as a Welshman, to say ‘yes’ to that, as long as the industry was consulted. By ‘the industry’, I mean from the big abattoirs through to the small ones, and the small cutting plants that are the backbone of the Welsh meat industry”³².

43. NFU Cymru³³, FUW³⁴ and HCC³⁵ also confirmed that they were content with the breadth of the powers contained in section 3.

Evidence from the Minister - Section 3: Functions

44. The Minister informed us that the functions detailed in Schedule 1 of the proposed Measure replicate current arrangements. She told us that:

“The functions in Schedule 1 replicate the functions that are currently outlined in the Welsh Levy Board Order 2008, which set up the Welsh Levy Board. Although they may seem to be broad, they are only replicating the current status quo”³⁶.

Our View – Section 3: Functions

45. We note that the majority of witnesses are content with section 3 and Schedule 1 of the proposed Measure as drafted. In light of this we are content with the functions in section 3 and Schedule 1 of the proposed Measure, that provide the means and mechanisms by which Welsh Ministers have the power to be able to amend the detail of the Measure.

³² RoP, paragraph 18, 19 November 2009

³³ RoP, paragraph 20, 12 November 2009

³⁴ RoP, paragraph 36, 5 November 2009

³⁵ *ibid*, paragraph 17

³⁶ RoP, paragraph 103, 12 November 2009

Section 4: Imposing a levy: designation of persons liable

Background

46. Section 4 places limitations on the proposed Measure, specifically that any levy raised can only be spent on the activities defined in Schedule 1 and on the red meat sector.

47. Section 4 provides flexibility so that the levy could be required to be paid by everyone in the whole red meat supply chain and sets out four categories of persons who may be eligible to have a levy fee charged on them. These include:

- those engaged in designated primary activity
- those engaged in designated secondary activity
- slaughterers
- exporters

48. The category of ‘secondary activity’ is not included in existing legislation.

49. The explanatory memorandum accompanying the proposed Measure explains that the Measure provides flexibility so that the levy could be required to be paid by everyone in the whole supply chain. It states that this ranges from:

“the farmer who keeps the stock and breeds and rears the animals through to the butcher who sells the meat and other products to the final consumer”³⁷.

Evidence from Witnesses - Section 4: Imposing a levy: designation of persons liable

50. Evidence from the FUW highlighted that the current means of distributing levies between the devolved regions, based upon the location of abattoirs, is inequitable and presents a risk to the Welsh red meat sector. They informed us that:

“There is no stability at the moment, and although you need flexibility, the key issue is stability in the end. The industry is very shaky, if that is the right word, and things can change in a couple of days if a particular business or the industry as a

³⁷ Explanatory Memorandum and Explanatory Note referring to section 4

whole gets into trouble. It could leave the industry more or less penniless overnight”³⁸.

Evidence from Witnesses - Flexibility

51. Witnesses were supportive of the flexibility contained in section 4 in terms of the ability to impose levies on all those in the red meat supply chain should this be required. A number of witnesses indicated that the proposed Measure could address some of the problems within the current levy collection system.

52. For example, in oral evidence, HCC said that:

“The levy provision we have at the moment is based on collection of levies from farmers and processors with the mechanisms for collection in the abattoir. The problem with the present system, and the NERC Act that governs it, is that neither we nor Welsh Ministers have any control over where those abattoirs happen to be. The failing is that if we say that we had 24 abattoirs operating in Wales in 2008, and if for some reason – and you could argue that it is possible – four of those abattoirs, which account for 80 per cent of the through out of sheep, closed, we would not have any means of collecting the levy in Wales because the stock would have to be slaughtered elsewhere”³⁹.

53. They added that:

“You could ultimately have a situation where we have no abattoirs in Wales and all the levies would be collected in England and Scotland, and therefore we would be devoid of any body to help the industry and Welsh farmers and processors”⁴⁰.

54. In terms of how the proposed Measure may address this issue HCC felt that:

“the proposed Measure provides us with the security or safety net that should those ministerial discussions not achieve what we require to safeguard the industry, there is a fallback position here through which we can look at other means of

³⁸ RoP, paragraph 94, 5 November 2009

³⁹ *ibid*, paragraph 28

⁴⁰ *ibid*, paragraph 29

collecting the levy and therefore safeguard the interests of the industry going forward”⁴¹.

55. The broad definitions of the proposed Measure, in terms of providing Welsh Ministers with the flexibility to impose a levy on all those in the red meat supply chain, were discussed during questioning. All witnesses were content with the drafting of the section 4 and particularly with the flexibility of this section. HCC informed us that “We need that flexibility in the provision and the proposed Measure”⁴².

56. NFU Cymru raised some concerns regarding the imposition of levies on all those in the red meat supply chain stating in oral evidence that:

“The only problem that we have as farmers is that, in the past, we have generally seen, either directly or indirectly, levies or charges placed on other people in the supply chain being passed back down the chain to us, so the advantage of the levy at present is that we can at least see exactly what is going out”⁴³.

57. FUW supported the flexibility to impose a levy on all those in the red meat supply chain but expressed similar concerns regarding how this flexibility should be used. In relation to changes to the way in which the levy is collected FUW informed us that:

“Potential problems would need to be considered before any significant decisions were taken in that regard. It is a volatile supply chain and you must be very careful, because there is always a risk that if you have a levy in the wrong place in the chain, it will always get passed on to the farmer, one way or another”⁴⁴.

58. Although there was some caution, regarding changes to the imposition of the levy, NFU Cymru and FUW felt that the current system of collecting levies needed to be improved.

⁴¹ RoP, paragraph 30, 5 November 2009

⁴² *ibid*, paragraph 34,

⁴³ RoP, paragraph 48, 12 November 2009

⁴⁴ RoP, paragraph 105, 5 November 2009

59.FUW commented that:

“We have to be realistic and realise that we have to find a better way of collecting this levy. It is not really up to us as an industry to propose it, but we would like to see the levy from the stock produced in Wales used to promote Wales”⁴⁵.

60.They added that:

“With the current system, we are vulnerable, because it is entirely based on the location of abattoirs, and producers, Hybu Cig Cymru and Welsh Ministers do not have much say over where abattoirs will be in the future. As things stand at the moment, we are losing somewhere between £0.74 million and £1.53 million, because a lot of stock is moved out of Wales”⁴⁶.

61.In terms of addressing this NFU Cymru suggested that:

“if, in the future, we look to use some of the powers in this proposed Measure to change the way in which the levy is collected, we may need to look to other people to collect the levy on our behalf, and it is probably important that we have this within the proposed Measure”⁴⁷.

Evidence from Witnesses - Secondary Activities

62.With regard to the intention to broaden the legislation to include those involved in ‘secondary activity’ in the sector, witnesses welcomed the flexibility of the proposed Measure in creating the potential for joint funding of the levy in the future. HCC explained that:

“The Measure, as drafted, gives us the flexibility to perhaps, at some point not defined in the future, to jointly fund the levy. For example, were there a need to develop certain parts of the supply chain that ordinarily do not pay levy, for example, distributors of meat or perhaps retailers, who for a specific purpose would wish to get the nutritional messages of eating a balanced healthy diet, and meat as part of that, over to the general public, there may be an opportunity for them to jointly

⁴⁵ RoP, paragraph 54, 5 November 2009

⁴⁶ *ibid*, paragraph 55

⁴⁷ RoP, paragraph 48, 12 November 2009

fund the levy on the basis of a project. As drafted, the Measure would give us that flexibility if the need arose”⁴⁸.

63. This view was shared by FUW who commented that:

“In terms of secondary activities, if there are other people in the supply chain who are benefiting from the work of Hybu Cig Cymru and the levy that goes into it, there is an argument that they should also put some money towards it. So, we need the flexibility”⁴⁹.

Evidence from Witnesses - Consultation

64. A number of witnesses raised the need for industry wide consultation should there be any change in the levy mechanism. In written evidence, WLBP commented that it:

“strongly believes that the rate of the levies paid by the industry should not be changed without the views of the industry being sought through a wide consultation process”⁵⁰.

65. However, most witnesses did not think that the proposed Measure needed to contain a requirement for consultation with the industry on this issue. HCC commented that:

“We do not specifically need that in the proposed Measure, because it is generally accepted that there is consultation on any changes”⁵¹.

66. NFU Cymru emphasised this point stating that:

“we stress that decisions should be made for the development and promotion of the red meat industry only after full consultation with the industry, because, at the end of the day, we are responsible for paying the levy, which is a significant proportion of the funds. So, provided that there is full consultation, we are content”⁵².

⁴⁸ RoP, paragraph 41, 5 November 2009

⁴⁹ RoP, paragraph 63, 12 November 2009

⁵⁰ RM 4, Written Evidence

⁵¹ RoP, paragraph 43, 5 November 2009

⁵² RoP, paragraph 25, 12 November 2009

67. A similar view was expressed by FUW who stated in oral evidence that:

“as a farming union, we would like to see that no changes are made unless consultation with industry had taken place and agreement had been reached”⁵³.

68. However, they also added that they would like to see a requirement for consultation contained in the proposed Measure⁵⁴.

Evidence from the Minister- Section 4: Imposing a levy: designation of persons liable

69. The Minister referred to the inequitable nature of the current mechanism for collecting levies and explained that the introduction of clauses in the proposed Measure to allow for the collection of the levy to be based not only at the abattoir, but at the primary producer or an organisation that maybe engaged in secondary activities in the red meat sector, could allow for a change of policy in the future to address this issue⁵⁵.

70. The Minister provided assurances that any such change in policy would:

“require considerable consultation and work to identify that activity and where the appropriate collection of levy could be undertaken as a means of raising the levy based on the transactions within the red meat sector”⁵⁶.

71. In reference to such consultation the Minister stated that:

“I do not believe that it is necessary for that to be on the face of the Measure. The affirmative procedure will allow that consultation, so it should happen”⁵⁷.

72. In responding to this query in further written evidence the Minister clarified the procedure that would apply should the point of collection be changed from slaughterhouses to farms. The evidence stated that:

⁵³ RoP, paragraph 65, 5 November 2009

⁵⁴ *ibid*, paragraph 67

⁵⁵ RoP, paragraph 111, 12 November 2009

⁵⁶ *ibid*, paragraph 117

⁵⁷ *ibid*, paragraph 121

“Farmers would be designated as persons liable to pay levy. The designation would take the form of a negative procedure order in accordance with section 4 (4) and the levy would be imposed upon farmers in the same order. The government is considering whether the affirmative procedure would apply to such an order”.

Our View – Section 4: Imposing a levy: designation of persons liable

73. We note the views of witnesses in welcoming the flexibility of the proposed Measure to enable the collection of levies at all stages of the red meat supply chain. In light of these views, we are content and agree with the flexibility of the powers conferred on Welsh Ministers to impose a levy on all those in the red meat supply chain.

74. We note the views of witnesses in terms of the need for consultation should any changes to the levy mechanism be undertaken and acknowledge the assurances provided by the Minister that any such changes would be subject to considerable consultation. We also acknowledge that such changes would be subject to the affirmative procedure, which would also involve a detailed consultation process.

75. However, having carefully considered the evidence we recognise the views of witnesses in emphasising the importance of consultation. Therefore, we recommend that the proposed Measure should contain a requirement for consultation with the industry should any changes to the levy mechanism be undertaken. For that reason, we ask that the Minister give consideration to bringing forward an amendment to this effect.

76. We have considered the Minister’s evidence in relation to section 4 (4) of the proposed Measure and the procedure that would apply should farmers be designated as persons liable to pay a levy. The Minister has informed us that such a designation would take the form of a negative procedure order in accordance with section 4 (4) and the levy would be imposed upon farmers in the same order. We note that the Minister has stated that the government is considering whether the affirmative procedure would apply to such an order.

77. In light of this evidence, we recommend that the Minister give consideration to bringing forward an amendment to ensure that such an order would be subject to the affirmative procedure.

Section 7: Delegation and Subsidiaries

Background

78. Section 7 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.

79. Under current arrangements, the Welsh Levy Board delegates the functions of promotion and marketing of the Welsh red meat sector to HCC. In a statement to plenary on the 20 October 2009 the Minister for Rural Affairs stated that:

“I do not propose to make any changes to the current delegation arrangements and it is envisaged that a new delegation arrangement will be put in place between the Welsh Ministers and Hybu Cig Cymru that will allow Hybu Cig Cymru to continue to promote and develop the red meat industry in Wales as before”⁵⁸.

Evidence from Witnesses – Section 7: Delegation and Subsidiaries

80. All witnesses supported the framework set out in section 7 of the proposed Measure, which provides Welsh Ministers with the power to be able to delegate all or some of their responsibilities to third parties.

81. In oral evidence HCC stated that:

“the arms length approach is important in that it encourages industry ownership of the work that we undertake on its behalf, as opposed to the work being seen as a delivery vehicle for Welsh Ministers”⁵⁹.

82. Most witnesses expressed a view that there was a need for HCC’s current role to continue. The work of HCC is directed by a board of industry representatives, and this accountability to the industry was deemed by witnesses to be important.

83. In written evidence, FUW stated that:

⁵⁸ RoP, Plenary Proceedings, 20 October 2009

⁵⁹ RoP, paragraph 24, 5 November 2009

“under no circumstances would FUW members support HCC being absorbed into the Welsh Assembly Government, as has happened with other bodies. This is particularly the case given that HCC differs significantly from other bodies, in that it derives income directly from levy-payers”⁶⁰.

84. This view was further clarified in oral evidence commenting that:

“The industry looks at Hybu Cig Cymru favourably. I am sure that it would be much more prepared to pay a levy to Hybu Cig Cymru than to the Welsh Government”⁶¹.

85. NFU Cymru supported this view stating that:

“provided that we can continue with the current arrangements of a Welsh-Assembly-Government-owned body that has a board of directors with strong industry representation, we would be content”⁶².

86. The Livestock Auctioneers Association shared this view and their representative told us that:

“I am in full agreement with HCC being kept as a separate body. It has a proven track record of leading the industry from the ground up, and we are more than happy with that organisation”⁶³.

87. Such views were consolidated in written evidence from HCC who stated that:

“the importance of retaining a separate red meat body in Wales to support the industry in development, marketing and promotion. As well as 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”⁶⁴.

88. This view was further supported in oral evidence stating that:

“I think that the arm’s length approach is important in that it encourages industry ownership of the work that we undertake

⁶⁰ RM2, Written Evidence

⁶¹ RoP, paragraph 90, 5 November 2009

⁶² RoP, paragraph 36, 12 November 2009

⁶³ *ibid*, paragraph 44

⁶⁴ RM1, Written Evidence

on its behalf, as opposed to the work being seen as a delivery vehicle for Welsh Ministers”.

89. Some witnesses raised concerns regarding the delegation of responsibility and financial probity of Welsh Levy Funds to a third party. Both the WLBP and National Sheep Association (NSA) stated that:

“If this is the case and Ministers delegate their authority over the levy to others it is imperative that the same robust governance and financial probity protocols continue to underpin such a delegation”⁶⁵.

Evidence from the Minister - Section 7: Delegation and Subsidiaries

90. In oral evidence the Minister provided an explanation as to why it was necessary to delegate powers, in relation to the red meat sector to a third party, namely HCC.

91. The Minister stated that:

“Having a close link with industry representatives, and having farmer, producer and processor representatives on the board of Hybu Cig Cymru, is useful in ensuring that all aspects of the industry feel that they have ownership of the promotional and development activity of Hybu Cig Cymru. As primary producers and processors, they are the ones who are paying the levy, of course”⁶⁶.

Our View – Section 7: Delegation and Subsidiaries

92. We note the evidence from witnesses in support of the framework set out in section 7 of the proposed Measure, which provides Welsh Ministers with the power to be able to delegate all or some of their responsibilities to third parties.

93. In light of this we are content with the provisions outlined in section 7.

⁶⁵ RM6, Written Evidence

⁶⁶ RoP, paragraph 106, 12 November 2009

Sections 8 and 9: Returns and Estimates and Provision of Information

Background

94. Section 8 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 Welsh Ministers. Section 8 also provides that the nature, timing and content of any such returns can be altered and amended as necessary. Failure to submit a return in accordance with any direction could incur a fine.

95. Section 9 requires that those liable to a levy payment must keep accurate records so as to enable the calculation of levy payment due to be made and to produce those records on demand. As with section 8, failure to do so is an offence and could lead to a fine.

Evidence from Witnesses - Sections 8 and 9: Returns and Estimates and Provision of Information

96. Most witnesses were content with the provisions contained in sections 8 and 9 of the proposed Measure. In relation to these provisions HCC stated that:

“it is reasonable and proportionate, and the precedent has already been set with regard to how we collect the levy and how returns are made. Non-payment of levy may result in legal proceedings”⁶⁷.

97. Witnesses were supportive of the flexibility contained within section 8 of the proposed Measure, which enables Welsh Ministers to change the timing and information required within a return. HCC commented that

“As long as any change is communicated clearly and in a timely manner, it is not a problem. We have to do it from time to time anyway, so I think that it is reasonable”⁶⁸.

⁶⁷ RoP, paragraph 50, 5 November 2009

⁶⁸ *ibid*, paragraph 52

98. This was a view shared by the FUW who stated that “as long as changes are fully consulted upon, agreed, and...there is a lead-in period, we do not see problems with that”⁶⁹.

99. The Livestock Auctioneers Association noted that:

“When a farmer-producer sells livestock through the market, we credit the abattoir with the producer’s element of the levy. It would be scandalous if the producer were having it deducted from his income when he sells the animal and if it were not then passed on by the slaughterer to HCC or whichever body is ultimately collecting it. That defeats the whole object, so it must be rigorously enforced”⁷⁰.

Evidence from Witnesses - Enforcement

100. Most witnesses did not anticipate any difficulties regarding the enforcement of the provisions in sections 8 and 9. However, FUW raised concerns that in instances where companies face financial difficulties or enter receivership and stop trading; this “may make enforcement difficult in relation to recovering any lost money”⁷¹.

101. Similar views were expressed by the Livestock Auctioneers Association who told us that:

“much of the red meat industry has problems with financing, and, sadly, in the past the Meat and Livestock Commission and other bodies have always appeared on the list of creditors in the final stages of an abattoir’s trading, as abattoir operators have placed it furthest down the list”⁷².

Evidence from the Minister - Sections 8 and 9: Returns and Estimates and Provision of Information

102. In oral evidence the Minister explained the rationale of sections 8 and 9 of the proposed Measure. She informed us that:

“The enforcement is outlined later in the proposed Measure in order to ensure that the levy is collected efficiently and is in

⁶⁹ RoP, paragraph 74, 5 November 2009

⁷⁰ RoP, paragraph 71, 12 November 2009

⁷¹ *ibid*, paragraph 76

⁷² *ibid*, paragraph 77

line with the aspirations of the legislation; enforcement is a key part of that”.

103. During questioning we raised concerns regarding inconsistencies in the drafting of section 8 (8) and section 11 (12) of the proposed Measure. We noted that section 11 (12) creates an offence of obstruction ‘without reasonable excuse’, whilst section 8 (8) creates an offence of failing to submit a return but contains no corresponding ‘without reasonable excuse’⁷³.

104. In response the Minister informed us that this she:

“will need to take this into account in considering whether to table amendments to the proposed Measure at the next stage”⁷⁴.

Our View - Sections 8 and 9: Returns and Estimates and Provision of Information

105. We note the inconsistency between the drafting of sections 11 (12) and sections 8 (8) of the proposed Measure, which creates an absolute offence in one case and not the other. We note that the Minister in giving evidence has confirmed that this inconsistency would be taken into account when considering amendments to the proposed Measure at the next stage. We recommend that the Minister brings forward an amendment to address this inconsistency at the next stage.

Sections 10 and 11: Inspection and Powers of Entry

Background

106. Section 10 makes provision for the appointment of a person (an ‘appointed person’) whose role would be to determine the accuracy of information relating to a levy and whether any offence has been committed.

107. Section 11 sets out the general and specific conditions that need to be met before an inspector (an ‘appointed person’) can apply for a warrant to enter land and/or premises for the purposes of enforcing the Measure. According to section 11 a Justice of the Peace could issue the ‘appointed person’ with a warrant to enter land or premises. This could only be done if there were reasonable grounds

⁷³ RoP, paragraph 127, 12 November 2009

⁷⁴ *ibid*, paragraph 129

for believing that entry to the land or premises was necessary to assess the accuracy of information, or to assess whether an offence had been committed. A warrant under this section of the Measure would include power to enter a private dwelling or a holding; to inspect any animals on the land or premises; inspect documents or records, remove anything the ‘appointed person’ reasonably believes to be evidence of any failure to comply with the requirements of the measure.

Evidence from Witnesses - Sections 10 and 11: Inspection and Powers of Entry

108. Witnesses were content with the provisions detailed in sections 10 and 11 of the proposed Measure. Witnesses were satisfied with provisions for a Justice of the Peace to issue a warrant to enter land or premises and to search that land or premises. The FUW informed us that it:

“is a fairly standard procedure with regard to a range of legislation, whether it is a matter of police raids or other things. Therefore, it is completely proportionate and it also provides some security to the business. It is a fair balance. We have trust in the JPs to make the decision and provide those warrants”⁷⁵.

109. A similar view was expressed by NFU Cymru who informed us that such enforcement processes were “normal practice”⁷⁶. They added that:

“There is a significant amount of legislation, so we have to put our trust in the JP to do his job as he does with other legislation”⁷⁷.

110. When questioned HCC⁷⁸ and the Association of British Abattoir Operators were also content with the provisions set out in sections 10 and 11 of the proposed Measure.

⁷⁵ RoP, paragraph , 5 November 2009

⁷⁶ RoP, paragraph 81, 12 November 2009

⁷⁷ *ibid*, paragraph 81

⁷⁸ *ibid*, paragraph 29

Evidence from the Minister - Sections 10 and 11: Inspection and Powers of Entry

111. In clarifying the intentions of sections 10 and 11 of the proposed Measure, the Minister's officials explained that, at present the levy is determined at the point of slaughter and therefore information regarding the number of animals slaughtered is available at four major points of information collection. If there was a move to a situation where the levy was collected determined at the farm, there would be "32,000 points of data collection and we would have a situation where the records were kept on the farm"⁷⁹.

112. The Minister's officials further explained that there are no clear and consistent definitions of a farm, a farmhouse or a dwelling house and stated that:

'therefore you need sufficient powers to be able to inspect the records that the levy is based on, and those records may be in the farmhouse—they may be in a farm office or somewhere else, but it is pretty likely that they will be in the farmhouse, however that is defined. So, for the purposes of this proposed Measure, we have taken a similar framework to that which is used in agriculture legislation across the board, for example in the cattle movement regulations, and the provisions in this proposed Measure, to a greater extent, mirror others that are used elsewhere'⁸⁰.

113. Section 11 (4) of the proposed Measure outlines the conditions under which an appointed person could enter a private dwelling house. We asked the Minister to clarify the intentions of section 11 (4) (a) in relation to the difference between a 'private dwelling house' and a 'holding'⁸¹.

114. In response the Minister Officials acknowledged that:

"The term 'holding' is not defined in the definitions section, section 14. We will be discussing with the Minister whether the definitions section will need to be revised in the light of that"⁸².

⁷⁹ RoP, paragraph 134, 12 November 2009

⁸⁰ *ibid*, paragraph 134

⁸¹ *ibid*, paragraph 149

⁸² *ibid*, paragraph 151

Our View - Sections 10 and 11: Inspection and Powers of Entry

115. We note that a number of witnesses are content with sections 10 and 11 of the proposed Measure as drafted and have expressed views that the provisions in these sections do not differ largely from current arrangements. In light of these views we are in agreement with sections 10 and 11 of the proposed Measure, subject to our previous recommendation about the need for consistency between sections 11(12) and 8(8).

5. Financial Implications

Evidence from witnesses

116. During the written consultation, we asked organisations whether there were any financial implications for organisations arising from the proposed Measure..

117. Hybu Cig Cymru, in written evidence, stated that whilst

“there are no immediate financial implications...the proposed Measure could be used to safeguard the Welsh red meat industry should attempts to agree an equitable distribution mechanism fail⁸³”.

118. This view was shared by NFU Cymru, who in written evidence, added that the Measure “does allow for decisions on the how the Welsh red meat industry is funded in future⁸⁴”.

119. In oral evidence to the Committee, Hybu Cig Cymru clarified this view by stating that

“Currently, we are some £1 million out of pocket due to some animals, such as beef cattle, being slaughtered in England, and that is a lot of money. If up to three slaughterhouses were to close, that financial loss would be much worse overnight. We must therefore ensure that we have the powers and resources to do something soon to protect the interests of Welsh farmers. In brief, our role is to assist the chain to develop and to be more efficient—that is, the farms and slaughterhouses. A large part of our work involves promoting the produce from Welsh industry, that is, the Welsh lamb and beef brands. We could be in a situation where there are no financial resources from the levy to do that, and the money ends up in England or Scotland and they use that money to compete against Welsh farmers. That is why we talk about protecting the interests of Welsh farmers in our evidence⁸⁵”.

⁸³ RM1, Written evidence

⁸⁴ RM3, Written evidence

⁸⁵ ROP, 5 November 2009, paragraph 66

Finance Committee consideration

120. In accordance with Standing Order 14.2, the Finance Committee considered the proposed Measure and additional written evidence from the Minister.

121. The Finance Committee wrote to us on 23 November 2009 noting

“the proposed Measure is primarily enabling in scope...it would appear that there are no direct financial implications of the Measure”.

122. They went on to say that the Committee had no comment to make on the proposed Measure but recommended that “all subordinate legislation is accompanied by a full regulatory assessment”.

Our view

123. We note the letter from the Finance Committee and have taken note of it in making our recommendations.

6. Report of the Subordinate Legislation Committee

Background

124. The Subordinate Legislation Committee considered the proposed Measure, in accordance with Standing Order 15.6 on 4 and 11 November 2009 and took oral evidence from the Minister. The Committee laid its report before the Assembly on 1 December 2009.

Our view

125. We note the Subordinate Legislation Committee's conclusions and recommendations.

Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed_redmeat.htm

5 November 2009

Gwyn Howells	Hybu Cig Cymru
Dr Nick Fenwick	Farmers Union of Wales
Euron Prysor Jones	

12 November 2009

Dylan Morgan	National Farmers Union of Wales
Ed Rees	
Stephen Williams	Livestock Auctioneers Association
Elin Jones AM	Minister for Rural Affairs

19 November 2009

William Lloyd Williams	Association of British Abattoir Operators
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List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed_redmeat.htm

<i>Organisation</i>	<i>Reference</i>
Hybu Cig Cymru	RM 1
Farmers' Union of Wales	RM 2
NFU Cymru	RM 3
Welsh Lamb and Beef Producers	RM 4
Agriculture and Horticulture Development Board	RM 5
National Sheep Association Cymru	RM 6