

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

Agriculture Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of, the National Assembly.
2. The Agriculture Bill (the “Bill”) was introduced in the House of Commons on 12 September 2018 and has completed Public Bill Committee stage. This Memorandum sets out the relevant amendments to the Bill made during Public Bill Committee and updates the position in respect of the clause on the WTO Agreement on Agriculture (Part 7). The latest version of the Bill, as amended in Committee, can be found at:

[Bill documents — Agriculture Bill 2017-19 — UK Parliament](#)

3. The Bill will now move to Report stage and Third Reading in the Commons before entering the House of Lords.

Policy Objective(s)

4. The UK Government’s stated policy objectives are to provide, for England, a new system of paying farmers “public money for public goods” – principally their work to enhance and protect the environment – and to phase out Direct Payments under the rules of the Common Agricultural Policy (CAP).

Summary of the Bill

5. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.
6. The key provisions of the Bill provide the legal framework for the United Kingdom (UK) to leave the Common Agricultural Policy (CAP) and, in England, establish a new system based on public money for public goods for the next generation of farmers and land managers.
7. In addition, at the request of the Welsh Government, the Bill provides powers for the Welsh Ministers.

Supplementary provisions in the Bill for which consent is required

8. The Welsh Government laid a Legislative Consent Memorandum in relation to the Agriculture Bill (as introduced on 12 September 2018) on 4 October. It noted two outstanding concerns which had not been resolved to our

satisfaction relating to the World Trade Organisation (WTO) Agreement on Agriculture and the Red Meat Levy and that work to resolve our outstanding concerns would continue during the Bill's passage through Parliament. Since the publication of the first Memorandum, the Bill has been amended during scrutiny in the House of Commons and agreement has been reached with the UK Government on the two outstanding issues of disagreement.

9. This Supplementary Memorandum sets out those changes to the Bill made at Commons Committee stage which require the consent of the Assembly. It also explains the agreement reached with UK Government on how the Secretary of State will exercise the powers relating to Part 7 (WTO Agreement on Agriculture) so that the interests of all parts of the UK are fully considered. The amendments made and the agreement reached together address the two concerns highlighted in paragraph 23 of our first Legislative Consent Memorandum. However, we anticipate further changes could be made to the Bill at House of Commons Report stage and as it progresses through the Lords. The first and Supplementary Memorandum must be considered together (with any further Supplementary Memorandums which may be laid before the Assembly to cover any future amendments) when deciding on consent.
10. The provisions for which consent is sought are contained in Part 7 (WTO Agreement on Agriculture); Part 8 (Red Meat Levy); Schedule 3 (Provision relating to Wales), and Part 10 of the Bill (Final Provisions). The clause numbers below relate to the version of the Bill ordered to be printed on 20 November and published on 21 November (the version as amended in Committee).

Part 7: WTO Agreement on Agriculture

11. The Cabinet Secretary for Energy, Planning and Rural Affairs' statement of 12 September noted the Welsh Government's view that these provisions require consent because of the strong and self-evident relationship between WTO powers and devolved responsibilities for agriculture support. The Legislative Consent Memorandum laid on 4 October also explained the Welsh Government's view "that consent is required for the provisions of Clause 26 [the WTO clause, now clause 28], because they fall within the legislative competence of the National Assembly for Wales as they relate to agriculture and the observation and implementation of international obligations, namely the Agreement on Agriculture". The UK Government believes the powers to be reserved, however, on the basis that they relate to international trade.
12. The Welsh and UK Governments have agreed a governance mechanism for use of these powers so that the interests of all parts of the UK are fully taken into account. We have agreed the following:
 - the UK Government will consult the devolved administrations, guided by the principles set out in the Intergovernmental Agreement before bringing forward regulations under the WTO clause;

- Ministers will seek to proceed by agreement but in the event of a dispute relevant material will be made available to both Houses of Parliament before Parliament vote on the regulations;
- the Welsh Ministers will be responsible for proposing the initial classification of Welsh agricultural support schemes, consistent with any regulations made under the WTO clause; and
- there will normally be a role for independent advice should the governments disagree on the appropriate classification of schemes or other relevant matters. The Secretary of State should have regard to this advice before making any decision and will share with the devolved administrations the advice, the decision and reason for decision.

13. In summary, the clear onus is on seeking agreement. However, where that is not feasible there are strong mechanisms for the Welsh Ministers to exert their views. These arrangements will be codified in a Memorandum of Understanding and the Secretary of State will put this on record in a statement on the floor of the House of Commons. This is a good outcome providing a strong role and flexibility for the Welsh Ministers following extensive and highly collaborative working between Governments. It provides a valuable model which could be used in other areas where intergovernmental cooperation is needed and demonstrates both governments' commitment to collaboration.

Part 8: Red Meat Levy

14. The Great Britain red meat levy boards (Agriculture and Horticulture Development Board (AHDB), Quality Meat Scotland, and Hybu Cig Cymru) each separately impose levies on red meat producers and processors in, respectively, England, Scotland and Wales. Those levies can only be imposed to enable each body to meet its expenses in supporting the red meat industry in the country in which the levy is raised. Levies are therefore based on the geographical location of abattoirs rather than the origin of the livestock and do not take into account the trading patterns that exist across GB borders. As a result, the levy paid by producers who are operating in one part of Britain may be used to fund promotional and developmental activities in another.
15. A new clause 29 (Red Meat levy: payments between levy bodies in Great Britain), enables Ministers to establish a scheme that requires agricultural boards within Great Britain to redistribute levy between themselves. It is intended that this will enable those who invest in breeding and rearing livestock to benefit from the levy collected in relation to their livestock, even if the levy is collected by a slaughter house in another jurisdiction. The Welsh Government is content the new clause provides appropriate means to resolve this issue.

Schedule 3, Part 2: Financial Support after exiting the EU

16. Part 2 of Schedule 3 of the Bill makes provision about the Welsh Ministers' powers to modify, after exiting the EU, retained EU law relating to the financing, management and monitoring of payments to farmers. It also makes provision about an agricultural transition period for Wales which can be extended by regulations made by the Welsh Ministers.
17. A new paragraph 7 (Power to reduce the direct payments ceilings for Wales in 2020 by up to 15%) confers a power on the Welsh Ministers to make regulations to reduce the direct payment ceiling for Wales in 2020 by up to 15%. That power will mean that the Welsh Ministers can maintain direct payments in 2020 at the same level as in 2019. The power cannot be exercised after the end of 2020. This power to make regulations is subject to the affirmative resolution procedure (as defined by clause 32(7)(b)).
18. A new paragraph 8 (Power to provide for the continuation of the basic payment scheme beyond 2020) provides the Welsh Ministers with a power to make regulations to continue the basic payments scheme after 2020, during the agricultural transition period for Wales. This includes power to prescribe by regulations the method by which direct payment ceilings will be determined after 2020. The Direct Payments Regulation (1307/2013) contains ceilings (the method for calculating payments to farmers) up to the end of the 2020 scheme year only. Without ceilings or a replacement for determining an amount the basic payments scheme could not continue. This power to make regulations is subject to the affirmative resolution procedure (as defined by clause 32(7)(b)).
19. Paragraph 9 (Power to provide for phasing out direct payments and delinked payments), is amended as follows:
- a) Sub-paragraph (1)(b) is amended so that there is no longer a requirement to terminate direct payments. This is a technical amendment in respect of the Welsh Ministers' powers to make by regulations provision for delinked payments in place of payments under the basic payment scheme. The amendment also makes clear that delinked payments cannot be made alongside direct payments under the basic payment scheme.
 - b) Sub-paragraph (8) is amended to correct a drafting error. Text is included to clarify that paragraph 9(8) applies if provision for terminating greening payments is made under paragraph 6(2) whether before or after the start of the agricultural transition period for Wales. The amendment brings the provision for Wales into line with that for England.

Schedule 3, Part 4: Intervention in Agricultural Markets

20. Part 4 of Schedule 3 allows the Welsh Ministers to take action to declare a period of exceptional market conditions, and, during the period for which the declaration has effect, to give, or agree to give financial assistance to support agricultural producers in Wales whose incomes are being, or are likely to be adversely affected by the exceptional market conditions described in the

declaration. Part 4 also allows the Welsh Ministers to make such use as they consider appropriate of any available powers under retained direct EU legislation which provides for the operation of public intervention and aid for private storage mechanisms in response to the declaration.

21. Paragraph 18 (Declaration relating to exceptional market conditions), is amended as follows:

- a) Sub-paragraph (2) is amended so as to clarify that provision is intended to set out the only circumstances in which the Welsh Ministers may make a declaration stating that there are exceptional market conditions. The amendment brings the provision for Wales into line with that for England.
- b) Sub-paragraph (3)(c) is amended to reflect a drafting error. The text of the Bill should have referred to “conditions” (not “decisions”).

Part 10: Final Provisions

22. Part 10 of the Bill provides for different types of ancillary provision which could be made in regulations made under the Bill.

23. Clause 32 (Regulations), is amended so that a new sub-clause (5) provides that regulations under section 32(3)(c) which make supplementary, incidental, consequential, transitional or saving provision modifying primary legislation will be subject to the affirmative resolution procedure. This enhances legislative scrutiny when regulations made under section 32(3)(c) modify primary legislation. Pointers to clause 32(5) are inserted into the provisions to make regulations using the negative resolution procedure at paragraphs 6(3), 11(5), 12(4), 20(3) and 22(3) of Schedule 3, to use the affirmative procedure instead if the relevant power is used, by virtue of section 32(3)(c), to make supplementary, incidental, consequential, transitional or saving provision modifying primary legislation.

24. Clause 33 (Interpretation) is amended to clarify that the definition of “subordinate legislation” includes legislation made under primary legislation by the devolved legislatures.

Consent

25. It is the Welsh Government’s view that the provisions in respect of the WTO Agreement on Agriculture (Part 7) require consent because they fall within the legislative competence of the National Assembly for Wales as they relate to agriculture and concern the domestic implementation of international obligations.

26. It is the Welsh Government’s view that the provisions in respect of the Red Meat Levy (Part 8), the amendments to Schedule 3 (Provision relating to Wales) and the amendments to Part 10 (Final Provisions) require consent

because they fall within the legislative competence of the National Assembly for Wales as they relate to agriculture and do not relate to reserved matters.

27. It is noted that the Memorandum laid on 4 October contained a minor drafting error. It stated that certain provisions extend and apply in relation to Wales (paragraph 18 of that original Memorandum refers). The relevant provisions extend to both England and Wales (and apply to Wales, as correctly stated).

Powers to create subordinate legislation

28. The Annex describes a consolidated list of subordinate legislation making powers conferred on the Welsh Ministers, updated from the Memorandum laid on 4 October to take account of the amendments made at House of Commons Committee stage as described in this Memorandum. 'Affirmative resolution procedure' and 'negative resolution procedure' are defined in Clause 32(7)(b) and (8)(b) of the Bill respectively as those terms apply to subordinate legislation made by the Welsh Ministers under the Bill.

Reasons for making these provisions for Wales in the Agriculture Bill

29. As set out in the first Memorandum, the Welsh Government considers that legislation is necessary to provide a legal basis for future support to farmers after Brexit, as we transition away from the Common Agricultural Policy. By including provisions now in the UK Agriculture Bill the Welsh Ministers can support farmers in Wales, and will be able to implement what is best for Wales.
30. A new power is also included in the Bill to redistribute red meat levy to resolve current anomalies. The Agriculture Bill provides an ideal opportunity to gain the necessary powers to bring forward an appropriate scheme to correct this imbalance.

Welsh Government position on the Bill as amended

31. Welsh Government is content with the amendments tabled by UK Government Ministers during Commons Committee in respect of the Red Meat Levy (Part 8), the amendments to Schedule 3 (Provision relating to Wales) and the amendments to Part 10 (Final Provisions). It is also content with the provisions in respect of the WTO Agreement on Agriculture in view of the agreement reached with the Secretary of State on the exercise of those regulation making powers. Further changes are likely to be made to the Bill at House of Commons Report stage and as it progresses through the Lords, not least in order to respond to points raised by Committee scrutiny in the National Assembly, in which case further Memoranda will be laid before the Assembly as appropriate. A final recommendation in respect of the National Assembly's consent will be provided once all amendments to the Bill have been made.

Financial implications

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

Conclusion

33. This supplementary memorandum describes the relevant changes made to the Bill since introduction requiring Assembly consent. The Welsh Government is supportive of the Bill as drafted. It should be noted however, that it is not possible to give an unequivocal recommendation to the Assembly to consent to the Bill until we are closer to the end of the Lords stage, since there may be more amendments to come. In the event of future amendments within the legislative competence of the Assembly then further Supplementary Legislative Consent Memoranda will be laid before the Assembly as appropriate, with a recommendation from Welsh Government in respect of the Assembly's consent at the appropriate time.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

March 2019

Annex

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM: AGRICULTURE BILL – CONSOLIDATED LIST OF PROVISIONS WHICH CONTAIN POWERS FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION AS AMENDED AT HOUSE OF COMMONS COMMITTEE STAGE

Paragraph of Schedule 3	Description of Power	Legislative procedure
2(7)	Power for Welsh Ministers by regulations to make provision for or in connection with requiring the Welsh Ministers or another person to publish specified information about financial assistance which has been given under Paragraph 1 of Schedule 3	Affirmative resolution procedure
3(1)	Powers for the Welsh Ministers by regulations to make provision for or in connection with checking, enforcing and monitoring compliance where financial assistance is to be or has been given under Paragraph 1 of Schedule 3	Affirmative resolution procedure
5(2)	Powers for the Welsh Ministers by regulations to extend the agricultural transition period for Wales set out in Paragraph 5(1) of Schedule 3	Affirmative resolution procedure
6(1)	Powers for the Welsh Ministers to modify legislation governing the basic payment scheme	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution procedure)
7(1)	Powers for the Welsh Ministers by regulations to make provision for or in connection with reducing the national and net direct payments ceilings for Wales that would otherwise apply in 2020 by up to 15%.	Affirmative resolution procedure
8(1)	Powers for the Welsh Ministers by regulations to modify legislation governing the basic payment scheme to make provision for or in connection with securing that the basic payment scheme continues to operate in relation to Wales for one or more years beyond 2020 (subject to any provision made under paragraph 9)	Affirmative resolution procedure

9(1)	Powers for the Welsh Ministers by regulations to make provision for or in connection with either or both the phasing out of direct payments under the basic payment scheme in relation to Wales over the whole or part of the agricultural transition period for Wales, or the termination of direct payments under that scheme in relation to Wales and instead the making of delinked payments in relation to Wales in respect of the whole or part of the agricultural transition period for Wales.	Affirmative resolution procedure
11(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation.	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution procedure)
12(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution procedure)
13(2)	Powers for the Welsh Ministers by regulations to require persons in or closely connected with an agri-food supply chain to provide information about matters connected with any of the person's activities connected with the supply chain so far as the activities are in Wales.	Affirmative resolution procedure
17(1)	Powers for the Welsh Ministers by regulations to make provision for enforcement of a requirement imposed under paragraph 13(1) or (2) of Schedule 3 (agri-food supply chains: requirement to provide information)	Affirmative resolution procedure
20 (1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for the purposes of altering the operation of provisions of such legislation, so far as they have effect in relation to Wales in connection with exceptional market conditions which are the subject of a	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution

	declaration under paragraph 18 of Schedule 3 (declaration relating to exceptional market conditions)	procedure)
20(2)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for specified purposes	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution procedure)
21(1)	Powers for the Welsh Ministers by regulations in relation to products which fall within a specified sector and are marketed in Wales, to make provisions about the standards with which those products must conform	Affirmative resolution procedure
21(3)	Powers for the Welsh Ministers to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales	Affirmative resolution procedure
22(2)	Powers for the Welsh Ministers by regulations to amend the list of agricultural sectors in paragraph 22(1) of Schedule 3 to add or remove a sector and to set out products that fall within each sector or otherwise give further detail on the sectors	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution procedure)
29	Powers for the Welsh Ministers (acting jointly with the Secretary of State and/or the Scottish Ministers) to make a scheme to make provision for amounts of red meat levy collected by the levy body for one country in Great Britain to be paid to the levy body for another such country.	No procedure