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Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Our Ref: LG/0284/19

Mr Mick Antoniw AM
Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

25 July 2019

Dear Mick

**Constitutional and Legislative Affairs Committee report on the Welsh Government's
Legislative Consent Memorandum on the Agriculture Bill**

Thank you for the Committee's consideration and reports on the Legislative Consent Memorandum ('LCM') and Supplementary Legislative Consent Memorandum ('SLCM') in relation to the UK Agriculture Bill.

I have carefully considered the Committee's recommendations and officials are working with the UK Government on a package to address concerns. You will appreciate this involves complex discussions with UKG and other administrations, however, I am pleased with progress made. I am providing the information I am currently able to in the annex to this letter. My officials would like to provide a technical briefing, in confidence, on the issues still subject to discussion with UK Government if you would find that helpful. As you know, the Bill is currently delayed in Parliament and I will provide a full response once the Bill continues its passage. In addition, I intend to update the Explanatory Notes to the Bill and lay before the Assembly an Explanatory Statement to supplement the LCMs. The Explanatory Statement will provide additional information on the Bill including how the regulation making powers will be used, justification of procedures and mechanisms for ensuring transparency and involvement of the National Assembly.

I would like to highlight certain parts of the package to demonstrate my commitment to transparency, my respect for the Assembly's role in scrutinising legislation and that I have listened and taken account of Assembly views.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Wales Agriculture Bill

I confirm it is still my intention to take the powers in Schedule 3 to the UK Bill. These powers are needed so we can begin to move to new systems of support when ready to do so.

I remain committed to bringing forward a Wales Agriculture Bill and the First Minister has provided an update on our plans as part of his statement on the Government's Legislative Programme on 16th July. A Welsh Agriculture Bill will be most effective if it is introduced in the next Assembly. It is important to legislate once and to legislate well. This is an opportunity to be ambitious and wide-ranging, going further than a simple farm support scheme and consider issues such as the rights of tenant farmers. I launched Sustainable Farming and our Land on 9th July which sets out ambitious proposals for the future, including paying farmers for the actions they take to respond to the climate emergency, reducing emissions and capturing carbon. Using the results of this consultation, we will bring forward a White Paper before the end of this Assembly to pave the way for legislation.

I want to give the legislative reassurance sought to underpin the express commitments Ministers have already made on this. I have, therefore, instructed officials to progress a "sunset" clause so that relevant provisions in the UK Agriculture Bill expire from the end of 31 December 2024.

WTO Agreement on Agriculture

I am happy to provide the further assurances requested about the Bilateral Agreement between the UK and Welsh Governments on the WTO powers.

The WTO clause raises important and complex constitutional, legal and policy considerations. It engages both devolved and reserved areas. Policy relating to international relations and the regulation of international trade is reserved, whilst that relating to agriculture and the observation and implementation of international obligations, is devolved and within legislative competence. As I have said previously, the Welsh Government and UK Government disagree on the status of the WTO provisions. I am not prepared to concede the Welsh Government position on this point, especially given the broader constitutional implications. However, I have agreed a way forward with the Secretary of State which is without prejudice to the matter.

What matters most to me is ensuring there are no constraints on Welsh Government competence. My negotiations have, therefore, focussed on strengthening the governance mechanism underpinning the use of the WTO clause to aim to achieve this.

I have discussed this issue with the Secretary of State several times and was very clear the consultation commitment initially proposed by the Secretary of State was unacceptable and could be used to constrain Wales' competence to make agricultural policy. Equally, we recognised a unilateral veto over the power to make WTO regulations would be difficult for the UK Government to concede, since it has the responsibility for representing the nations of the United Kingdom at the WTO. We agreed our officials should develop a range of legislative and non-legislative options to address my concerns and that these options should be developed around the precedent of the discussions with UK Government on the European Union (Withdrawal) Act 2018 which led to the Inter-Governmental Agreement (IGA). Overall, my negotiating objective was to secure the strongest possible role for Welsh Ministers in the use of the powers.

This is what we have achieved. Through the agreement, I have secured a very strong role for Wales in both the initial making of the regulations under the clause and the ongoing use of those regulations. This is much stronger than the initial consultation commitment and includes an explicit commitment on the Secretary of State to proceed by consensus, underpinned by a clear and transparent mechanism. While this is not an absolute protection, it sets the bar extremely high. I recognise there may be situations where consensus is more difficult to find and Welsh Government officials proposed the mechanism for resolving differences which forms part of the Agreement. This is a robust and transparent mechanism, ensuring Ministers' views are properly taken into account and, crucially, including recourse to an independent panel or to Parliament in the most serious cases. If, for example, the Welsh Government does not agree proposed regulations and the UKG decides to proceed, the

Secretary of State must provide Parliament with statements from UK and Welsh Governments. Whilst not an absolute veto, both Houses of Parliament would have to deliberately agree to approve the regulations and thus override devolved Ministers' objections on the basis of full information. If helpful, officials can consider whether the Assembly could be notified and have the opportunity to comment on subordinate legislation as it is prepared. I will review the effectiveness of the process in due course and consider whether any adjustments are needed to strengthen it.

Red Meat Levy

At my request, a new clause resolving the long standing issue of repatriation of red meat levy has been laid by the UK Government and now forms part of the Bill. The new clause confers powers on Ministers, acting jointly, to establish a scheme that requires agricultural boards within Great Britain to redistribute levy between themselves. Officials will now continue to develop a scheme in parallel to the legislation progressing through Parliament to ensure a fair system is in place as soon as possible.

Inter-Institutional Relations and working

I am considering a range of potential amendments and commitments to place additional duties on the Welsh Government and ensure a clear role for the Assembly in scrutinising secondary legislation.

***Brexit and our Land* update and next steps**

On 9 July I launched the *Sustainable Farming and our Land* consultation, which seeks views on our revised policy proposals for supporting Welsh farmers. The consultation will run until 30 October 2019. We will also be commencing a co-design programme later in the year. This will allow us to explore some of the practical aspects of the proposed scheme in a collaborative approach, which would not be fully possible using only a written consultation process. I will provide the indicative timeline for development of the proposed new scheme requested once I have further clarity about future funding and have analysed responses to the consultation. I would like to reiterate that no decisions will be made on future schemes until consultation responses have been reviewed, that the Basic Payment Scheme (BPS) will remain unchanged up to and including 2020, and that existing schemes will not be removed before any new schemes are ready.

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive, flowing style.

Lesley Griffiths AC/AM

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Welsh Government response to the Constitutional and Legislative Affairs Committee report (published 04 January 2019) on the Welsh Government’s Legislative Consent Memorandum on the Agriculture Bill

CLAC Recommendation	Welsh Government Response
<p>Recommendation 1</p> <p>The Cabinet Secretary should write to this Committee in response to the clarification we request in paragraphs 101 and 107 of this report.</p>	<p>Accept</p> <p>I wrote to the Secretary of State last summer setting out my expectations for discussions and negotiations on the Bill to take place in line with the Inter Government Agreement (IGA) on the European Union (Withdrawal) Act 2018 and the Establishment of Common Frameworks.</p> <p>I considered carefully early in 2018 the feasibility of introducing a Wales Agriculture Bill in the National Assembly by September 2018. Given the complexity and significance for the agriculture sector of the UK’s departure from the EU, I concluded further time was needed to carry out careful, thorough and considered policy development and consultation with those affected. I announced on 10th July that I was considering including Welsh specific provisions in the UK Government’s Agriculture Bill on a time limited basis to provide powers to begin phased transition until Welsh primary legislation takes effect.</p> <p>Last July I agreed to work with UKG to provide the Welsh Ministers with powers in the UK Bill to continue existing schemes following our exit from the EU and to develop new policies to allow for a smooth transition from the Common Agricultural Policy to a new land management programme.</p> <p>The UK Government’s legislative vehicle was appropriate for Wales and the circumstances deemed it practical to include the provisions to be able to provide certainty to Welsh farmers that the Government will have powers in place to support them when the UK leaves the EU. Without such powers, we may not be able to continue paying agricultural support beyond 2020 or to move towards proposed new support systems. This is on a temporary basis until an Agriculture Bill can be introduced in the Assembly. Welsh Government instructions were sent to the Office of the Parliamentary Counsel in August 2018.</p> <p>I remain committed to introducing a Wales Agriculture Bill as soon as is practicable and appropriate. The First Minister provided an update on this in his statement on the Government’s Legislative Programme. A Welsh Agriculture Bill will be most effective if it is introduced in the next Assembly. It is important</p>

	<p>to legislate once and to legislate well. This is an opportunity to be ambitious and wide-ranging, going further than a simple farm support schemes to look at issues such as the rights of tenant farmers. I launched Sustainable Farming and our Land on 9th July. Using the results of this consultation, we will bring forward a White Paper before the end of this Assembly to pave the way for legislation.</p>
<p>Recommendation 2</p> <p>The Cabinet Secretary should write to this Committee and clarify whether the only provision needed for the Welsh Ministers to have legal authority to make direct payments to farmers in 2020 (and beyond) is contained in paragraph 8 of Schedule 3 to the Bill, as agreed at committee stage in the House of Commons.</p>	<p>Accept in principle</p> <p>Brexit has created unprecedented uncertainty and I want to ensure provision is made to allow the amendment of retained EU law and to enable transition to proposed new schemes so that Welsh farmers are not disadvantaged.</p>
<p>Recommendation 3</p> <p>The Cabinet Secretary should seek to amend the UK Agriculture Bill to insert a sunset provision to the effect that Schedule 3 will no longer apply after the Fifth Assembly.</p>	<p>Accept in principle</p> <p>I have listened to the concerns of the Assembly Committees regarding the absence of a “sunset” clause. I have instructed officials to progress a “sunset” clause so that relevant provisions in the Bill expire from the end of 31 December 2024. Officials are working with Parliamentary Counsel and UK Government to prepare a suitable provision that gives the legislative reassurance sought by the Committees in addition to the express commitment already given that the Welsh Government will bring forward a Wales Agriculture Bill in a suitable timeframe.</p> <p>I intend for this provision to be brought forward as a Government amendment.</p>
<p>Recommendation 4</p> <p>The Cabinet Secretary should respond to the 34th report of the Delegated Powers and Regulatory Reform Committee, entitled Agriculture Bill (HL Paper 194) published on 17 October 2018 before the start of proceedings in the House of Lords and copy that response to this Committee.</p>	<p>Reject</p> <p>I have listened to the concerns expressed by the House of Lords Delegated Powers and Regulatory Reform Committee and National Assembly Committees regarding the number and appropriateness of delegated powers within the Bill. In strict accountability terms it would not be appropriate for the Welsh Ministers to respond directly to DPRRC. The Secretary of State for Environment and Rural Affairs will be replying to the DPRCC presently and I will provide a copy of his letter to the Committee.</p>
<p>Recommendation 5</p> <p>We recommend that the Cabinet Secretary reviews all procedures attached to the regulation-making powers delegated to the Welsh Ministers under the UK Agricultural Bill, taking account of the views we express in this report.</p>	<p>Accept</p> <p>I have reviewed all powers and procedures. Welsh Government and Defra are working together to address concerns across the Bill. This work is ongoing and I will provide the Assembly with the information requested as soon as I am in a position to do so.</p>

<p>Recommendation 6</p> <p>The Cabinet Secretary should lay before the National Assembly a supplementary document to the LCM which:</p> <ul style="list-style-type: none"> ▪ outlines the outcome of the review in recommendation 5; ▪ justifies why it is appropriate to seek a regulation-making power in each case within the UK Agriculture Bill; ▪ justifies the choice of procedure in each case, taking account of our view that there should be a presumption in favour of the affirmative procedure given that no decisions have yet been taken on how the regulation-making powers will be used; ▪ explains any decision to reject recommendation 3; ▪ explains and provides a practical example of where the negative procedure may be necessary because of the need for urgency; ▪ explains the process by which it will seek amendment of the UK Agriculture Bill where that is deemed appropriate. 	<p>Accept</p> <p>I will lay an Explanatory Statement before the National Assembly with this information. Work is in hand to address the committee's concerns in recommendation 6 and I anticipate being in a position to provide the information requested when the Bill moves to report stage. My officials would like to provide a technical briefing on the issues still subject to discussion if you would find that helpful.</p>
<p>Recommendation 7</p> <p>The information collated under recommendation 6 related to the delegation of powers to the Welsh Ministers should be made available to MPs for report stage on the UK Agriculture Bill.</p>	<p>Accept</p> <p>It is my intention to provide all parties with the information requested in good time for the next stage of the Bill.</p>
<p>Recommendation 8</p> <p>The Cabinet Secretary should ensure that the explanatory notes to accompany the UK Agriculture Bill on its introduction to the House of Lords should include information collated under recommendation 6 related to the delegation of powers to the Welsh Ministers.</p>	<p>Accept</p> <p>A revised set of Explanatory Notes has been prepared and will be published along with the information collected in response to recommendation 6 when the Bill resumes its passage.</p>
<p>Recommendation 9</p> <p>The Cabinet Secretary should explain to this Committee why it may not be necessary to amend clause 26 of the UK Agriculture Bill to resolve the issues that have been of concern to the Welsh Government. In so doing, the Cabinet Secretary should explain whether the inter-governmental agreement she spoke of would, in</p>	<p>I provided details of the Bilateral Agreement with the UK Government on the use of the WTO clause (now clause 28) in my Written Statement on 21 March. This provides a robust and transparent mechanism for involving the Welsh Ministers in decision making and for resolving disputes on matters relating to the UK's</p>

<p>effect, allow UK Ministers to act in devolved areas without any scrutiny by the National Assembly.</p>	<p>compliance with the WTO Agreement on Agriculture.</p> <p>The WTO clause is complex and engages devolved and reserved areas. While policy relating to international relations and the regulation of international trade is reserved, that relating to agriculture and the observation and implementation of international obligations is devolved. I have secured the strongest possible role for the Welsh Ministers in the use of the powers and I no longer consider it necessary to amend the Bill. Subordinate legislation on devolved matters will continue to be laid before the Assembly for scrutiny in the usual way.</p> <p>I note the Committee's further concerns made in the report on the SLCM. However, I continue to believe this represents a good result which should not constrain Wales' competence to make agricultural policy and legislation.</p>
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Welsh Government response to the Constitutional and Legislative Affairs Committee report (published June 2019) on the Welsh Government's Supplementary Legislative Consent Memorandum on the Agriculture Bill

<p>Recommendation 1</p> <p>The Minister should provide details on how, in her approach to and handling of the Agriculture Bill, she has complied with the requirements of the Inter-Institutional relations agreement between the National Assembly for Wales and the Welsh Government, particularly paragraphs 8 and 14 to 17 of that Agreement</p>	<p>I am committed to the principle of transparency and the legitimate role of the Assembly in scrutinising activity of the Welsh Government. This needs to be balanced – as the IIR agreement recognises – with the need for confidential inter-governmental discussion between the administrations within the United Kingdom, for example, in situations where negotiations on particular issues are taking place.</p> <p>The Welsh Government's approach and handling of the WTO clause in the Bill complies with the requirements of the IIR Bilateral Agreement. I wrote to the Committee on 24 May informing them of dates of future Inter-Ministerial Group EFRA meetings where the Agriculture Bill is discussed along with other Brexit related issues. A summary of discussions is published after each meeting and can be found here. https://www.gov.uk/government/publications/committee-report-from-the-inter-ministerial-group-for-environment-food-and-rural-affairs</p> <p>In future, I will provide a copy of the meeting summary to the Committee along with other relevant information to ensure they are aware of our discussions.</p> <p>Negotiations on the Bilateral Agreement were complex and sensitive and I provided the Committee with as much information as was</p>
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	<p>appropriate during this time. I provided full details in my Written Ministerial Statement of 21 March which is published on the websites of the Welsh Government and National Assembly. https://gov.wales/written-statement-future-land-management-programme-update-and-next-steps</p> <p>I have asked my officials to consider how best to keep the Assembly informed in confidence in situations where negotiations on particular issues are taking place.</p>
<p>Recommendation 2</p> <p>We believe a procedure comparable to the procedure outlined in Standing Order 30C should be developed, that recognises the terms of the Bilateral Agreement, and which applies to the relevant regulations made under the Agriculture Bill, once enacted.</p>	<p>Accept in part</p> <p>I am committed to the principle of transparency and the legitimate role of the Assembly in scrutinising activity of the Welsh Government.</p> <p>Experience of the EU Withdrawal Act SIs showed that the SO30C did not work to give Assembly Members the information they needed to do that. Officials are reviewing SO30C, and it is of course open to the Business Committee to conduct their own review if they wish. We propose this review as part of the broader piece of work on how the executive and legislature can work best together in the interests of the people of Wales. I will of course consider how best to involve the Assembly in regulations relating to the WTO clause once this work has concluded.</p>