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WWF Cymru: ETRA Committee Agriculture (Wales) Bill 2022 Written Evidence Response

Introduction

1. Thank you for the opportunity to provide written evidence in addition to attending Committee in October. Please be aware that WWF Cymru is in the process of seeking formal legal advice on the drafting of the Agriculture (Wales) Bill 2022 (AWB) so please consider both this, and our oral evidence, to be our preliminary opinion based on our initial reading.
2. Sadly, due to understandable Committee reporting deadlines our formal legal advice will not be ready for your Stage 1 scrutiny, however we will be using this advice to put forward recommendation to improve the Bill in advance of the final Stage 1 Debate and hope to engage with the Committee during Stage 2 in early 2023.

Part 1: Sustainable Land Management

3. WWF Cymru strongly supports the AWB's approach of bringing forward Sustainable Land Management (SLM). This is a significant break from the status-quo provided for by the Common Agricultural Policy (CAP) which has failed to support a sustainable sector economically, environmentally, or culturally in recent decades. This is evidenced by the loss in the number of farms (800 farms lost between 2013-2017); the loss of agricultural employment (13% reduction in farm workers over the past decade); the drive towards intensification which is threatening traditional family farms; that agricultural management remains a primary driver of biodiversity loss; and that agricultural sector Greenhouse Gas (GHG) emissions have increased over the last decade while all other sectors have seen a decrease.
4. Taken together the status-quo has failed to deliver sustainable agriculture and has jeopardised Welsh food security by focusing primarily on production destined for export (only 5% of beef and lamb produced in Wales is consumed

in Wales) that has thus left significant dietary gaps which must be met with imported products.

5. The shift to SLM, through the provision of high-conditionality environmental payments linked to sustainable practices instead of low-conditionality area-based stability payments (akin to the Basic Payments Scheme (BPS)), is therefore one to be supported and we urge Committee members to support the AWB.
6. WWF Cymru notes the Welsh Government decision not to define SLM on the face of the Bill, and instead refer to a United Nations (UN) definition in the supportive Explanatory Memorandum. It is our preference that SLM is defined on the face of the Bill to better articulate the purpose of the legislation and guide future interpretation by policy makers and scheme participants.
7. We support the use of the UN definition as it is well framed for Wales' needs. It is also the definition which has enjoyed majority support throughout the cross-sector co-production process which has contributed to the delivery of the Bill.
8. We note that there exists a minority preference for an alternative World Bank definition. In our view this definition is deficient to the UN one. Our rationale for this is as follows:
 - a. The UN definition is significantly more advanced, authoritative and current in its articulation of SLM and the recognition that environmental sustainability is essential for achieving wider sustainability.
 - b. The UN definition is less transactional/exploitative. Rather than focusing on the use of natural resources to meet a human demand) that is the basis for the World Bank), the UN definition instead seeks to use those resources while simultaneously ensuring their long-term potential and benefits – this is more consistent with the Sustainable Management of Natural Resources (SMNR) provisions of existing Welsh law – the Environment (Wales) Act 2016 (EWA).
 - c. The UN definition recognises the broader 'goods' that can be obtained from our natural resources (carbon, nature, tourism, cultural) rather than being limited to 'food and fibre demands' and 'sustaining livelihoods' which appears to limit livelihoods to an economic sense.
 - d. The UN definition is reflective of 'changing human needs', while the World Bank definition presumes rising needs. Needs do not always rise, they instead often change over time. For example, UK meat consumption has decreased 17% over the last decade.

9. In addition, we feel that use of the UN definition would be enhanced by an approach more rooted in the Welsh context, where its usage is explicitly linked to existing Welsh law in the form of the EWA and Well-being of Future Generations Act 2015 (WFGA). One approach to achieving this would be to better recognise and expand the link to the DECCA framework of the EWA¹. Currently this is included in Clause 6 of Part 1 but is limited in its application to Objective 3.
10. In the view of WWR Cymru, the scope of the DECCA framework could be widened to cover all the Objectives by becoming part of the SLM definition. Doing so would enable all the Objectives to better articulate what practices could be supported in the Sustainable Farming Scheme (SFS) and thereby meet all Objectives. This approach could help dictate what practices amount to the sustainable production of food and other goods (under Objective 1) by permitting the SFS to support on farm practices that deliver a positive contribution to DECCA's components. To give a practical example, support for the practice of using cover crops in arable rotations can be argued to support several aspects of DECCA through their impact on soil health.
11. WWF Cymru supports the existing four objectives as drafted in principle. We recognise the political desire to add a fifth around the economic livelihoods and the vitality of rural Wales. We reserve judgement on such an Objective until drafted and stress that the critical aspect of the Objectives is less about their number about more about their applied definition and how they function together.
12. An example of their applied definition can be found in Objective 1 and the question of what is meant by producing 'food and other goods in a sustainable manner'. The Bill does go on to refer to the WFGA, but the linkage here is relatively basic and needs to be improved as it doesn't sufficiently recognise the sustainability hierarchy – namely that long-term social and economic sustainability are the result of a sustainable ecosystem and therefore cannot be achieved without environmental stability being first achieved.
13. As detailed above in paragraph 10, we recommend more use is made of the EWA to further strengthen this meaning and therefore ensure that the wording of these Objectives do not allow perverse interpretations in future years at a policy

¹ Part 1, Section 4, subclause (i) of EWA sets out the DECCA framework on the resilience of ecosystems. This includes:

- (i) **D**iversity between and within ecosystems
- (ii) **T**he scale of Ecosystems [**E**xtent]
- (iii) **T**he **C**onnections between and within ecosystems
- (iv) **T**he **C**ondition of ecosystems (including their structure and functioning)
- (v) **T**he **A**daptability of ecosystems.

This is replicated in the AWB Part 1 Section 6.

level which would be subject to limited Senedd scrutiny compared to the AWB. WWF Cymru is currently seeking legal advice on how this could be improved.

14. The joint functionality of the Objectives is however something we see to be just as important. As drafted, the Bill places a duty on ministers to take action which best contributes towards achieving all four Objectives (emphasis on the plural). However, we note from the Minister's comments to Committee that it will be possible 'to make a significant contribution to one [Objective] whilst making, perhaps, little or indeed no contribution to the others'. This position is concerning as it opens the door to a level of flexibility which has the potential to undermine the Objectives in future and contradicts the text of the Bill as currently drafted.
15. To improve this, we recommend the Committee looks to existing legislative language that already deals with this approach – namely the WFGA. In this regard the WFGA requires ministers to 'maximise' their contribution (in that case the Well-being Goals) and to take 'all reasonable steps' to do so. This wording allows for a policy forming process which, rather than trading off Objectives against one another, seeks develop solutions which maximises their contribution to all.
16. In addition to improving the applied definitions and joint functionality of the Objectives we also wish to draw the Committee's attention to the Monitoring and Reporting sections of Part 1. In these sections ministers are given powers to set indicators and targets at a future date. To do so they are permitted to have regard to only a few documents (often of the Welsh Government's own creation) and must only consult with the office of the Future Generations Commissioner. We argue that this is deficient in several regards.
17. First, we note that the AWB has been created in a spirit of co-production. We would wish that to continue into the development of these monitoring and reporting processes and would therefore urge the Committee to consider requiring the Bill to be more explicit about who must be consulted. In making this recommendation we recognise that the list does not need to be exhaustive, nor should it be. However, ministers should not be given the free hand to the extent the Bill currently provides. To curtail this, we recommend additions are made to Section 5, subclause 3 to include reference to cross-sector representers of the rural economy (we would expect this to include representatives from agriculture, forestry, environmental management etc). This would be more consistent with the WFGA Ways of Working.
18. Second, we note that as currently drafted ministers can develop whichever indicators and targets, they wish. We recommend that the AWB be more explicit where it can be about what these should be. For example, we know the AWB will operate in the context of Wales' journey towards Net Zero, and also the 30by30 nature target soon to be legislated for. As such the Bill should

provide a non-exhaustive list, building on what we have learnt since the WGFA was passed to specify that there will be at least one GHG emissions indicator (and Net Zero plan compliant sectorial target) linked to at least Objective 2.

19. We also stress the need for a Global Responsibility indicator and target. Its existence would cover several objectives, but we need flesh on the bone of what this means beyond the Well-being goal link. This could include a target for eliminating deforestation-linked imports. This could then form part of the definition of sustainable food production. In all circumstances it would not be necessary for the AWB to state the form of these objectives and targets at this stage, but Section 4 should be amended to explicitly state that they should exist.
20. A final point on Part 1 is to ensure that any indicators and targets are sufficiently robust in terms of the pace of change required to meet the nature and climate emergency. We know agricultural emissions have been rising in recent years and are now the third largest territorial sector. We also know that nature is declining. The final SFS won't be fully operational until 2029/30. That will be more than a decade since we started this work with 'Brexiteer and our Land'. Members should be pushing the Government to ensure that it's plugging the transition gap with additional actions outside of this Bill. Otherwise, 2030 is likely to come and go without Wales' ambitions being met.

Part 2: Support for Agriculture

21. WWF Cymru argue that the Purposes identified for which ministers will provide support in the SFS suffer from the same applied definition issues outlined for the Objectives above.
22. The issue becomes more acute at this level of the AWB as these purposes become key to the development of SFS actions at a later date. In our view, if the Government intends to deliver on its ambition to tackle the nature and climate emergency then it will be essential that this Bill is designed in a way which does not permit a future government or SFS participant to 'cherry pick' the design and/or implementation of scheme actions so that not all Objectives are contributed towards.
23. The best way to achieve this is twofold. First, to make the changes to the ministerial duty as outlined above in paragraph 15 and, second, ensure that the combination of supported actions in the Universal Tier of the SFS are sufficient to deliver upon national nature and climate targets.
24. Given the focus within this part of the bill is on farm income and will face a high level of external scrutiny, it is worth emphasising the points made in paragraphs 3-5 that the status-quo of low conditionality area-based stability payments have failed to deliver sustainable agriculture and food security. We also stress that

Food Sovereignty is a much more appropriate lenses through which to view our national needs².

25. In addition, we would stress that more is required in these Purposes to support diverse new entrants and community ownership models. In recent years we have seen an increased interest and participation in Community Supported Agriculture (CSA) projects across Wales. Sadly, the CAP is not targeted at supporting these projects for several reasons - including the minimal hectare limit for support.
26. While we hope the SFS will be more amenable, we recommend the AWB is amended to support such changes. One approach could be to add a purpose akin to 'Improving community access to local goods'. In theory such a step would allow the Collaborative Tier to better support farmers or other third parties to set up CSA projects and deliver produce to their communities. This could cover a range of activities from veg/meat boxes through to more elaborate schemes.
27. WWF Cymru notes that this section of the AWB provides ministers with powers to make changes to the existing CAP BPS. While we recognise the need for this to continue to exist during the 2025-2029 SFS transition period we are concerned that the AWB does not provide a sunset clause to ensure that BPS cannot continue post transition.
28. While we understand that is not the intent of the current government, the fact that such payments are carved out of the SLM Objectives means that the lack of the 'sunset clause' poses the risk that two or more parallel scheme could be run in future which undermine the purpose of the AWB. To that end we recommend the Committee considers amending the Bill to include a sunset clause.
29. We would also urge caution around the powers for ministers to declare Exceptional Market Conditions (EMC). As drafted ministers appear to have the powers to extend EMC as they so choose for three-month periods with the Senedd only informed of this decision. Given the potentially significant impact of such measures we recommend the Committee considers amending the Bill to require the use or extension of EMC be subject to an affirmative Senedd vote.

Additional Comments

30. For the AWB and SFS to function as intended and pay participants for undertaking positive environmental practices that support the Objectives, it will be vital to ensure that the regulatory baseline is sufficient and enforced effectively. Wales has frequently been deficient in both respects as has been

² Wales Environment Link. 2022. Sustainable food production and food security.
https://waleslink.org/wp-content/uploads/2022/04/WEL-Food-Security-Briefing_-Final.pdf

seen with regards to water quality in recent decades and a lack of Natural Resources Wales (NRW) enforcement for budgetary reasons.

31. We note the Government's intent to bring forward additional primary legislation on National Minimum Standards (NMS) ahead of the SFS beginning operations in 2025 but are concerned that this will be deprioritised due to resourcing and legislative time constraints. To ensure this does not occur we recommend the Committee considers the inclusion of a duty in the AWB to compel ministers to bring forward and complete the new NMS ahead of December 2024 so that they are in place for the SFS.

I gael mwy o wybodaeth, cysylltwch â / For more information, please contact:
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