



Written Response to the Economy Trade and Rural Affairs Committees call on the general principles of the Agriculture (Wales) Bill

Natural Resources Wales welcomes the opportunity to submit written evidence to the committee and would be pleased to provide further information to elaborate on any points raised in our submission.

Natural Resources Wales is the largest Welsh Government sponsored body. Our Roles and responsibilities are listed in Annex 1.

Summary

Natural Resources Wales welcomes the introduction of the Agriculture (Wales) Bill by the Minister for Rural Affairs and North Wales, and Trefnydd. Natural Resources Wales supports the forestry provisions within the Bill which will provide the tools to enable compliance with the Conservation of Habitats and Species Regulations 2017 and the need to bring forestry permitting in line with other permitting regimes. Some of the proposed changes, such as the ability to amend felling licences, have also been requested by the forestry industry and we fully support this amendment.

The absence of any commitment in the Bill to regulatory reform (introduction of National Minimum Standards and Civil Sanctions) as outlined in the White Paper is likely to place additional burdens on current financial and regulatory tools to secure essential outcomes required to deliver against the Climate and Nature Emergencies that have been declared in Wales. Natural Resources Wales would like to continue the opportunity of collaborating with Welsh Government colleagues on providing advice and supporting the development of the Bill.

Part 1 Sustainable Land Management

Objectives and Duty

The Agriculture (Wales) Bill defines Sustainable Land Management (SLM) duty for Ministers in terms of four objectives. The scope of the objectives seeks to ensure that food and other goods are produced in a way to contribute now and in the future to the Well-being goals defined in section four of the Well-being of Future Generations (Wales) Act 2015. However, there is no statutory definition of Sustainable Land Management. Not including a statutory definition will leave it open to potential arguments as to what is the intended scope and therefore there is a risk of potential drift in the Sustainable Land Management duty over time. Therefore, we would prefer to see a statutory definition of such a key term which aligns in totality to the delivery of the Well-being of Future Generations Act and the Environment (Wales) Act 2016. This needs to be drafted in such a way as to ensure that it is clear and unambiguous when it comes to its application. A useful starting point would be the UN definition of Sustainable Land Management as mentioned in the Sustainable Farming and our Land consultation.

Agriculture is the largest group of land managers (88% of the land area of Wales) in Wales and as such is the principal supplier and user of ecosystem services, and the benefits they provide. Therefore, it is critical that Sustainable Land Management aligns to the delivery of Sustainable Management of Natural Resources (SMNR) if the SLM duty is to support delivery against the Environment (Act) Wales 2016.

We welcome the inclusion of all four objectives. However, there is a discrepancy between the content of the objectives in the Bill and the Sustainable Management of Natural Resources as defined in the Environment (Wales) Act 2016. Strengthening the objectives to ensure that the SLM duty includes all aspects of SMNR would guarantee that the two pieces of legislation align and deliver for the people of Wales now and in the future.

Monitoring and Reporting

Leaving the EU means that the financial framework for agriculture has changed significantly. SLM indicators and targets need to be ambitious to ensure that financial assistance is guaranteed, and budgets secured beyond the short term. The Agriculture (Wales) Bill indicators and targets to measure progress towards SLM objectives need to show how the exercise of the functions in this Bill deliver against the wider agendas as they relate to agriculture or ancillary activities including the Well-being and SMNR indicators. By taking the current approach outlined, of at least one indicator and target per objective of SLM, means that the relationship between SLM, Environment (Wales) Act and 2016 and Well-being of Future Generations Act (2015) and wider agendas for Wales will be tenuous. Strengthening the requirement for indicators and targets to be linked to these acts rather than SLM objective will mean that emphasis moves from delivery against SLM to the wider delivery for the people of Wales and therefore ensuring an integrated approach.

When preparing or revising indicators and targets, Welsh Ministers must have regard for the well-being of future generation indicators and the most recent State of Natural Resources report. Strengthening regard for indicators beyond the well-being of future generations to include Environment (Wales) Act indicators and other cross cutting targets such as net zero and beyond recycling so far as it relates to agriculture and ancillary activities needs to be considered.

The requirement to consider the most recent state of natural resources report in preparing or revising indicators and targets is too specific. Consideration should be given to changing this to the Current Assessment of Sustainable Management of Natural Resources. The Current Assessment includes information published in previous versions of the State of Natural Resources Reports where the body of evidence has not changed during reporting periods. This will ensure that Welsh Ministers have regard for the current state of natural resources and not limiting their scope to those areas covered in the most recent State of Natural Resources report.

When preparing or revising indicators and targets the Welsh Ministers must consult the Future Generations Commissioner and any other persons they consider appropriate. Whilst NRW is within scope of the term “any other persons as they consider appropriate”, this is discretionary and so would be a decision for the Welsh Ministers as to whether they would consult NRW. NRW is the principal advisor to Government in relation to environment and natural resources. It would seem prudent to include NRW as a body that must be consulted when preparing and revising indicators and targets.

In preparing Sustainable Land Management reports the Welsh Ministers must have regard to most recent state of natural resources report. Consideration should be given to changing this to the Current Assessment of Sustainable Management of Natural Resource. The Current Assessment includes information published in previous versions of the State of Natural Resources Reports where the body of evidence has not changed during reporting periods. This will ensure that Welsh Ministers have regard for the current state of Natural Resource and not limiting their scope to those areas covered in the most recent State of Natural Resources report.

The reporting periods are specified in the Bill and can be changed by regulation. Thought needs to be given to how the time scales for reporting are aligned to cycles outlined in the Well-being of Future Generations Act 2015 and the Environment (Wales) Act 2016 to enable integration.

Under Section 4 the Welsh Ministers must prepare a Statement of Indicators and Targets. The Welsh Ministers then have the power to review and revise the Statement at any time. In preparing the Statement, the Welsh Ministers must have to regard to various reports including the most recent Impact Report published under section 13. Whilst there is a requirement on the Welsh Ministers to have regard to the Impact Report and the Statement of Indicators etc, outside of the timetable for preparing those reports the Bill does not set out any required timetable in which the relevant scheme should be revised as a result of the findings of the various reports. Therefore, the post implementation review of the scheme (Chapter 9 explanatory memorandum) may not lead to timely action in policy development or scheme delivery.

Part 2: Support for agriculture etc.

Definition of Agriculture and Ancillary Activities

There is a possibility that the following terms in the Bill could cause confusion

- ‘farm woodland’ and ‘agroforestry’ within the definition of ‘agriculture’
- taking action on land (i) ‘to create and manage habitats for the other purposes relating to nature conservation (iii) to maintain and enhance the resilience of ecosystems in ‘ancillary

The Agriculture Act 1967 define “woodland” as including “*all land used primarily for the growing of trees*” and WG’s [natural-resources-policy.pdf \(gov.wales\)](#) states that “*We also need greater integration between woodland and other land uses and a removal of the historical, artificial distinction between farmland and woodland management*”. It would appear that the policy intent is to bring the two land uses together in terms of the various functions given to Welsh Ministers under this Bill. However, when it comes to exercising powers under other pieces of legislation (such as forestry, planning and tenancy) the Bill’s definitions have no status, which could lead to confusion.

In many cases, taking action on land used for agriculture to (i) create and manage habitats, or for other purposes relating to nature conservation and (iii) to maintain and enhance the resilience of ecosystems does not necessarily require a change in land use but a scale at which current activities are undertaken. Therefore, classification of these as an ‘ancillary activity’ separates the integrated purposes of SLM and maintains the

dichotomy of either food production or environmental management. Similarly in the Explanatory Memorandum (p50 3.159) environmental land management is referred to as a non-agricultural activity where it is in many cases 'agriculture' albeit at a more extensive scale or level.

Purposes for which support is provided

The list of purposes for which support can be provided under section 8 do not necessarily align to the delivery of the objectives within the SLM duty defined in the Bill. The objectives include mitigation and adaptation to climate change. However, the list in section 8 does not include adaptation to climate change. Inclusion of adaptation to climate change in the lists of purposes for which support can be provided should be considered. This will be particularly important to ensure continuing delivery of Sustainable Land Management in relation to agriculture and ancillary activities.

Powers to modify legislation relating to the Common Agricultural Policy (Part 2, 15), Rural Development (Part 2, 18) and make consequential transitional provision (Part 6, 46) are not subject to SLM duty required by Welsh Ministers. However, having regard for the SLM duty in relation to these sections would ensure that decisions on current and transitional support would align with the longer-term ambition set out in the Bill.

Exceptional Market conditions: powers available to Welsh Ministers

Welsh Ministers powers in section 21, falls outside of the Welsh Ministers power to provide support as set out in section 8 and is unlikely to be subject to the Sustainable Land Management Duty. However, having regard for the SLM duty in relation to section 21 powers would ensure that support would not contradict other support provided within the Bill.

Agricultural Tenancies

The principle of providing a route to dispute resolution to tenants where clauses in the tenancies prevent diversification is a step forward. However, there will still be practical matters of timing. For example, if the tenant needs to make an application for a certain scheme by a deadline date, dispute resolution can be a lengthy process to progress. Parties will be expected to attempt to resolve the matter by negotiation first before referring to dispute resolution which can take time and may prove costly especially if the parties are to have legal representation, by which time the application deadlines have passed.

Many Agricultural Holdings Act (AHA) tenancies require the tenant to manage their holding according to the Rules of Good Husbandry Practice which in a purely agricultural situation makes sense, for example controlling ragwort and managing thistles docks. Modernising of these rules to reflect that good habitat management is good husbandry practice should be considered. Thought needs to be given where tenants look at conversion options in schemes where they agree to revert what would call agriculture pasture to habitat to deliver against the third objective of SLM (to maintain and enhance the resilience of ecosystems and the benefits they provide).

Part 3: Matters relating to agriculture and agricultural products

Collection and Sharing of data

The powers contained in sections 24 – 30 of the Bill relate specifically to the Welsh Ministers and when they require third parties to provide information to them with Section 28 (4) identifying the list of purposes for which the information can be processed. Section 28(4) currently only contains (e) minimise adverse environmental effects of activities connect with the agri-food supply chain or relevant activities. The agri-food system was identified in State of Natural Resources Report (SoNaRR 2020) as one of three systems that require transformative change to enable the Sustainable Management of Natural Resources which underpins the Well-being Goals. To identify effective solutions data from across the agri-supply chain is required. Therefore, we would like to see the ability for Welsh Minister to require information to be provided to assist NRW in meeting its SMNR duty and for statutory reporting requirements to be included in section 28 (4).

Part 4: Forestry

NRW considers that having the power to attach environmental conditions to felling licences in addition to restocking conditions will enable better compliance with the requirements of the Conservation of Habitats & Species Regulations 2017.

The proposed powers to allow NRW to add conditions to felling licences beyond solely restocking conditions, and the power to amend, suspend or revoke a tree felling licence will be used proportionately.

The effect is primarily to safeguard habitats and species and provide protection from environmental damage. This is detailed in the Welsh Government's principles of implementation paper and NRW's approach paper, both of which can be found here: [Agriculture \(Wales\) Bill 2022 | GOV.WALES](#). The principles of implementation paper outlines how NRW should put in place the new powers arising from the amendments to the Forestry Act 1967. This was explained to the Senedd Committee by the Minister on [5 October 2022](#).

The approach paper is a high-level paper reflecting the non-statutory guidance and NRW's approach to putting the new powers in place. It also sets out how NRW will develop full guidance ready for January 2024. NRW will provide clear guidance for stakeholders providing an understanding of how and when the proposed powers will be used. NRW will also produce internal guidance for all relevant staff to ensure the proposed new powers are utilised consistently, proportionately, and appropriately. Appropriate arrangements will be put in place to ensure functional separation of the relevant roles within NRW.

It is hoped that increasing the fine to a level 5 unlimited fine will have a deterrent effect. It also brings the Forestry Act 1967 in line with other regimes where NRW has a regulatory role e.g. the Wildlife & Countryside Act 1981.

Part 5: Snares and glue traps

NRW does not use snares or glue traps on the Welsh Government Woodland Estate. NRW's general licences do not include the use of snares, so we do not actively permit them.

In some cases, predator control may be a requirement for species management on protected sites and within species conservation projects, although in such cases we do not stipulate the method of control.

Annex 1. Roles and Responsibilities of Natural Resources Wales

- **Adviser:** principal adviser to Welsh Government, and adviser to industry and the wider public and voluntary sector, and communicator about issues relating to the environment and its natural resources
- **Regulator:** protecting people and the environment including marine, forest and waste industries, and prosecuting those who breach the regulations that we are responsible for
- **Designator:** for Sites of Special Scientific Interest – areas of particular value for their wildlife or geology, Areas of Outstanding Natural Beauty (AONBs), and National Parks, as well as declaring National Nature Reserves
- **Responder:** to some 9,000 reported environmental incidents a year as a Category 1 emergency responder
- **Statutory consultee:** to some 9,000 planning applications a year
- **Manager/Operator:** managing seven per cent of Wales' land area including woodlands, National Nature Reserves, water and flood defences, and operating our visitor centres, recreation facilities, hatcheries and a laboratory
- **Partner, Educator and Enabler:** key collaborator with the public, private and voluntary sectors, providing grant aid, and helping a wide range of people use the environment as a learning resource; acting as a catalyst for others' work
- **Evidence gatherer:** monitoring our environment, commissioning and undertaking research, developing our knowledge, and being a public records body