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Llywodraeth Cymru
Welsh Government

Welsh Government

Consultation Document

Agriculture (Wales) White Paper

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

Overview

We are consulting on the legislative framework to support Welsh agriculture and are seeking views on our proposals for:

- future support for agriculture;
- regulatory reform;
- future support for industry and the supply chain;
- forestry and woodland management;
- improving animal health and welfare;
- improving monitoring through the effective use of data and remote technology.

How to respond

You can reply in any of the following ways:

Online

The consultation document can be accessed from the Welsh Government's website at <https://gov.wales/agriculture-wales-bill>

Write to us:

Agriculture (Wales) White Paper
Land Management Reform Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Email us at:

AgricultureWalesWhitePaper@gov.wales

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

Agriculture (Wales) White Paper
Land Management Reform Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Email:

AgricultureWalesWhitePaper@gov.wales

Also available in Welsh at:

<https://llyw.cymru/bil-amaethyddiaeth-cymru>

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The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

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- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:

Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail: Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

Foreword

The United Kingdom's decision to leave the European Union has had far-reaching consequences for us all. For Wales, some of the most visible consequences may arise from changes to farming and farm support.

The results of centuries of farming and woodland management in Wales are visible to all. Our landscapes are largely rural in nature, shaped by farming and one of the principal reasons why tourism thrives in many parts of Wales. These industries also make a significant contribution to the social capital embedded in rural communities. In some cases, farms have been managed by multiple generations of the same family, creating and reinforcing social networks and helping bring cohesion and resilience to their communities. In many parts of Wales, the continued use of the Welsh language by farming communities adds to such cohesion.

Welsh farmers, like others in the EU, have benefited from decades of Common Agriculture Policy funding and a single market protected by an external tariff boundary. This has enabled Welsh agriculture to find and develop markets in other European countries for a range of products. All of this will change once the EU transition period ends on 31 December 2020.

Once the referendum result was known, I acted quickly to establish stakeholder groups to consider what action we could take to ensure agriculture in Wales had a sustainable future. Alongside this, we began working with stakeholders on the process of developing policy proposals for a future support scheme. At the outset of this process we made clear our proposals for future support should be based on the principle of a payment for the production of public goods. Over the last two years, I have published two consultation documents¹ setting out our thinking on a future approach to agriculture policy and support based upon that proposal. Understandably, there was a considerable amount of comment on these proposals. I'm grateful to everyone who took the time to read and respond to these consultations.

The Environment (Wales) Act 2016 and the Well-being of Future Generations (Wales) Act 2015 places a responsibility on the Welsh Government and other public bodies to ensure sustainable development is embedded in our policies. This approach fully informed our previous consultation documents and is at the heart of the proposals in this White Paper.

Some stakeholders have argued for continuity at this time of uncertainty. However, the scale of the challenges that confront us means we need to act decisively to ensure rural communities will continue to thrive in years to come.

Welsh farmers hold a unique position in society, recognised for their role in producing a supply of safe, high quality food. We need to continue supporting farmers to produce food in a sustainable way whilst taking action to respond to the

¹ *Brexit and our Land; Sustainable Farming and our Land*

climate emergency and to help reverse the decline in biodiversity. Together, these are Government's key strategic objectives for agriculture.

Our policy framework, Sustainable Land Management, sets out our ideas on how Government and farmers should work together to deliver these objectives. The analysis of consultation responses from *Sustainable Farming and our Land* highlighted a majority of responses endorsed this policy framework as the way forward. We have therefore adopted the Sustainable Land Management policy framework as the overarching principle for future policy and support to enable current and future generations of farmers to be rewarded for the sustainable production of food and for their contribution to the health and wellbeing of our nation.

I believe, based upon the two consultations and policy analysis we have carried out since the EU referendum, it is entirely possible for farmers to achieve these objectives, largely through changes to current agricultural practice. It is my intention we implement changes in a way that enables farmers to see them as an opportunity, rather than an approach which restricts their freedom to farm.

I want the agricultural sector in Wales to thrive. Innovation and improvements to efficiency will play a part in this, alongside the support we propose providing for the delivery of outcomes. The important point is none of these objectives are mutually exclusive – it is possible to farm sustainably in a way that produces food, addresses climate change and restores biodiversity at the same time.

We intend to provide the necessary advisory and financial support, together with appropriate regulatory reform, to enable changes to take place and to support farmers to continue to deliver against our objectives. For farm businesses we propose a single scheme that will deliver all necessary advice and support. A separate approach is proposed to provide wider ('beyond the farm gate') support for supply chain and agri-food development.

Achieving Wales' 'net zero' ambition will require significant effort across the whole economy and society. For the agricultural sector this will take similar effort and a willingness to change.

Managing the land differently to maintain and restore biodiversity whilst still producing food may mean learning new skills for some but will also mean drawing on the skills and knowledge already within the farming community.

Improving air and water quality where this is currently affected by agriculture is vital for the health of our nation and will also mean farmers learning to manage resources differently in the future.

Of course, many other sectors will also have to change to ensure we can collectively achieve our ambitions for Welsh society. However, agriculture must play its part and it is right to focus in this White Paper on what we expect in return for the support we will provide.

This White Paper and the policy work we have all been involved in represents the Welsh Government's proposals for what may be the biggest changes in agriculture policy for decades. It sets out our intentions for primary legislation and provides the

basis of the Agriculture (Wales) Bill. There will, of course, be much more detail about a future scheme and other matters in the secondary legislation which will follow.

Since the first consultation was published, increasing awareness of the consequences of exiting the EU has led to the development of a changed relationship between those who have an interest in land management and the Welsh Government. We recognise there is no one part of the relationship with the answers to the pressing problems confronting us. We are ready to continue working with farmers to achieve the common goals I have set out. Together, working in partnership, we can ensure a sustainable future for farming for both current and future generations.

A handwritten signature in cursive script that reads "Lesley Griffiths".

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs



Summary

- i) In our consultations, *Brexit and Our Land* and *Sustainable Farming and Our Land*, we set out our ambition to bring forward an Agriculture (Wales) Bill in the Senedd. The Agriculture (Wales) Bill ('the Bill') will be:

“Strategic in scope, setting a support framework which can accommodate the development of agriculture and forestry within Wales for the next fifteen to twenty years².”

- ii) We propose some broad principles for the Bill:
- The proposals within it must support the delivery of Sustainable Land Management (SLM). This policy framework is our response to the legislative framework established by the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016. Our assessment on the ways in which our proposals meet the requirements of both Acts was set out in *Sustainable Farming and our Land*. In future, the implementation and continued delivery of SLM will be the principle goal of agricultural policy and future support for farming in Wales;
 - It must contain measures to address the need for Welsh agriculture to have a sustainable future. Sustainable food production is at the heart of this future, but it is also about supporting changes to farming practice to respond to the climate emergency, the decline of biodiversity and the public health issues associated with emissions from agriculture;
 - It will provide a framework of high-level, enabling powers for Welsh Ministers. This will provide flexibility to adapt and respond quickly and effectively to changing circumstances. Where needed, further details will generally be provided in subordinate legislation and/or guidance which would be the subject of consultation, as appropriate;
 - It will be informed by the best available evidence - including economic, environmental and social - which will be used to assess and fully understand the impact of our proposals to reflect the Welsh context. We will be clear and transparent about our sources of data and our assumptions and we will engage with stakeholders as we develop our evidence base so they have the opportunity to help shape and inform our analysis;
 - It will bring together different pieces of legislation on agriculture, contributing to the ongoing process of consolidating and codifying Welsh

² Oral Statement in the Senedd by Minister for Environment Energy and Rural Affairs, 7 July 2020.

law, with the intention of improving the accessibility of Welsh law in accordance with the requirements of the Legislation (Wales) Act 2019.

- iii) Our policy development and analysis of consultation responses, undertaken from the period immediately after the EU referendum result to the present, has reflected upon the challenges and potential economic consequences of leaving the EU and, latterly, the Covid-19 pandemic. These issues have arisen over the same time period we have declared a climate emergency in Wales and recognised the impact of some agricultural intensification on farmland biodiversity and public health.
- iv) Some stakeholders have sought to retain the status-quo in terms of funding and other support, arguing that the challenges set out above would be exacerbated by changes to support. We do not agree. As we set out in our first consultation, *Brexit and our Land*, the funding provided to farmers through the EU Common Agricultural Policy (CAP) has not equipped the sector to be resilient nor address the environmental challenges confronting us.
- v) Rather, we want to see changes to support that will enable a collective effort to address all of these issues. The proposed changes, set out in this White Paper, will benefit farmers and rural communities by offering a sustainable future for agriculture.
- vi) The adoption of a future policy and support framework based on the implementation and delivery of SLM can respond to these challenges by placing a proper value on the environmental outcomes that farms deliver alongside sustainable food production, to create an economically resilient agriculture sector in Wales for future generations. This offers farmers the best opportunity to build environmental and economic resilience into their farm businesses.
- vii) As we develop our proposals for future support, we are assessing their economic, social and environmental impacts against those generated by current support provided through the Basic Payments Scheme (BPS)³. We are already engaging stakeholders on this analysis which is likely to be completed in 2021.

³ Basic Payment Scheme – The specific element of the EU’s Common Agricultural Policy (CAP) which provides de-linked (from production) income support to farmers. The Basic Payment Scheme will end in Wales as a result of the UK leaving the European Union.

Our Proposals: Part One - Purposes of the Bill

- viii) We want the Bill to create a system which works for Wales, our farmers, our land managers, our rural communities and the wider supply chain and industry. This includes our proposals to:
- Establish a farm support scheme - the proposed *Sustainable Farming Scheme* - to replace current EU schemes. The proposed scheme would address climate change, public health and environmental issues associated with agriculture by implementing SLM. This integrated, whole farm approach would enable the production of sustainable food alongside the delivery of improvements to those social issues;
 - Provide support to those parts of the wider industry and supply chain that also support the continued delivery of SLM;
 - Reduce regulatory complexity by consolidating legislation into one set of National Minimum Standards, supported by a range of advice and guidance to encourage compliance. These Standards will set the regulatory baseline above which the proposed scheme will operate;
 - Improve the way agricultural regulation is enforced by introducing new measures to ensure enforcement action is proportionate to the severity and magnitude of the offence;
 - Improve monitoring through the effective use of data and remote technology;
 - Improve animal health and welfare;
 - Improve regulation and support for forestry and woodland management.

UK Agriculture Act 2020 – impact of the ‘sunset clause’

- ix) We have taken powers for the Welsh Ministers through the Agriculture Act 2020 (‘the UK Act’). The UK Act was introduced to Parliament on 16 January 2020 and became law on 11 November 2020. It provides the Welsh Ministers with powers to enable the continued operation of existing farming support beyond 2020 and to ensure the effective operation of the agricultural sector and agriculture markets following our departure from the EU. Certain powers available to the Welsh Ministers are time limited (in Schedule 5 to the Act and a small number of related provisions).
- x) During the passage of the UK Act, we listened carefully to concerns raised by the Climate Change, Environment and Rural Affairs Committee and the

Legislation, Justice and Constitution Committee. In response we made a number of changes to our approach, most significantly by removing those provisions which would have allowed for transition to new systems of agriculture support and by adding a ‘sunset’ provision to put into legislation our commitment that provisions relating to Wales will expire on 31 December 2024. We also made it clear we would bring forward our proposals in a Bill and confirmed our intention to legislate through the Senedd for any matter on which it has legislative competence. This approach reflects our recognition that future agriculture policy and support will, in the main, be specific to Wales in order to meet our needs.

Our Proposals: Part Two

- xi) In Part Two, we set out our proposals on whether any powers for Welsh Ministers contained in the UK Act (and not subject to the sunset clause) would be helpful in terms of delivering future policy. We continue to consider the extent of these powers, whether they will still be required and if changes or improvement are needed. These proposals will need further detailed development and assessment and will need to be consistent with the Senedd’s legislative competence as set out in the Government of Wales Act 2006. Subject to that ongoing work, we intend to legislate through the Senedd on those provisions which are still needed in the Bill, including:
- Powers taken for the Welsh Ministers through the UK Act which will expire (‘sunset’) on 31 December 2024; and
 - Certain powers relating to Wales through the UK Act which do not expire on 31 December 2024.

Conclusion

- xii) There are at least two important timing considerations for the Bill:
- The ‘sunset’ provision in the UK Act which means current powers expire on 31 December 2024; and
 - The need to bring forward new powers before we are able to begin to transition to proposed new schemes.
- xiii) We therefore intend to introduce the Bill towards the end of the first year of the sixth Senedd (summer 2022).
- xiv) The responses to this White Paper, along with ongoing engagement with stakeholders and the continued development of our evidence base, will be used to inform our long term policy and legislative approach.

Chapter 1. Introduction

- 1.1 This White Paper sets out our ambition to reform the way in which agriculture (including farm woodland management) is supported by Government. Such reform requires a strategic view of the role and purpose of agriculture in Wales, together with an understanding of the broader societal demands and expectations placed upon farmers and land managers by the nation.
- 1.2 We are seeking your views on the key elements of the Bill which will set our policy direction for agriculture in Wales for the next fifteen to twenty years. For this reason, the scope of this White Paper is broader than the need to develop a new support scheme for agriculture, although this development will be the principal tool enabling policy delivery.
- 1.3 We set out in both *Brexit and Our Land* and *Sustainable Farming and Our Land* the issues we considered any future agricultural policy would need to take into account. Where appropriate, we have updated those issues to reflect the current position, before setting out our proposals for addressing them.

European Union Transition and Trade

- 1.4 The United Kingdom's membership of the EU has provided a relatively stable operating environment for agriculture in Wales for decades. Membership has provided many farmers with significant amounts of annual income support and access to a large market for agricultural products protected by an external tariff boundary. Farming and land management practices in Wales have also been governed by a complex framework of European and domestic legislation.
- 1.5 However, as we move towards the end of the transition period following the UK's exit from the EU, considerable uncertainty remains about the details of any future trade deal or whether we will exit on a 'no-deal' basis. This is compounded by the lack of clarity about how either outcome might affect the market for farm products.
- 1.6 The UK Act places a duty on the Secretary of State to lay a report before Parliament in respect of certain new trade deals. The report must consider the measures applicable to trade in agricultural products and will look at the potential implications for the UK's standards in respect of human, animal or plant life or health, animal welfare and the environment. In addition, the UK Government has made commitments that the Trade and Agriculture Commission will move to a statutory footing by provision under the Trade Bill. These developments however do not negate the UK Government's refusal to

put into statute their commitment to maintaining existing high standards of food safety and animal welfare in any new trade deals. This refusal speaks volumes. Food safety and welfare are devolved matters, and we have been clear that we will resist any clauses in the Internal Market Bill which would allow Westminster to start a race to the bottom in terms of standards – a move which would not just impact consumers, but also place farm businesses across Wales at risk as they face international competition from companies willing to forego the standards to which our farmers adhere.

- 1.7 In *Brexit and our Land* we set out the potentially severe consequences of a no deal exit from the EU for some sectors of the agricultural industry in Wales, notably those whose principal product is lamb. Approximately 35% of Welsh lamb is exported from the UK and 90% of that export goes to the EU, supported by frictionless trade within the EU's external tariff boundary. The loss of the EU market in its current tariff-free state could result in domestic over production in the short term with a consequent immediate and significant reduction in price. In the medium term, current beef and dairy producers may see modest price increases as opportunities for import substitution arise which may lead to some structural changes as farmers respond to market opportunities.
- 1.8 Leaving the EU also means the end of the EU CAP and its associated funding for farmers and regulatory framework. Agriculture is a devolved matter. We therefore have an opportunity to create a system which works for Welsh farmers, land managers, rural communities and the wider supply chain and industry. There are a number of important reasons therefore why we must review our current regulatory framework and our approach to future farm support, not least as agricultural policy within the four nations of the UK is already diverging.

Future Trade Deals

- 1.9 As the UK Government embarks upon negotiations to develop trade agreements with countries such as the United States, Australia and New Zealand, there is likely to be pressure to allow agricultural producers increased access to the UK market. Over time, Welsh farmers may therefore see increased price-based competition in their home market. Although farmers in some sectors of the industry may be able to compete on cost terms, for many this may not be the case.
- 1.10 There is of course a potential opportunity for products from Wales to access new markets. However, exporting to markets where the equivalent cost of production is lower will require Welsh produce to compete on a basis other than cost.

Covid-19

- 1.11 In common with all other sectors of the economy, the Covid-19 pandemic has added points of further economic pressure and uncertainty to farming, but in general domestic agricultural markets have exhibited some positive resilience. At the time of writing, the UK is in the initial stages of recovery from a severe economic contraction as a consequence of the measures introduced in response to the pandemic, and effects on individual preferences given perceived risks. UK GDP remains around 9% below its level in February, with GDP from agriculture around 4% lower.
- 1.12 Whilst there has been broad resilience in the production and supply of food to consumers, supported by increased retailer on-line services, there have been some evolving changes in the patterns of consumer demand between food services and home provision, and for specific agri-food products. Agri-food processing businesses have been implementing operational adaptations where necessary to manage Covid-19 risks and, despite some labour-related incidents at specific meat processing plants in the UK, supply does not appear to have been generally affected to this point.
- 1.13 The immediate decline in demand in the food service, catering and hospitality sectors had some initial impacts on the use requirements for some agricultural outputs, and specific policy interventions were implemented in some circumstances. Output in UK food and beverage services has risen significantly in more recent estimates but remains some way below that of February 2020.

Sustainable Food Production

- 1.14 Welsh farmers hold a unique position in society, recognised for their role in producing a supply of safe, high quality food. The agri-food sector also makes a significant contribution to the rural economy, with many jobs dependent on primary production and the wider supply chain.
- 1.15 Whilst the supply chains established by food retailers meant they were largely able to maintain the supply of food, the pandemic has led to an increased focus upon food security and the international nature of some supply chains. There is also likely to be increased focus on the maintenance of supply chains at the end of the EU transition period. Whilst it is not possible for Wales (or the UK) to be self-sufficient in terms of food supply, there is an opportunity to consider how we might shorten the supply chain, improve food security and retain the value of food produced within Wales based on its local and sustainable credentials.

- 1.16 We must therefore continue to support farmers to produce food sustainably, recognising that the competitiveness of farming, food production and improved environmental resilience are complementary agendas. We will continue to support the wider industry and food chain, recognising that a thriving Welsh food and drink industry can create demand for Welsh primary produce. This will be key to enabling Welsh farmers to compete in international markets and putting Welsh food on tables across the world.

Our Rural Communities

- 1.17 The results of centuries of farming and woodland management in Wales are clearly visible. Our scenic and often spectacular landscapes are one of the principal reasons why tourism thrives in many parts of Wales. The agri-food sector also makes a significant contribution to the social capital embedded in rural communities. In some cases, farms have been managed by multiple generations of the same family, creating and reinforcing social networks and helping to bring cohesion and resilience to their communities. In many parts of Wales, the continued use of the Welsh language by farming communities also adds to such cohesion. These important reasons justify our continued support for agriculture, including farm woodland creation and management.

Climate Emergency

- 1.18 Last year, the Welsh Government declared a climate emergency in response to the latest evidence from the Intergovernmental Panel on Climate Change (IPCC). This was intended to send a clear signal the Welsh Government will not allow the process of leaving the EU to distract from the challenge of climate change, which threatens our health, economy, infrastructure and our natural environment.
- 1.19 In 2019, we accepted the UK Committee on Climate Change (UKCCC) recommendation for Wales to increase its 2050 emissions reduction target from 80% to 95%, and declared an ambition to reach net zero. Following further advice from the UKCCC in December 2020, we will ask the Senedd to update Wales's statutory emissions reduction pathway in March 2021. The new targets demand greater effort from all emissions sectors, including agriculture.
- 1.20 Tackling the climate emergency is not an issue which can be left entirely to individuals or to the free market. It requires collective action and the Government has a central role in making collective action possible. In this regard, we welcome the National Farmers Union's ambition of reaching 'net zero' greenhouse gas emissions across the whole of agriculture in England and Wales by 2040.

- 1.21 The agriculture sector is responsible for approximately 13% of total greenhouse gas emissions in Wales (against a 1990 baseline). Although progress has been made in reducing agricultural emissions, this has stalled in the recent past. Tackling climate change and reducing emissions from agriculture will require changes to be made to some currently preferred and firmly established farming practices. There is much work to do in this area and we recognise the need to work in partnership if we are to resolve some of the issues associated with emissions from the land management sector.

Public Health

- 1.22 Emissions from some sectors of agriculture have the potential to have public health impacts if not correctly managed. Ammonia is a gas involved in the formation of PM2.5 particulates directly involved in respiratory disease and premature death in Wales. As part of our drive to improve air quality and reduce ill-health we must address this issue.
- 1.23 The principal source of ammonia in Wales is agriculture. The majority of emissions are from livestock farming with smaller contributions from other arable agriculture. As set out in our *Clean Air Plan for Wales*, the vast majority of farmers take their environmental responsibilities seriously but we will not meet the *National Emissions Ceiling Directive* target for ammonia emission without more improvements. Many of the actions which lower ammonia emissions (such as changes to the storage and spreading of slurry and manures) can also lower those for carbon and reduce costs for farmers implementing them. We will support farmers to make these and other changes.
- 1.24 Ammonia also interferes with ecosystems. It can acidify soils and freshwaters, 'over-fertilising' natural plant communities and freshwater ecosystems, leading to their degradation and biodiversity loss. Our proposed Sustainable Farming Scheme will offer farmers an incentive to do more to address this important issue.

Animal Health Impacts on Public Health

- 1.25 Food producing animals should live in high health production systems, which satisfy their welfare requirements as sentient beings and deliver safe products for human consumption that promote consumer confidence.
- 1.26 Keeping animals healthy also reduces the need to use antibiotics and other medicines to treat disease. That in turn reduces risks of antimicrobial resistance (AMR), which is one of the greatest threats to our society. The

farming of livestock must have infection prevention and control at its core, and the routine use of medicines for production is not sustainable. Reductions in antibiotic use also contribute to improved soil health.

- 1.27 Our approach to Animal Health and Welfare is set out in the *Wales Animal Health and Welfare Framework*⁴ and to AMR control in the *Animal and Environment Antimicrobial Resistance Implementation Plan*⁵. We propose to integrate animal health and welfare objectives into the Sustainable Farming Scheme.

Biodiversity Loss

- 1.28 The impact of some agricultural practices upon biodiversity is widely recognised, including in our refreshed *Nature Recovery Plan*. In particular, many intensive agricultural practices greatly reduce farmland biodiversity through their actions, including the application of biocides and the conversion of habitat to arable use or monocultural grassland. The European Environment Agency's report, *The European Environment – State and Outlook 2020*⁶, points to agricultural intensification in Europe (including the UK) as one of the main causes of ecosystem degradation and biodiversity loss. Closer to home, the most recent *State of Natural Resources Report*⁷ produced by Natural Resources Wales has highlighted continued decline in biodiversity in Wales, including species and habitats associated with enclosed farmland. We are committed to reversing the loss of farmland biodiversity through our proposed scheme.

Improving Animal Health and Welfare

- 1.29 The *Wales Animal Health and Welfare Framework*⁸ sets out our commitment to improving animal health and welfare. To support the delivery of SLM, our farmed animals must be kept in ways that result in them:
- Being healthy and productive, to be part of financially sustainable farming businesses;
 - Having a good quality of life, to meet societal and market expectations for animal welfare;

⁴ <https://gov.wales/animal-health-and-welfare-framework-implementation-plan-2019-2020>

⁵ <https://gov.wales/antimicrobial-resistance-animals-and-environment-implementation-plan>

⁶ <https://www.eea.europa.eu/publications/soer-2020>

⁷ <https://naturalresources.wales/evidence-and-data/research-and-reports/state-of-natural-resources-interim-report-2019/?lang=en>

⁸ <https://gov.wales/sites/default/files/publications/2019-07/animal-health-and-welfare-framework-implementation-plan-2019-2020.pdf>

- Enhancing, and not damaging, the environments in which they live, to be part of biodiverse ecosystems and to minimise the impact on climate change.

1.30 We will ensure the goals and principles of the *Wales Animal Health and Welfare Framework* are integrated into future support proposals.

Our proposals for future support

1.31 In *Sustainable Farming and our Land* we set out how we had built upon the policy analysis on trade and future support developed in our first consultation, *Brexit and our Land*. We described the development of a policy framework (SLM) that met the requirements of domestic legislation, (notably the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016); the pressing need to address climate change associated with land management; and the continuing loss of biodiversity on farmland. We concluded a policy framework that delivered SLM was necessary to meet our legislative requirements and address those issues.

1.32 We must continue to produce food and other products from Welsh land, but the nature of the climate emergency and the rate of biodiversity decline mean that we must act more swiftly and with greater effort than has been the case previously.

1.33 We are clear that we want to maintain our high food safety, animal welfare and environmental standards in Wales, underpinned by a clear regulatory framework. For their own and society's benefit, Welsh farmers will need to continue producing high quality food whilst maintaining high production standards. However, there is increasing evidence that agricultural intensification has adverse impacts upon society through reductions in air and water quality, carbon emissions and reductions in farmland biodiversity. We propose asking Welsh farmers to go further, by adopting an approach that enables sustainable food production from farms which are characterised by having a very low carbon footprint, increased biodiversity and minimised nutrient losses to air and water. Rewarding farmers for achieving these goals through our proposed Sustainable Farming Scheme would help create a sustainable and resilient agriculture sector in Wales for future generations. Our data section sets out how we might evidence the sustainable attributes of food produced from such systems. This would benefit the consumer and farmer alike.

Our proposals for regulatory reform

1.34 Land management practices in Wales have been governed by a framework of European and domestic legislation. In leaving the EU, there are a number of important reasons why we must review our current regulations:

- **Maintaining current standards:** We must ensure we retain appropriate legal standards as we transition out of the EU. Farmers, land managers and consumers are proud of the world leading food production standards in Wales and the UK, as highlighted by a recent NFU campaign⁹. We are committed to maintaining these high standards as we leave the EU;
- **Fulfilling our environmental commitments:** We must all do more to protect our natural resources. We have set out the basis for our adoption of SLM based upon the requirements of Well-being of Future Generations (Wales) Act 2015 and Environment Act (Wales) 2016. We want to ensure our regulations reflect these commitments;
- **Improving the experience of regulation:** Continued regulation is important to protect the environment upon which we all depend, to maintain Welsh standards and to facilitate trade. The Public Health Wales *Supporting Farming Communities at Times of Uncertainty* Report¹⁰ cites understanding and complying with regulation as a key challenge to maintaining good mental health and well-being of farmers and recommends we revisit the progress made following the *Working Smarter 2011*¹¹ Report;
- **Ensuring enforcement is proportionate:** It is important regulation is applied equally to all farmers and land managers in Wales and is enforced proportionately depending on the severity of the offence. Currently, farmers in receipt of EU CAP payments are sanctioned for a failure to meet the requirements of Cross Compliance¹² through reductions to their

⁹ <https://www.campaigns.nfuonline.com/page/56262/petition/1>

¹⁰ <https://phw.nhs.wales/news/farmers-health-and-wellbeing-needs-to-be-at-the-centre-of-brexit-response-new-report/>

¹¹ <https://gov.wales/written-statement-welsh-government-response-working-smarter-report-recommendations-welsh-government>

¹² Cross Compliance refers to the regulatory baseline requirements all farmers must meet to receive Common Agricultural Policy (CAP) payments (including Basic Payment Scheme (BPS) or Rural Development support) in Wales. It lays the foundation upon which Welsh farmers can produce food and provides an important mechanism to protect and safeguard the Welsh countryside. Cross Compliance requirements are listed at Annex II to Regulation 1306/2013 and consist of Statutory Management Requirements (SMRs) and Good Agricultural and Environmental Condition (GAECs). SMRs are EU legislative standards relating to the environment, food safety, animal and plant health, and animal welfare. GAECs are standards consistent with keeping land in Good Agricultural and Environmental Condition.

payments. In contrast, enforcement against those who are not part of EU CAP funded schemes relies on criminal sanctions enforced through the courts, which are not appropriate to all levels of offences. We must address this and ensure enforcement can be applied proportionately to all farmers and land managers.

- 1.35 Within this White Paper, we have made several proposals for the regulatory reform of agriculture in Wales, including the monitoring and enforcement of compliance.
- 1.36 As described within Section 5 on data sharing, we intend to improve the monitoring of regulatory compliance by facilitating a more risk-based approach to inspection and the use of remote technology to better target farm visits.
- 1.37 We aim to encourage regulatory compliance as much as possible through clear advice and guidance. However, it is important we can deter and enforce non-compliance proportionately and consistently by ensuring regulators can use an appropriate sanction for the offence. Within Section 2, we have detailed our proposals to introduce primary powers for a range of civil sanctions.
- 1.38 In particular, this reform applies to the following initial regulatory proposals:
- The development of a set of National Minimum Standards to provide a clear regulatory baseline which will apply to all farmers in Wales;
 - Improvements to animal health and welfare;
 - Regulation of forestry and woodland management.
- 1.39 The above regulations will involve individual consultation as part of the development of secondary legislation.
- 1.40 The National Minimum Standards are intended to come into force at the same time as the proposed Sustainable Farming Scheme. As described in Section 2, the proposals for enforcement of agricultural regulation are separate from sanctions for the Sustainable Farming Scheme. Detailed consideration will be needed on the scope and application of civil sanctions and how these interact with scheme requirements. We will also need to consider how the timescales

for the introduction of the National Minimum Standards fit alongside the transition period to the new Scheme.

Summary

- 1.41 The delivery of SLM will enable us to address our strategic objectives for agriculture in Wales. Derived from the legal framework created by the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016, the proposals in this White Paper will result in some visible changes at a landscape scale in Wales. These changes will include increased woodland cover, an increase in arable and horticultural production together with increased farm and landscape-scale habitat resilience. They will also result in changes to the way agriculture will operate, with shorter supply chains, a new emphasis on localism and better data management. Farms will have a sustainable, long term business model, taking advantage of market demand to produce the food desired by consumers but in a way that maintains delivery of the other outcomes for which the Welsh Government will provide financial support. Less visibly, farms will significantly reduce their carbon footprint as well as contributing to improved public health through the delivery of better air and water quality.

Chapter 2. Our Proposals Part 1: Regulatory Reform, Future Policy and Support for Sustainable Land Management

Section 1

National Minimum Standards: Keeping, clarifying and applying our regulations

Summary

- 2.1 We propose to include powers within the Bill enabling the Welsh Ministers to create National Minimum Standards for agriculture. After the Bill receives Royal Assent, we propose to consolidate the existing legislation which currently underpins the Cross Compliance requirements into secondary legislation with limited modifications and additions where necessary. Further, more detailed, consultation on the scope of the National Minimum Standards will accompany this secondary legislation. We will ensure powers are broad enough to future-proof the National Minimum Standards and to ensure there are adequate powers of inspection for regulators to monitor compliance.

Case for Change

- 2.2 Current agricultural regulations related to land management are dispersed across numerous legislative instruments, introduced at different times to address different issues by a combination of the Senedd, the UK Government and the EU. This can make it difficult to understand the regulations with which all farmers must comply. Respondents to *Sustainable Farming and Our Land* agreed the existing regulatory environment was overly complex and felt the regulatory framework should be simplified and streamlined.
- 2.3 Cross Compliance requirements are made up of Statutory Management Requirements (SMRs) and Good Agricultural and Environmental Conditions (GAECs). Currently, approximately 16,400 farmers in Wales are claimants of CAP funded schemes and therefore must comply with the Cross Compliance requirements.
- 2.4 The vast majority of Cross Compliance standards are also included within Welsh domestic legislation. This means all farmers must comply with these standards, regardless of whether they are CAP claimants. However, farmers who are not part of CAP funded schemes may be less aware of these legal requirements.

Our Proposals

- 2.5 We want to retain and clarify the existing standards we have in place. To resolve the current regulatory complexity, we propose to bring together agricultural legislation into a set of National Minimum Standards, clarifying and consolidating agricultural regulations into one piece of legislation.
- 2.6 Developing a set of National Minimum Standards would provide a clear regulatory baseline for all farmers in Wales. This would also allow agricultural regulation to be monitored and enforced consistently, facilitating a level playing field across Wales for all businesses managing agricultural land.
- 2.7 We propose the National Minimum Standards would initially be based on the existing legislation which underpins Cross Compliance requirements. This would maintain the existing legal requirements we already have in place. As mentioned above, all SMRs and most GAECs are already reflected in domestic legislation. Therefore, we are not proposing to significantly change the current legal requirements, but to consolidate what is already in law into one place. As described in Section 2, the National Minimum Standards are proposed to have a new proportionate enforcement regime which will be subject to further consultation. We do not propose to carry over the current system of BPS penalties for a failure to meet the requirements of Cross Compliance. However, as described in Section 3, given regulatory compliance is required for the proposed new Sustainable Farming Scheme, failure to comply with regulation may put scheme payments at risk. We will consider and consult on this further as part of our detailed scheme design.
- 2.8 When developing the National Minimum Standards, we would need to involve stakeholders in careful consideration of any discrepancies which exist between the Cross Compliance requirements and domestic legislation. For example, there are variations between the requirements for the maintenance of landscape features in GAEC 7 and the domestic legislation covering habitat protection and hedgerows which will need to be addressed in the National Minimum Standards. We propose GAEC 4 and 5, which require farmers to maintain minimum soil cover as well as to minimise soil erosion and compaction, should be included into the National Minimum Standards. Without doing this, there would be no statutory regulations protecting soil in Wales.
- 2.9 Farmers who are BPS claimants are already used to complying with SMRs and GAECs under the Cross Compliance requirements, including those around soils. Therefore, this is not a new change in practice for the majority and would clarify the legal requirements for all farmers.
- 2.10 The National Minimum Standards would contain technical details relating to farming and land management practices which would need to be amended more often than typical for primary legislation, in order to respond to changing circumstances over time. Therefore, we believe the most appropriate way to ensure we have the flexibility to make these amendments is to give the Welsh

Ministers powers to create these standards in secondary legislation. There are a number of reasons we believe flexibility will be important, including to:

- Respond to changes and fulfil our existing or future statutory and international obligations on climate change and the environment in Wales;
- Respond to changes in agricultural practices;
- Tackle new and emerging issues, such as disease risks and outbreaks;
- Maintain appropriate standards to enable trade with the EU and rest of the world;
- Respond to any new legislative developments and further consolidation of existing legislation;
- Respond to any significant changes to the proposed Sustainable Farming Scheme.

2.11 In the longer term, it may be appropriate to consider further consolidation of other existing agricultural legislation under the National Minimum Standards. For example, if the decision is made to make the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2020, these are likely to come into force prior to the National Minimum Standards. We would propose that these regulations would be consolidated into the National Minimum Standards as these are designed to tackle agricultural pollution in a way which also fulfils our obligations under the Nitrates Directive, and will form part of the standards for Cross Compliance.

2.12 Within this White Paper there are also proposals for new areas of agricultural regulations. We may seek to incorporate some or all of these into the proposed Standards in the future. We would consult stakeholders on any such proposals.

2.13 In addition to existing legislation and the legislation in place at the time of the initial consolidation of the National Minimum Standards, new agricultural legislation is likely to be proposed in the future, following public consultation, with regards to farming practices and animal health and welfare to meet our domestic and international obligations on environment and climate change. In order to future-proof the National Minimum Standards, we will need the powers within the Bill to be sufficiently broad to incorporate such legislation.

2.14 Under the new framework, regulators will need to have adequate powers to carry out their regulatory duties. We want to retain current statutory powers of regulators to inspect all farmers and land managers and apply these powers to monitor the new National Minimum Standards.

2.15 We will need to consider how regulators should monitor compliance (proactive and reactive) with the National Minimum Standards consistently across

claimants and non-claimants in Wales. We will also need to review whether it would be appropriate to set inspection rates, requiring regulators to undertake a certain number of inspections each year. However, further detailed consideration and consultation around this would be needed, including reviewing regulatory resource requirements. We have included proposals to improve the monitoring of regulation within Section 5 of this White Paper.

Advice and Guidance

2.16 Providing appropriate and accessible advice and guidance would be important to supporting regulatory reform and to aid the agricultural industry in achieving the environmental outcomes intended through regulation. Advice and guidance would be necessary in order to raise understanding of the following:

- **The legal requirements all farmers must comply with.** In a similar way to our approach to consolidating regulation under the National Minimum Standards, we believe this should be supported by consolidated and comprehensive guidance, tailored for farmers, clearly explaining the actions they must take in order to comply with regulations;
- **The expectations for monitoring compliance.** Making improvements to the way farmers are monitored could change the way they communicate and engage with regulators. It is important these are included in guidance to ensure farmers have a realistic expectation of what will be asked of them by regulators for monitoring purposes;
- **The enforcement mechanisms, such as criminal or civil sanctions, which would be used for instances of non-compliance.** With the introduction of new enforcement mechanisms, it is important farmers and land managers are fully aware of the type of sanction they could expect to receive for non-compliance and the process of administering those sanctions, including how they are able to appeal against a sanction.

2.17 We believe a clear understanding of the above should help alleviate some of the negative effects of regulation on farmers. Therefore, it is important we spend time developing user friendly advice and guidance in consultation with stakeholders. We are seeking views on the further considerations needed, including:

- What form this guidance should take (such as handbooks, online resources, training etc.);
- Who should be responsible for developing and providing this guidance;
- The scope of this guidance (for example if it should only include the regulatory requirement, or advice on best practice as well);

- The role of farm advisory services in supporting farmers.

Consultation Questions

- 1 What are your views on:
 - (a) The proposed approach to the creation of the National Minimum Standards?
 - (b) The need for flexibility to amend the National Minimum Standards where necessary? Are there any further considerations which are needed?

Please provide comments to support your view e.g. potential benefits and impacts.

- 2 What are your views on:
 - (a) How advice and guidance can effectively support farmers to understand the National Minimum Standards; and
 - (b) The further considerations needed for advice and guidance? For example, what form guidance should take, who should provide it, the scope of guidance and how farm advisory services may support farmers.

Please provide comments to support your view, e.g. potential benefits and impacts associated with the considerations.

Section 2

Civil Sanctions: An effective and proportionate approach to enforcement

Summary

- 2.18 In *Sustainable Farming and our Land*, we outlined the need for enforcement to be proportionate and we were encouraged to see respondents agreed with this approach. We feel the best way to achieve these goals is to ensure regulators have the ability to use a broad range of sanctions to enforce compliance. We propose the Bill contain provisions enabling Welsh Ministers to enact a civil sanctions regime as part of a regulatory enforcement regime. This will ensure regulators are able to apply a proportionate sanction for non-compliance, regardless of whether a farmer or land manager is a scheme claimant. We propose the exact nature of these sanctions will be set out in secondary legislation.
- 2.19 We believe enforcement should be proportionate to the severity of the non-compliance and the environmental and societal harm caused or the potential for harm. This would vary depending on the offence, severity and magnitude of non-compliance. We want to avoid the criminalisation of farmers and land managers wherever possible by using alternative sanctions which are more appropriate for less serious offences. However, we also need to ensure enforcement mechanisms deter those who continue not to comply with regulations.
- 2.20 As described earlier, we propose primary powers for civil sanctions should be available to enforce the following areas of agricultural regulation described in this White Paper:
- National Minimum Standards;
 - Animal health and welfare regulation;
 - Forestry and woodland management regulation.

Case for Change

- 2.21 The majority of agricultural regulations are currently enforced through the following mechanisms:
- **Reductions in CAP payments**, where a farmer or land manager, who is a beneficiary of EU CAP funded schemes, has failed to comply with the Cross Compliance requirements;

- **Criminal sanctions**, which apply to all farmers and land managers;
 - **Civil sanctions**, Natural Resources Wales has the power to use civil sanctions for offences relating to waste, water and invasive non-native species, a small number of which apply to agriculture.
- 2.22 Financial penalties applied through EU CAP funded schemes, such as BPS, are the most commonly used enforcement mechanism, due to the numbers of farmers and land managers who are CAP beneficiaries. These financial penalties have shown to be an effective way of deterring non-compliance.
- 2.23 A good illustration of this can be seen from the introduction of financial penalties for overdue Bovine Tuberculosis (TB) tests in 2015. Testing is important for supporting eradication of the disease in livestock. Since this time, the number of overdue tests reduced significantly from 1,755 in 2014, to 486 within a year of its introduction. This reduction has been maintained in subsequent years between 2015 and 2019.
- 2.24 We however recognise that BPS penalties are not always viewed as proportionate to the non-compliance. Such penalties can be applied for errors in administrative submissions for BPS claims which would not be applicable for regulatory compliance. Additionally, for farmers who are not EU CAP beneficiaries, regulators can issue cautions/warnings in some cases, but then rely solely on criminal sanctions to enforce most regulations. This predominantly involves financial penalties and a criminal record, with incarceration reserved for the most serious offences. Criminal sanctions can be effective for deterring non-compliance and penalising serious offences; however regulators do not have the range of enforcement mechanisms available for less serious offences. Criminal prosecutions are resource intensive and are a lengthy process for all involved. There are lessons that can be learnt therefore from the way BPS penalties and criminal sanctions are currently issued to ensure a new enforcement regime is fair and proportionate.
- 2.25 Due to the limited range of enforcement options available to regulators it is sometimes difficult to reach the right balance between punishment and deterring future non-compliance. This is considered to be particularly relevant when dealing with offences that fall somewhere between a minor and serious offence. The enforcement gap means lower level offences may not always be immediately addressed leading to potential for issues to escalate and cause more damage.

Our Proposals

- 2.26 We want to retain criminal sanctions in order to effectively enforce and deter serious and repeat offences.
- 2.27 We believe civil sanctions offer effective and proportionate enforcement for less serious offences. These are already commonly used by regulators to enforce environmental law within the UK.
- 2.28 Natural Resources Wales does not have powers to administer civil sanctions for the same breadth of offences as the Environment Agency. Natural Resources Wales has previously highlighted to us the advantages of a civil sanction approach.
- 2.29 Within the Bill, we propose to include a suite of civil sanctions, ranging from notices to monetary penalties, which can be applied across the National Minimum Standards and in other areas such as animal welfare and the licensing of tree felling. The type of civil sanctions would be broadly based upon those currently used by Natural Resources Wales and Environmental Regulators in England, as outlined in the Regulatory Enforcement and Sanctions Act 2008.
- 2.30 We intend to take learning from the current penalty systems in the creation of a new enforcement regime. The BPS will be replaced in its entirety by the proposed Sustainable Farming Scheme. Civil sanctions are not intended to be a direct replacement for BPS penalties and will be separate from sanctions for the new Sustainable Farming Scheme. Detailed consideration and consultation will be needed on the scope and application of civil sanctions and how these interact with scheme requirements. These civil sanctions could include:
- **Compliance Notices:** Where a farmer or land manager is non-compliant with the regulations, a compliance notice can be issued outlining the steps they must take to come back into compliance;
 - **Restoration Notices:** Where an offence has damaged the environment or animal/human health in a way which could be reversed, a restoration notice would outline the way in which a farmer or land manager would remedy the damage created;
 - **Stop Notices:** Where an activity risks damage to the environment or animal/human health, a stop notice can be issued to stop the activity until a full assessment of the risk has been undertaken;
 - **Fixed Monetary Penalties (FMP):** Where low level offences are known to be detrimental to the environment, animal health and welfare or public health, a monetary value could be applied to these offences based on the environmental and societal harm likely to be caused;

- **Variable Monetary Penalties (VMP):** The value of a VMP would be calculated specifically for an individual offence, with the aim of reversing any financial benefit gained through the offence and compensate for the severity of environmental/animal welfare/societal harm caused. This would allow regulators to attribute penalties of different monetary values for different offences, based on factors such the magnitude of the non-compliance;
 - **Enforcement Undertaking (EUT):** A EUT is a legally binding agreement where the farmer or land manager can offer to restore the damage made to the environment or undertake an action which will secure equivalent benefit or improvement.
- 2.31 Giving regulators the ability to use these civil sanctions as an alternative to criminal sanctions will provide the flexibility to apply a proportionate and effective sanction depending on the severity and magnitude of each individual offence.

How enforcement would work

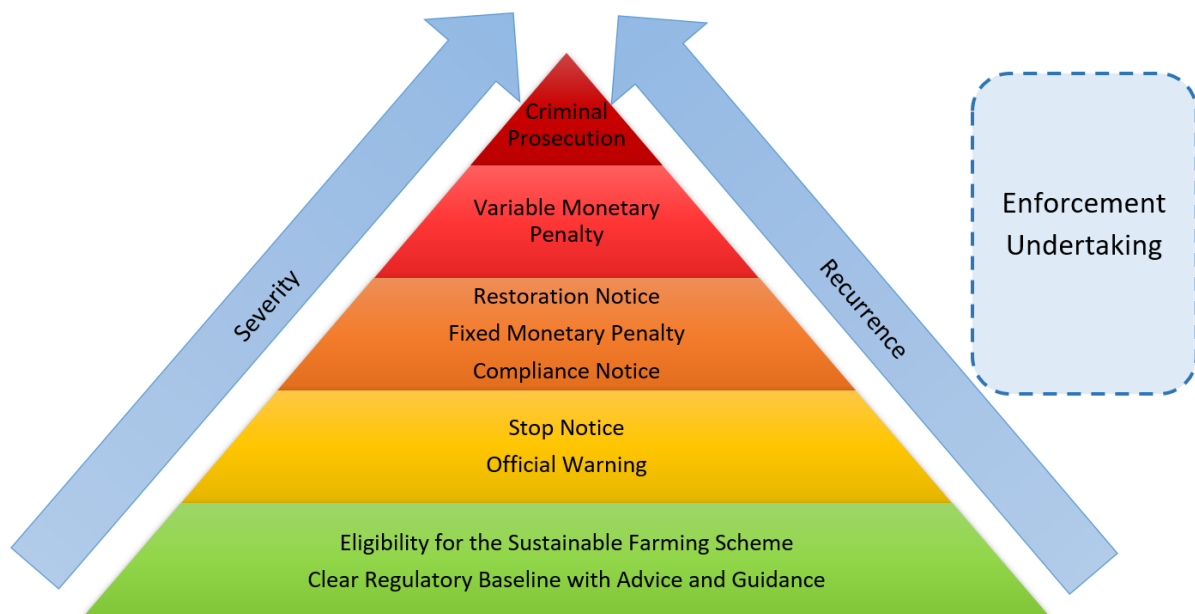
- 2.32 Where appropriate, regulators could issue warnings, notices or monetary penalties for lower level offences, with the main aim of ensuring a farmer or land manager either stops undertaking a prohibited activity, and/or restores the damage caused through non-compliance.
- 2.33 If a farmer or land manager continued the offence, or demonstrated a pattern of non-compliance and negligence towards regulation, more significant monetary penalties could be appropriate. In some cases, however, issuing a compliance or restoration notice could be seen as more severe than a fixed monetary penalty, as the cost of taking action to restore damage caused or to return to compliance could be higher than the cost of a monetary penalty, and could therefore act as a greater deterrent.
- 2.34 An alternative approach to issuing a monetary penalty or criminal prosecution, would be for a regulator to be able to accept an EUT from a farmer or land manager. This is a legally binding agreement which replaces the civil or criminal sanction originally issued by the regulator. However, regulators are not able to require or ask farmers and land managers to offer an EUT. It must be offered by the farmer or land manager on their own accord. Regulators do not have to accept an EUT, if they do not believe this is the best option to promote desirable outcomes or positive behaviour change.
- 2.35 In offering an EUT, a farmer or land manager must make an offer to a regulator to carry out works or other measures which will restore any damage to the environment. This would be paid for by the farmer or land manager. Where it is not possible to restore the damage, the measures can take the form of action which will secure equivalent benefit or improvement to the environment. This can consist of a donation to an environmental cause. EUTs

are widely regarded by regulators and offenders as one of the most effective enforcement mechanisms. Whilst it is ultimately up to the regulator to accept or reject the EUT, a farmer and land manager has more autonomy in an EUT process, rather than having to follow an order from a regulator or court. In addition, any donations offered as part of an EUT are used to benefit the local or wider environment.

2.36 However, for the civil sanctions described above, it will be important to ensure all penalties effectively deter non-compliance. For the most serious offences, where severe harm has been caused, criminal prosecution will still be required. In some cases, where advice, guidance and civil sanctions have proved ineffective in promoting positive behaviour change, prosecution may be the only option to enforce repeated offences.

2.37 The proposed approach to enforcement is illustrated in Figure 1.

Figure 1: Proposed enforcement mechanisms



2.38 The following two examples also describe how these sanctions could be used to enforce particular regulations in practice:

Example 1: Environmental Impact Assessments (EIA)

2.39 A farmer or land manager who has carried out agricultural improvement works, or is in the process of doing so on uncultivated or semi-natural grassland without EIA consent would, in some circumstances, be issued with a legally binding Stop Notice to prevent further activity taking place. Following the necessary ecological assessments, the regulator would then determine if

the land is of significant ecological value and should be retained under the Environmental Impact Assessments (Agriculture) (Wales) Regulations 2017. If the land in question were deemed to be of significant ecological value, it would be proportionate to issue a variable monetary penalty calculated on the severity of the environmental damage caused and any income gained. However, the farmer or land manager would also have the freedom to propose an EUT in place of the variable monetary penalty, outlining how they would restore the damage to the environment. The regulator would be able to make an assessment of which mechanism would most appropriately address the non-compliance.

Example 2: TB Controls

2.40 If a farmer or land manager is overdue for TB testing, it would not be proportionate to criminalise them. However, we would want to ensure there is an effective deterrent for non-compliance. Financial penalties under Cross Compliance have proved to be effective in improving compliance with TB testing for claimants of CAP funded schemes. A similar approach using civil sanctions would retain this deterrent and allow for a fair enforcement procedure applicable to all farmers including those who are non-claimants. This approach would need to be supported by ensuring farmers are clear about what they need to do to comply, such as the dates TB testing must take place, and the consequence for non-compliance. Where non-compliance does occur, we believe it would be proportionate to issue a monetary penalty, such as a fixed or variable monetary penalty.

Further considerations for enforcement

2.41 Whilst we have outlined the broad principles for the use of civil sanctions, further consideration will be needed. Proposals will need to be developed in collaboration with farmers, land managers and regulators. These considerations include, but are not limited to the following:

- A transition period for the introduction of civil sanctions;
- How we distinguish between first and repeat offences, size of business and amount of harm caused when administering sanctions;
- Some activities are already prohibited under existing regulation. We need to consider whether it would be appropriate to prohibit other activities which are known to be detrimental or have the potential for harm to the environment and animal health and welfare, under the proposed regulations;
- How we can ensure the monetary value of a penalty is proportionate, whilst also ensuring it effectively deters non-compliance;

- Any adjustments needed to improve the effective administration of civil sanctions;
- How we can ensure there is an appropriate and proportionate appeals process based on the principles of independence from the regulator and Government and on consistency and fairness of approach to civil sanctions. The appeals process would also require expertise based on the subject matter;
- How we ensure the different enforcement mechanisms are applied consistently by regulators;
- How consequences of non-compliance can be clearly communicated to farmers and land managers.

2.42 Providing regulators with the flexibility to use civil sanctions, as well as the existing criminal sanctions, will allow regulators to apply a proportionate sanction to each individual case. This would avoid criminalisation where possible, but ensure criminal sanctions can be retained as a last resort for severe or repeat offences. These new sanctions are intended to be more outcome-focussed, providing more options for a proportionate response to an offence whilst also being more efficient to administer.

2.43 We will need to ensure enforcement of the proposed regulations is applied consistently to all farmers, regardless of whether they are scheme claimants. It will be important farmers and land managers understand how the law and the scheme fit together. We set out our thinking on this further in Section 3.

Consultation Question

- 3 What are your views on the proposals for civil sanctions to enable proportionate enforcement of regulations? Are there any further considerations which are needed?

Please provide comments to support your view, e.g. potential benefits and impacts associated with the considerations.

Section 3

Sustainable Land Management: Future Policy and Support

Summary

- 2.44 Since the Second World War, successive governments have provided support for policies that have increased agricultural production and provided affordable food. These policies have resulted in increased levels of production per hectare for many, but this increase in production has come at a wider societal cost. The impacts of some intensification practices on farmland biodiversity, air and water quality, public health and the climate are increasingly recognised as issues that must be urgently addressed.
- 2.45 Consequently, the agriculture sector is on the front line of the climate and ecological emergency. Together with the much more challenging trading environment the UK will find itself in after the transition period, these challenges require a new approach to support which links it directly to the delivery of change.
- 2.46 The scale of the economic and environmental challenges confronting us, together with the need to act urgently, means that maintaining the status quo for agriculture in Wales is no longer an option. We must act urgently to align future agricultural policy and support with the policy framework based on SLM set out in *Sustainable Farming and our Land*, enabling us to collectively respond to these challenges.
- 2.47 SLM has the potential to produce a range of benefits -economic, environmental and social - to farm businesses, the wider agricultural sector and the public. This approach and the policy framework drew wide support from consultees. Bringing forward a Bill in the next Senedd session will enable us to change support in a way that will offer farmers and rural communities a sustainable future.
- 2.48 We propose the Bill should contain provisions establishing SLM as the overarching principle for future agricultural policy, including future support. This will improve farm business resilience by providing an income stream not tied to the markets for agricultural products. It will also offer a way of making Welsh agricultural products unique in the marketplace (through demonstrating evidenced sustainability) and should reduce farm business' reliance on external inputs (and therefore costs) through a focus a circular economy approach to resource management.
- 2.49 We recognise support can take many forms including; the provision of an income stream, investment in infrastructure, advice, skills development and training, research, and market development. We propose to replace the BPS and other EU agri-environment schemes with a single direct support scheme (the Sustainable Farming Scheme) for farming. This proposed scheme will

provide advice and support for farmers and farm businesses. Separate funding is proposed for wider industry and supply chain development beyond the farm gate. This is described in Section 4.

- 2.50 This scheme should reward farmers appropriately for the production of non-market goods (improved soils, clean air, clean water, improved biodiversity, actions to reduce global warming) at levels above those set by regulation through the management of land in a sustainable way. We recognise that sustainability also has an important economic component, and as such we will offer business improvement advice and support to enable farmers to take advantage of new markets and diversification opportunities within the context set by SLM. We want farmers to recognise these scheme proposals as a way of improving the resilience of their enterprise.
- 2.51 Our purpose in providing this future support is to implement SLM in order to create a sustainable agriculture sector in Wales for future generations. Achieving this objective will do much to ensure the long-term economic resilience of the sector and enable farming to play its part in delivering the wider outcomes described above.

Sustainable Land Management

- 2.52 In *Sustainable Farming and Our Land* we defined SLM as:

“The use of land resources, including soils, water, animals and plants, for the production of goods to meet changing human needs, while simultaneously ensuring the long-term potential of these resources and the maintenance and enhancement of their environmental benefits”.

- 2.53 This policy approach will ensure the economic, environmental and social outcomes from land management practice can be delivered for the long-term benefit of the people of Wales. This reflects the obligations placed upon the Welsh Ministers and public bodies set out in the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016. Further details on the ways in which our proposals are consistent with both Acts were set out in *Sustainable Farming and Our Land*.
- 2.54 This holistic approach to future support and policy encourages the production of goods (food and timber for example) in a way that does not adversely impact upon the environment and the resources used to produce those goods. Furthermore, if the way in which those goods are produced actually increases the amount of those resources it is only right that farmers should be paid for that enhancement. In this way we can all continue to benefit from the products arising from farming as well as improvements to the environment in which we all live, whilst farmers benefit from selling their goods and being paid for producing them in a way that is sustainable.
- 2.55 We want farm businesses to be increasingly resilient and viable, enabling them to compete in a changing world. This means that farm businesses

should adopt SLM (supported by advice and funding) to improve the efficiency of their business model whilst operating within the natural capabilities of their land, reducing their reliance on external inputs and accessing the financial support we provide for the delivery of environmental outcomes.

- 2.56 We have concluded that our adoption of SLM and its delivery as the goal of future agricultural policy and support will enable us collectively to respond to these challenges. All future agricultural support (financial and advisory) provided by the Welsh Government must enable the purposeful delivery of SLM.
- 2.57 In *Brexit and our Land* we set out proposals for two schemes – one which supported business improvement and one providing support for environmental improvement. Stakeholders did not support this approach, but instead advocated the development of a single scheme in which both economic resilience and public goods were included.
- 2.58 As a result, *Sustainable Farming and Our Land* set out our plans for a productive, sustainable farming sector, supporting farmers to provide wider social outcomes from land management through and alongside the provision of high quality produce made to high environmental, and animal health and welfare standards.
- 2.59 The application of SLM has the potential to produce a range of benefits to farms, the wider agricultural sector, the public and the environment.
- 2.60 To realise these benefits, we propose replacing the BPS and EU agri-environment support schemes with the Sustainable Farming Scheme (SFS). The SFS will be a business improvement programme, increasing long-term farm business resilience by rewarding farmers for the delivery of societal outcomes alongside, and as a consequence of, food production. This new income stream will not be market dependent and should increase the farm's ability to manage in a future, potentially more volatile, market environment. The SFS should reward farmers appropriately for the production of outcomes (healthier soils, clean air, clean water, improved biodiversity, actions to reduce global warming) at levels above those set by regulation, through and alongside the production of food in a sustainable way. We will need to consider the different opportunities for the delivery of these outcomes on each farm as it enters the scheme. This work will define the actions needed to deliver sustainability for that farm business. This is why we set out the need for detailed advice and support for each farm entering the scheme (the Farm Sustainability Review) in our previous consultation. We consider that this initial review is so important to future success that it must be a mandatory part of entry into the scheme.
- 2.61 Implementation of SLM through the proposed SFS will enable sustainable agricultural production in a way that simultaneously generates the environmental outcomes we need from land management. We expect these outcomes can be delivered by a combination of changes to farming practice,

infrastructure improvement and some changes to current land use. We will also look at improving resource efficiency by providing support for the wider industry and downstream supply chain connected to primary production, so long as this support does not undermine SLM delivery at farm level.

- 2.62 We believe it is in everyone's interest for the Welsh Government to incentivise farmers to produce these goods on behalf of society. Our proposals to reward farmers and land managers are therefore based on providing a payment around outcomes which are not currently rewarded by the market. This reflects the economic contract approach we have set out in our Economic Action Plan.
- 2.63 The SFS is intended to reward farmers for the delivery of outcomes rather than compensate them for the cost of their inputs. This will offer farmers an income stream not subject to market volatility and whose outcomes cannot be substituted by imports. We propose moving away from traditional agri-environment schemes which paid farmers on the basis of compensation for income foregone and additional costs incurred. We want farmers to regard their input costs to meet the requirements of the scheme as an investment in order to reap the reward of continued payments for the outcomes they deliver. As part of our economic analysis work we will be undertaking cost-benefit analysis to ascertain the best way to incentivise farmers to do the additional work required to deliver the outcomes we seek. We plan to further develop the option or options that demonstrate the greatest cost/benefit ratio as part of the proposed scheme design.
- 2.64 Protecting the environmental, and other, outcomes that farmers and wider society depend upon - improved soils, clean water, clean air and a resilient environment with increasing biodiversity - will also enable future generations of farmers to continue managing their land. Our proposals also enable the agriculture sector to decarbonise and take action to increase the size of Wales' carbon sink in support of our 'net zero by 2050' ambition.
- 2.65 We recognise the coming years will be challenging for farmers. Within the policy framework and proposed scheme described above we will also offer business improvement advice and support to enable farmers to take advantage of new markets and diversification opportunities consistent with SLM. We will seek to enable farms to become sustainably productive, with farmers making the best use of their natural resources and improving the efficiency of that sustainable production within the bounds of the SLM framework.
- 2.66 Demonstrating this sustainability through effective monitoring and evaluation will provide the competitive advantage for Welsh agriculture needed in response to the likely scale of change resulting from Brexit and future trade deals. Demonstrating the sustainable origins of food produced here in Wales will enable us to develop a clear brand and marketplace for Welsh produce.

- 2.67 We propose developing processes to ensure initial farm sustainability assessments, scheme monitoring and reporting provide the necessary evidence to demonstrate the sustainability of farm products from farms within the scheme. We propose establishing long term targets for each outcome and developing a monitoring and evaluation approach that will establish the amount of each outcome delivered each year, where necessary developing credible proxy measures in order to do so. This approach would enable us to continuously refine and develop our policies during implementation, as well as enabling reporting to the Senedd on outcome delivery.
- 2.68 The cultural importance of landscapes and archaeological or historical features adds another layer of meaning to the definition and implementation of SLM. Although landscape change is inevitable over time through natural processes, change brought about by SLM practices should not undermine the cultural value derived from individual features or the context provided by their surrounding landscape.
- 2.69 It will be important for farmers and land managers to understand how the proposed regulatory reform and the scheme fit together. We would expect all farmers who apply for the scheme to comply with the law and continued compliance would be essential in order to justify continued payments for environmental outcomes. We will need to ensure enforcement of the law is applied consistently to all farmers, regardless of whether they are scheme beneficiaries or not, but we will also need to carefully consider how payments may be affected if farmers fail to comply with the National Minimum Standards at any point during the period of scheme membership. We will consider this further as part of our detailed scheme design and consult at a later stage.

Our Proposals

- 2.70 To make provision in the Bill establishing SLM as the overarching principle for future agricultural policy, including future support.
- 2.71 To provide the Welsh Ministers with the powers to establish, administer and close a scheme or schemes which enable and support the delivery of SLM. In all cases, support will be provided to deliver additionality i.e. outcomes beyond that which could reasonably be expected to be delivered through current regulation alone.
- 2.72 To place a duty on the Welsh Ministers to make an annual statement to the Senedd on the budget for direct agricultural support. The statement should include an estimate of the outcomes to be delivered in that year together with a target for the amount of delivery for each outcome.
- 2.73 To place a duty on the Welsh Ministers to report annually to the Senedd on the impact of the total expenditure incurred in terms of direct farming support.
- 2.74 To provide the Welsh Ministers with the powers to fund the following purposes in support of the delivery of SLM:

- To enable and support the development of long-term farm business and primary supply chain resilience arising from increased delivery of outcomes through SLM alongside and through the production of food, including support for collaborative action between farmers and between farmers and others;
- To improve the delivery of animal health and welfare standards beyond the legal baseline. One of the key principles underpinning the *Wales Animal Health and Welfare Framework* is “prevention is better than cure” to minimise animal disease and associated welfare impacts. We will integrate this approach into any future support and policies. High animal health and welfare standards, as part of SLM, is a key part of future product differentiation;
- To provide partnership funding for joint work with academia and other stakeholders such as private sector and levy bodies to drive the development and adoption of innovation and knowledge transfer in support of SLM delivery;
- To provide necessary advice, training and continuing professional development to farmers in pursuit of the delivery of SLM;
- To enable and support the decarbonisation of the Wales agricultural sector to meet the Welsh Government’s ‘net zero by 2050’ ambition. To include measures to support adaptive actions enabling farmers and land managers to improve climate change resilience;
- To increase levels of carbon sequestration through land management, (including woodland creation and management, the introduction of agro-forestry, the restoration of peat bog functionality, salt marsh restoration and increasing levels of soil organic matter in improved agricultural land) to help achieve the requirements of Welsh Ministers with regard to the delivery of Welsh Governments ‘net zero by 2050’ ambition;
- To significantly reduce or eliminate ammonia and any other losses from farms to air and water which are harmful to public health and/or injurious to riparian and other sensitive habitats;
- To increase levels of farm biodiversity and wider habitat and ecosystem resilience associated with agriculture and agricultural practice including through the sustained improvement of soil health;
- To support appropriate public access to farm land for leisure or educational purposes.

2.75 We are committed to the principle of transparency and the legitimate role of the Senedd in scrutinising activity of the Welsh Government. Where needed, further details on the proposed support will generally be provided in subordinate legislation and/or guidance which would be the subject of

appropriate consultation. This will also enable scrutiny of the proposals by members of the Senedd.

Advice & Guidance

- 2.76 In *Sustainable Farming and our Land* we set out proposals for a two-pronged approach to advice and guidance. We want to provide farmers with an initial assessment of the current sustainability of the farm and farm business. We will do this, for example, by looking at the farm's carbon footprint and potential for change, and providing advice on how SLM can be most successfully implemented on farm. This will enable us to agree actions for delivery and metrics for the measurement of delivery with the farmer. We will also build on best practice from existing advisory services – for example Farming Connect and Glastir contract managers – to provide a more comprehensive and long term service to farmers.
- 2.77 This reflects the long term economic and environmental challenges that will confront agriculture in the future. We believe advice should be seen as an investment in the capacity of farmers rather than a cost to the scheme and we will continue to develop and engage with stakeholders on our proposals for the future.
- 2.78 We will support farmers to introduce new technologies in ways which enable the delivery of our SLM outcomes. In addition to providing direct advice and support, we will work with academia and other stakeholders to drive innovation in all agricultural sectors including farm woodland management. This will be important in areas such as data management, precision agriculture, the development of improved efficiency in reducing emissions from red meat production (including through the use of genomics), nutrient management (including reductions in artificial fertiliser use) and reductions in energy use.
- 2.79 For example, precision agriculture is an increasingly important way of improving resilience in a farm business. It offers farmers a way of improving productivity whilst reducing external inputs and costs. Precision agriculture needs to be embedded in every aspect of farming through use of better genetics, better targeting of inputs and gathering and utilising data to improve business efficiency. With new technology comes the need to ensure farmers have the right skills and training to make best use of it. In future we will need to work closely with academia to make sure appropriate continued professional development (CPD) is available to farmers. We believe that working in this way will not only improve a farm's business efficiency but will also begin to contribute to the delivery of the broader environmental outcomes sought as part of SLM.

Consultation Question

- 4 What are your views on the proposed purposes for funding in support of the delivery of SLM? Are there other purposes which you feel should be considered?

Please provide comments to support your view e.g. potential benefits and impacts.

Section 4

Industry & Supply Chain: Future support

Summary

- 2.80 In *Sustainable Farming and Our Land* we set out our proposals to provide support to the wider industry and supply chain. We propose the majority of financial support (i.e. that which replaces BPS and current agri-environment schemes) should be directed at farmers through the proposed Sustainable Farming Scheme. However, in some instances we may also need to provide support to the wider industry and food supply chain beyond the farm gate.
- 2.81 A thriving Welsh food and drink industry can create demand for Welsh primary produce. We propose to provide support to the wider industry and supply chain, if it supports the continued delivery of SLM outcomes and ultimately benefits Welsh farmers. We therefore propose the Bill should contain provisions enabling such support to be provided.

Case for Change

- 2.82 Support for rural development is about contributing to the development of rural economies and sectors so that they are more resilient, competitive and innovative. The objectives of this support include:
- Contributing towards the sustainable management of natural resources as set out in the Environment (Wales) Act 2016;
 - Enabling wider agri-food industry support and supply chain; development beyond the farm gate;
 - Ensuring non-agricultural rural climate resilience through adaptation measures;
 - Achieving a balanced territorial development of rural economies and communities, including the creation and maintenance of employment.
- 2.83 Currently, support for rural development is provided through Wales' Rural Development Programme 2014-20 with EU funding and co-financing from the Welsh Government until 2023. Under the terms of the Withdrawal Agreement, EU Law continues to govern those programmes until the programmes close or commitments end. The UK Government will have to negotiate 'technical measures' as a departing Member State to adjust any EU requirements. Governance is provided through the Managing Authority, working closely with Rural Payments Wales. There are numerous reporting requirements

prescribed within EU Regulations, culminating with the Programme Management Committee (PMC).

2.84 In addition to the ongoing EU Rural Development Programme 2014-2020, we are considering how to establish interim domestically funded rural development arrangements to compliment the EU spending commitments. These interim arrangements will run from 2021-24, bridging the period of time before the powers in the Bill come into effect. The legislation to support these interim arrangements will set out the broad scope of the programme in line with the objectives above. We will also consider the line of sight to future arrangements, including how any future agricultural market interventions might be funded.

2.85 Looking beyond this period, we propose to provide support to the wider industry and supply chain where that support enables the continued delivery of SLM and, ultimately, benefits Welsh farmers. Whilst we will need to retain flexibility to ensure future support can be adapted to reflect new challenges, changing trends and emerging government priorities, our priorities for industry and supply chain support include:

- Improving the promotional offer for farmers' produce by effectively evidencing SLM;
- Encouraging greater market alignment by supporting farmers in understanding and producing what consumers and the supply chain want to buy;
- Identifying and overcoming barriers in the supply chain by supporting farmers to increase the amount and value of Welsh products used in the supply chain, both in Wales and beyond;
- Shortening supply chains for Welsh products by supporting the creation of local supply chains that can retain the value of products within Wales;
- Provision for market intervention measures to help farming businesses cope with exceptional market volatility or failure should it arise.

2.86 We will also continue to consider the case for providing support to other sectors if it helps deliver SLM, in particular forestry and wider food industry support.

2.87 In the future, we expect any new schemes using domestic funding to:

- Have a clear focus on value for money and the delivery of outcomes in accordance with the framework and principles set out in *Managing Welsh Public Money*;

- Have robust evaluation systems built in, including a value for money evaluation of funding applications;
- Make full use of stakeholder input into the policy development and design stages, whilst also bringing in adequate external challenge and scrutiny on proposals;
- Apply learning from past evaluation and experience;
- Be open and transparent in the grant-awarding process to ensure fair access to funding.

Our Proposals

- 2.88 We propose the Bill should provide Welsh Ministers with the powers to create, administer and close a domestic scheme or schemes in relation to rural development and the wider agri-food supply chain which enable and support the continued delivery of SLM.
- 2.89 To place a duty on the Welsh Ministers to make an annual statement to the Senedd on the budget for rural development support. The statement should include an estimate of the outcomes to be delivered in that year together with a target for the amount of delivery for each outcome.
- 2.90 To place a duty on the Welsh Ministers to report annually to the Senedd on the impact of the total expenditure incurred in terms of rural development support.
- 2.91 We are committed to the principle of transparency and the legitimate role of the Senedd in scrutinising activity of the Welsh Government. Where needed, further details on the proposed support will generally be provided in subordinate legislation and/or guidance which would be the subject of consultation in the usual way. This will also enable scrutiny of the proposals by members of the Senedd.

Consultation Question

- 5 What are your views on the proposed priorities for industry and supply chain support?

Please provide comments to support your view e.g. potential benefits and impacts.

Section 5

Collection and Sharing of Data

Summary

- 2.92 We want clear provision to support the improved collection and processing of data, including ensuring new technology can be used to streamline systems. Enabling access to and the sharing of data on farms will reduce administrative burden for farmers and improve the efficiency of the monitoring of regulations and financial support schemes. We are looking to streamline data collection and minimise the need to collect data multiple times.
- 2.93 We propose to include powers to collect and share data on all farms and businesses in the agri-supply chain in Wales in the Bill. This section considers the potential uses of this data in more detail along with the principles on which collection and sharing should be based.

Case for Change

- 2.94 The primary reasons we need to collect data on agriculture and the associated supply chain in Wales are:
- Monitoring of financial assistance schemes;
 - Monitoring of regulatory compliance for all farms in Wales, regardless of participation in financial assistance schemes;
 - Research and analysis to inform agricultural policy;
 - Surveillance of the agri-food supply chain and national trend monitoring.
- 2.95 The power to collect and process data on agriculture is currently scattered across numerous pieces of EU and domestic legislation.

Monitoring of financial assistance schemes

- 2.96 We hold a range of information about farms and farmers who currently claim BPS payments, are a part of an agri-environment scheme or have livestock. Some data is provided on a mandatory basis, such as livestock movement records, some is required with participation in schemes (e.g. RPW online) and some is collected by surveys (e.g. Farm Business Survey).
- 2.97 The drive for the collection and reporting of scheme data has largely been shaped by EU regulation. It is already possible to share data (including personal data) between public bodies for specific purposes (as defined by the Digital Economy Act 2017). Our approach will be to streamline data collection processes and minimise the need to collect data multiple times.

Monitoring of regulatory compliance

- 2.98 Compliance with agricultural regulations in Wales is currently monitored by a number of regulatory bodies including the Rural Inspectorate, Natural Resources Wales, Animal and Plant Health Agency, Local Authorities and the Health and Safety Executive. Each body has varying powers to monitor and enforce regulatory compliance, with some overlapping responsibilities. Farmers can be asked to provide similar information to different bodies, creating an unnecessary administrative burden to complete and keep documentation. On-farm inspections are also resource intensive for regulators and can be burdensome for farmers and land managers. Improvements are therefore needed to ensure inspections are used more effectively and better supported by other tools to monitor compliance.
- 2.99 The *Working Smarter 2011* report¹³ made several recommendations regarding monitoring and some progress has been made as a result, for example, through aligning a number of Cross Compliance inspections and publishing *When the Inspector Calls* guidance. However, there remain barriers preventing some of these recommendations being taken forward, such as difficulties with effective and compliant data-sharing between regulators.
- 2.100 The majority of routine monitoring and inspection is largely focused on farms who are part of EU CAP funded schemes. Inspections of farmers and land managers who are not part of schemes are often reactive as a result of suspected non-compliance. There is not therefore a balance of monitoring across Wales.
- 2.101 Access to a range of data is important to help regulators to monitor compliance effectively. There is currently a set of data which identifies land ownership and usage captured for those who are part of EU CAP funded schemes. There is also data for livestock keepers, including non-claimants.

¹³ <https://gov.wales/sites/default/files/inline-documents/2018-11/120131workingsmarterreporten.pdf>

These data sets are required to help regulators cross-reference satellite imagery with information to identify who owns or manages the land. However, there is limited data available for farmers and land managers who are not claimants of EU CAP or keepers of livestock. This limits the ability of regulators to use remote monitoring for all farmers and land managers in Wales.

Our proposals

Improved collection and processing of data

2.102 We want to be clear about what data needs to be collected and how it will be used. The aim is to make the process more efficient for farmers, regulators and government and ensure we have robust data on all farms in Wales. Clarifying in legislation the purposes for which data can be collected and processed will mean there is a clearly identifiable legal basis which respects the principles of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA). The primary purposes for the collection, sharing and linking of data are to:

- Help persons in agri-food supply chains or persons carrying out agricultural activities to increase productivity, manage risks, manage market volatility;
- Monitor and evaluate financial assistance schemes;
- Enable targeted and risk based monitoring of regulatory compliance;
- Promote transparency or fairness in agri-food supply chains or agricultural activities;
- Promote the health, welfare or traceability of animals;
- Promote the health of plants;
- Minimise adverse environmental effects of activities connected with agri-food supply chains or agricultural activities;
- Minimise waste arising from activities connected with agri-food supply chains or agricultural activities;
- Monitor or analyse markets connected with agri-food supply chains or agricultural activities;
- Support research and evaluation to inform policy development on agricultural activity and agri-food supply chains.

- 2.103 We also want to ensure continuity by retaining the ability to process historic data (already held by the Welsh Government) when the powers we are drawing from the UK Act come to an end. This will be done in compliance with the DPA 2018.
- 2.104 Allowing regulators, evaluators and scheme managers to share information between themselves would provide the opportunity to streamline the system. This, along with advances in automated data collection (e.g. Earth Observation Data¹⁴), has the potential to reduce the administrative burden on farmers and provide increased value for money from a scheme perspective.
- 2.105 Removing barriers for data comparison and sharing will be key to reducing the monitoring burden on farmers and land managers. It would also enable regulators to more effectively refer non-compliance to the relevant body to take enforcement action.
- 2.106 We propose information should be centrally collected and shared between regulators, therefore reducing the number of documents farmers need to complete.
- 2.107 We want to build upon the ICT platforms we already have, identify overlap and the potential to share data and reuse data. It will be vital that all farms in Wales are covered and we may need to mandate data from non-scheme participants.
- 2.108 A dataset could be coordinated centrally and shared with other public bodies who currently request this data directly from farmers. The power to do this could be taken from the Digital Economy Act 2017. Secondary legislation to define the purpose would be required, which would ensure that any data processing is reasonable and proportionate.
- 2.109 A key challenge in any approach we take is to harmonise the form in which data is collected between different public bodies and ensure we remain consistent with the rest of the UK to allow national level analysis to be undertaken. This will need to be done in partnership with regulators and farmers alongside the introduction of new legislation, prior to the introduction of the proposed SFS and National Minimum Standards, to ensure the format works for all.

¹⁴ Earth Observation is the gathering information about the physical, chemical and biological systems on farmland without making physical contact e.g. using satellite data

Non-legislative considerations

Better use of technology

- 2.110 We intend to use advances in technology to make the monitoring of regulatory compliance and the monitoring of the SFS more efficient. Technology such as geotagged photographs, mobile apps, on-farm sensors, Earth Observation and analysis software are some of the methods we can use to collect data for these different monitoring purposes.
- 2.111 Advances in Earth Observation mean images of Wales can now be captured more frequently (daily) and at a far higher resolution than was previously the case. This could provide regulators and scheme managers clear and up-to-date images to effectively monitor scheme and regulatory compliance. We will need to ensure we have accurate data on the usage and tenure of land to support this technology.
- 2.112 In some cases, access to Earth Observation imagery could prevent the need for an on-farm visit. For example, if a regulator received a referral regarding potential non-compliance, daily imagery could be used to help establish whether non-compliance has occurred and whether an on farm visit is required.
- 2.113 Farmers who participate in future financial assistance schemes will need to provide a range of data on the farm business and report regularly on the progress of the actions which have been agreed. There is the potential to automate some of the data collection by using Earth Observation data and/or on-farm sensors and use more conventional methods such as geo-tagging photographs. This will be consulted upon and detailed as a part of the scheme design.
- 2.114 We will also need to consider whether other types of data collected by farmers and farm assurance schemes could be used to support efficient monitoring. With better use of technology and data, we hope this will reduce the reliance for on-farm visits both for the scheme and regulatory compliance.

Better use of data

- 2.115 In addition to using technology, it is also important we can effectively analyse, compare and share a range of data, including on regional and national trends.
- 2.116 In terms of regulation, we want to ensure appropriate monitoring of regulatory compliance is consistent across all farms in Wales. Whilst regulators currently use a range of data to assess the risk of non-compliance on individual farms, we want to enable more effective collaboration between regulators to avoid duplication of monitoring and data requirements. We want to improve the use

of risk based inspections to more effectively monitor those at highest risk of non-compliance. This would be balanced against the need to monitor compliance across a proportionate sample of farms in Wales. We believe this will reduce the burden on farmers and ensure inspections are used in the most effective way.

- 2.117 We will need to consider the next steps in approaching how farmers could gain earned recognition for regulatory compliance, this could include the use self-monitoring information shared with regulators.
- 2.118 In terms of the financial assistance schemes, it is our intention to enable the data we collect on a farm to be used by farmers to track progress over time. This will enable farmers to see the effects of the actions which have been undertaken as a part of the scheme, as well as the ability to compare performance with other, similar, farms. Benchmarking performance against similar farms is an effective way of identifying areas of potential improvement. In addition we are exploring the possibility of using data collected within the scheme to allow farmers to demonstrate their sustainability to the businesses they supply (e.g. supermarkets), and to underpin assurance schemes to reduce the number of on farm checks. This will enable farm businesses to demonstrate their sustainability credentials without recourse to further data gathering.

Evaluation

- 2.119 It will be important to evaluate the effectiveness of the proposed scheme and regulatory framework. A range of data will be required to understand who has engaged with the scheme, the impact the scheme and regulatory framework has had and the effect on the sector and the environment. It is necessary to demonstrate to the public the value for money of the scheme and the benefits which will have been realised. The ability to access accurate and up-to-date statistical data is also essential to developing and evaluating policy for the agricultural sector and associated supply chain. We will set out a strategy to enable robust monitoring and evaluation and to consider the impact of the proposals.

Consultation Questions

- 6 What are your views on the proposed purposes for collecting, sharing and linking data?

Please provide comments to support your view e.g. potential benefits and impacts.

- 7 What are your views on the establishment of a national database for farms and livestock?

Please provide comments to support your view e.g. potential benefits and impacts.

Thinking about the SFS:

- 8 In terms of the future scheme, what are your views on the proposals to enable the data we collect on a farm to be used by farmers to track progress and demonstrate their sustainability credentials?

Please provide comments to support your view e.g. potential benefits and impacts.

Thinking about regulatory compliance:

- 9 What are your views on the proposals for improving the monitoring of regulatory compliance?

Please provide comments to support your view e.g. potential benefits and impacts.

- 10 What do you think needs to be considered in future to enable regulators to effectively monitor regulations?

Section 6

Forestry and Woodlands

Summary

2.120 There are three key areas where we seek improvement to the current regulations and processes affecting the way in which woodlands are created and managed in Wales:

- Tackling the climate change emergency will require woodland creation on a greater scale than at any point in the past 50 years. We want to have an approval system for woodland plans which is simple, predictable and proportionate;
- While felling trees is often an important part of sustainable woodland management, some trees and woodlands are so environmentally valuable that illegal felling of them is particularly damaging. We want to take powers to add conditions to licenses for tree felling and ensure effective deterrents are in place to prevent illegal felling;
- The proposed Sustainable Farming Scheme will provide payments to farmers who choose to deliver positive benefits from planting and managing woodland on their farms. Support must also continue to be provided for woodlands not on farms.

2.121 We propose the Agriculture (Wales) Bill should include provisions to allow for these changes.

Case for Change

Woodland creation

2.122 As part of our plan to tackle the climate emergency we have set a target for increasing woodland by at least 2,000 hectares a year, rising to 4,000 hectares a year as soon as possible. We also want to bring more existing woodlands into management

2.123 Creating new woodlands provides an important way of capturing and storing carbon. The timber from woodlands provides a sustainable resource that can replace high carbon materials to help de-carbonise sectors such as construction. Improving the management of existing woodlands can also provide carbon benefits, because managed woodlands with diverse age structures can store a greater amount of carbon.

- 2.124 Not enough woodland is currently planted in Wales, and too little existing woodland is managed. In 2018/19, only 80 hectares of new woodland were created in Wales. This is not because of a lack of interest in woodland creation.
- 2.125 There are a number of barriers that prevent greater progress being made:
- The economic returns to planting trees often take many years to arise, and many of the public benefits are not currently recognised;
 - Government incentives to plant trees have been perceived as complicated and unpredictable and not fully integrated with other farming support;
 - The benefits of woodland management are not always understood;
 - The regulatory environment is perceived to be complex and increases the difficulty of planting woodland.
- 2.126 The first three issues will be addressed as part of our proposed Sustainable Farming Scheme, which will enable and reward the creation of new woodland and the development of agroforestry systems on farms. The final issue reflects the reality of the current overly complex process for approving and funding woodland creation proposals, making it difficult to plan and deliver new woodland projects.
- 2.127 Many of the changes which need to take place to enable increased levels of woodland creation involve process change rather than legislative change. We want to improve these processes and explore how we can provide up front support for woodland plans to be verified before applications for funding are made. We will seek to carry these changes into the design of the proposed Sustainable Farming Scheme.
- 2.128 We also want to provide more clarity to farmers and other landowners on where different types of woodland will be approved. We have recently provided guidance to Natural Resources Wales (NRW) on how they should apply their Sustainable Management of Natural Resources objective to forestry. We have begun work to update and improve our Woodland Opportunities Map, which seeks to provide clear guidance to the public on which areas are low sensitivity for woodland planting. We will also seek to move to a system of earned recognition which recognises past performance of woodland planners.
- 2.129 Tackling the climate change emergency will require woodland creation on a greater scale than at any point in the past 50 years. We want to have an approval system for woodland plans which is simple, predictable and proportionate.

Licensing tree felling and penalties for felling illegally

- 2.130 As a general rule, before felling trees a felling licence must first be issued by NRW. Under the Forestry Act 1967, NRW are only able to attach conditions to these licenses in very limited circumstances. NRW has no power to revoke a licence once granted, or to amend it once imposed.
- 2.131 However there are instances where felling is only appropriate under certain conditions because of the environmental damage that would be caused otherwise. For example, felling trees during sensitive periods such as nesting or breeding seasons for protected species may breach the Conservation of Habitats and Species Regulations 2017. In such circumstances NRW do not currently have powers to place conditions on them.
- 2.132 Ash dieback is an increasing concern for land managers, particularly where trees are in high risk areas such as roadsides, rail side or adjacent to public rights of way. Evidence suggests 97% of ash trees could become infected. Where there is a potential risk to life and limb it is important landowners manage the risk proactively.
- 2.133 While felling trees is often an important part of sustainable woodland management, some trees and woodlands are so environmentally valuable that illegal felling of them is particularly damaging. This is especially the case for areas of Ancient Semi-Natural Woodlands (broadleaf woodlands which have been in existence for over 400 years). It is important that there are sufficient deterrents to prevent illegal felling of these trees.

Future funding of woodland creation and management

- 2.134 We intend the proposed Sustainable Farming Scheme to provide payments to farmers who choose to deliver positive benefits from planting and managing woodland on their farms.
- 2.135 This support is likely to be for woodlands whose principal purposes are carbon sequestration, the improvement of habitat resilience and the provision of amenity. We will also support the creation of woodland to intercept ammonia emissions and particulates such as PM_{2.5} where our analysis shows that such planting offers the best cost/benefit ratio for the improvement of public health outcomes associated with the reduction of these emissions.
- 2.136 We are also clear support must also continue to be provided for woodlands not on farms. Alongside developing the proposed Sustainable Farming Scheme, we will explore how best to support other types of woodland.
- 2.137 As the UK Committee on Climate Change's report on land use makes clear, the level of tree planting required will not be possible through public sector support alone but will require attracting private sector investment into forestry. We want to consider how farmers and other land managers in Wales can fully take advantage of the growing market for the carbon sequestered by trees.

- 2.138 The Welsh Government supports the Woodland Carbon Code, which has been developed to provide a reliable and consistent method for measuring the CO₂ captured from the environment by trees, and issue verified carbon units to owners of woodlands. These carbon units can be sold to individuals and organisations that wish to offset their own emissions or invest in de-carbonisation.
- 2.139 We will consult next year on how we can support all types of landowners in Wales to benefit from carbon markets for planting trees, including how to address the upfront capital costs and advisory support which might be required.

Our Proposals

Woodland creation

- 2.140 A key aspect of the woodland creation process is the EIA (Forestry) (England and Wales) Regulations 1999 which dictate when woodland plans require consent from NRW before planting. At the end of the EU implementation period, Welsh Ministers will lose the powers to amend this legislation. We intend to include powers within the Bill to ensure the Welsh Ministers retain the power to review and amend EIA thresholds.
- 2.141 There are no current plans to change the EIA regulations. Any future changes to these thresholds would require secondary legislation to be laid and would be subject to a separate consultation, which would need to include evidence of the impact of any changes both on tree planting and existing biodiversity, habitats and species.

Licensing tree felling and penalties for felling illegally

- 2.142 We will include provisions in the Bill amending the Forestry Act 1967 to allow the Welsh Ministers to add conditions to felling licenses, and to allow felling licenses to be amended, suspended or revoked after licenses have been granted. We will include provisions to allow NRW to charge for felling licenses in the future if this would improve delivery. There are no current plans to introduce such charges. We will add an exemption to the need for a felling license in the case of any ash tree in a location which could pose a danger if the tree was infected with ash dieback. NRW will consult on how these new powers will be implemented and will publish guidance, subject to ministerial approval, which sets out the circumstances in which they will be used.
- 2.143 We will include provisions to enable the Welsh Ministers to issue civil sanctions for offences related to felling licenses, including in the case of illegal felling of ancient woodlands. These would provide additional enforcement

tools, but would not replace the need for criminal action in the most serious cases.

Consultation Questions

11 What are your views on the proposed amendments to forestry legislation?

Please provide comments to support your view e.g. potential benefits and impacts.

12 What are your views on how the Welsh Government can support landowners in Wales to benefit from carbon markets for planting trees?

Section 7

Proposals for additional Powers

Agricultural Tenancies

Case for Change

- 2.144 A significant proportion of farmed land in Wales is managed through a combination of short and long term tenancy agreements. As such, tenants and tenanted land are important in the delivery of the SLM outcomes we seek.
- 2.145 Last year we consulted on reforms to agricultural tenancy law based on recommendations of the Tenancy Reform Industry Group (TRIG). The proposals aimed to remove perceived barriers to improving productivity, enabling structural change and accessing future farm support schemes.
- 2.146 We have analysed consultation responses and have taken forward all but one of the proposals that received broad support through the UK Act.
- 2.147 We did not take forward a power in the UK Act to enable tenants to refer to arbitration or third party determination requests for landlord's consent to activities that are restricted under the terms of their tenancy agreement or requests for a variation of tenancy terms, for the purpose of enabling the tenant to access Welsh Government financial assistance. This proposal received strong support in our consultation and we consider it would be more appropriate to take forward through the Bill.

Our Proposals

- 2.148 We intend to take regulation making powers to enable tenants of Agricultural Holding Act 1986 (1986 Act) tenancies to refer to dispute resolution requests for landlord's consent to activities that are restricted under the terms of their tenancy agreement or requests for a variation of terms, where that request relates to the tenant accessing Welsh Government financial assistance schemes. This will help ensure tenants are not unreasonably restricted from accessing financial assistance due to the terms of their tenancy agreements whilst also ensuring the landlord's position and interests are considered as part of the process.
- 2.149 The 1986 Act sets the framework within which individual Agricultural Holding Act (AHA) tenancies have been negotiated and agreed between landlords and the tenants. Most AHA leases were written and agreed over twenty years ago. Many include standard landlord restrictive clauses to prevent the tenant from undertaking activities which could change the landlord's fixed equipment or land use on the holding without the tenant first gaining the landlords consent

to the activity (e.g. diversifying into non-agricultural activities such as sustainable land management).

- 2.150 Many landlords and tenants are able to work together effectively to negotiate and overcome issues relating to restrictive clauses without the need for recourse to dispute resolution. We understand this may not be the case for all tenancies and some tenants may find restrictive clauses written several years ago may unreasonably hinder their ability to fully participate in opportunities offered by future SLM schemes if their landlord is not willing to consent to the activities involved.
- 2.151 Respondents to our previous consultation suggested tenants of Agricultural Tenancies Act 1995 (1995 Act) tenancies, known as Farm Business Tenancies (FBTs), do not face restrictions in the same way. FBTs are more modern commercial agreements, negotiated more recently than 1986 Act tenancies. They are also reviewed more regularly, giving tenants the opportunity to renegotiate their terms of contract if they feel it necessary e.g. to enable diversifications or to enter financial assistance schemes.
- 2.152 There may be instances where future schemes include longer term commitments, such as woodland creation or the restoration of peat bog functionality, beyond the life of the current tenancy, particularly in the case of FBTs. Taking this into account, we would like to hear views on the scope of the provision.

The Management of Common Land

Case for Change

- 2.153 Common land in Wales amounts to some 175,000 hectares or 8.5% of the agricultural land area and has an important role in supporting agricultural production in Wales. The majority of this land is registered under the Commons Registration Act 1965 (the 1965 Act) and is privately owned, with rights of common held by others (e.g. the right to graze livestock).
- 2.154 The Commons Act 2006 (the 2006 Act) was introduced to remedy inconsistencies and deficiencies of the 1965 Act (including providing for the correction of errors and for the updating and maintenance of the registers). The objectives of the 2006 Act include the improved protection of common land from development and the promotion of sustainable management of common land.
- 2.155 The 2006 Act has rectified many of the deficiencies of the 1965 Act, but a number of issues have been brought to the Welsh Government's attention. These include the requirement for consent for restricted works on common land in addition to, in many cases, the requirement to obtain planning permission. This is, in certain circumstances, viewed as duplication.

- 2.156 Where work has been carried out on common land without the required consent, the 2006 Act allows any person to take action to enforce the 2006 Act through the County Courts but it does not provide an obligation to take action. This has led to some confusion and frustration amongst those with an interest in protecting the quality of common land in Wales.
- 2.157 One of the main objectives of the 2006 Act was to facilitate the better management of common land through the establishment of Commons Councils. The ability of Commons Councils to significantly improve management has been questioned as the 2006 Act limits their powers to agriculture, vegetation and rights rather than allowing the Council to take a wider and more holistic approach.

Our Proposals

- 2.158 Powers will be taken to revise the consenting regime on common land to include the definition of restricted works, exemptions and where duplication exists with the requirement to obtain consent under planning legislation.
- 2.159 New powers will allow the Welsh Ministers to revise the enforcement responsibility and function on common land in response to breaches of the consenting process where restricted works have been undertaken without permission.
- 2.160 The effective management of common land will be further enhanced by expanding the functions and powers of Commons Councils to manage the common and improve their ability to contribute to the social, economic and environmental objectives of the sustainable land management policy framework.

Animal Health and Welfare

Our Proposals

- 2.161 We propose additional powers for the Welsh Ministers to establish Movement Control Zones to control the movement of animals, semen, embryos, animal products, animal by-products and/or other things, e.g. equipment and utensils, in the event of a novel threat or animal disease outbreak, where there is currently no or limited power to do this. This will mean the Welsh Ministers can respond immediately to new and novel disease threats that can appear suddenly and spread rapidly in animal and human populations, in order to protect human and animal health in Wales, along with the rural economy.
- 2.162 We propose introducing powers for the Welsh Ministers to specify 'animal', 'farmed animal', 'livestock', 'pet animal' and 'animals intended for agricultural purposes', beyond the current rigid traditional definitions. These powers will ensure animal disease control measures can be applied appropriately and

flexibly to any species of kept animal where there is a potential disease risk. This should reduce any ambiguity in the application of existing disease controls, and allow a more accurate and proportionate response to new or emerging disease risks. In addition, these powers should enable the Welsh Ministers to introduce a system of compulsory animal identification (ID) for kept species, where a system isn't currently in place and where suitable, to ensure effective traceability and to protect animal and public health.

- 2.163 We propose to introduce a system of civil sanctions for non-compliance with specific animal disease controls and animal welfare standards. We would need a system of civil sanctions for non-compliance with current animal disease control and animal welfare cross-compliance standards (and whatever may replace them in the future), and other on-farm disease control measures to apply to all livestock keepers (as defined in the Bill), irrespective of whether they receive payments under the proposed Sustainable Farming Scheme. Other breaches of regulated controls could also be subject to civil sanctions in the future where it is identified the non-compliance would be more proportionately dealt with via civil sanctions than to progress via other enforcement controls. Any such breaches to which civil sanctions could be applied would be subject to detailed consultation and review to inform and shape their introduction and implementation. This will form part of our overall civil sanctions proposal described earlier.

Regulating the use of Snares

Case for Change

- 2.164 In September 2015, we published a *Code of Best Practice on the use of snares in fox control*. In drawing up the Code, we worked and continue to work with stakeholders that support continued use (agriculture and gamekeeper interest groups) and that would like to ban snare use (animal welfare groups). Regulators such as Natural Resources Wales and the Police have also been included in ongoing stakeholder meetings.
- 2.165 The Code is voluntary and issued under Section 14 of the Animal Welfare Act 2006. We have previously stated that should this voluntary approach fail to drive up operator practice and animal welfare standards we would seek to regulate the sale and use of snares in Wales. Regular meetings and communications with snare-user groups have failed to provide sufficient evidence to demonstrate that the Code is being adhered to across Wales.

2.166 The legislation providing for snares could be amended to increase the control over their manufacture, sale and use. The legislation providing for snares includes:

- Wildlife and Countryside Act 1981;
- Deer Act 1991;
- Wild Mammals (Protection) Act 1996;
- Animal Welfare Act 2006.

Our Proposals

2.167 Wildlife legislation has been considered as part of the analysis in the Law Commission report on wildlife law reform. It is the Law Commission's view that, in the future, the operation and inspection of snares may benefit from additional regulations prescribing how relevant snares should be operated and inspected.

2.168 Recommendation 89 states that it should be an offence to use a snare, other than a self-locking snare, unless the snare:

- Is inspected at least once in every 24 hour period that it is in use; and
- Complies with, and is operated in accordance with, such other requirements, if any, as may be prescribed by regulations.

2.169 We propose amending the Wildlife and Countryside Act 1981 to create a broad power for the Welsh Ministers to regulate snares. This will allow the Welsh Ministers to create an identification and licencing regime if they so wish. It would also allow them to specify matters including what a lawful purpose of setting such a trap would be e.g. necessary pest control.

Sustainable agricultural business practice

Case for Change

2.170 The Covid-19 pandemic has highlighted continuing issues with the balance of responsibilities and fairness in the agri-food supply chain, especially the ability of primary producers to respond to market volatility and other shocks affecting its efficient operation.

2.171 Leaving the European Union, and the resulting increase in competition from global markets increases the necessity for sustainable business practice in the agri-food supply chain. This vulnerability is also evident in the sectors ability to respond to the climate emergency.

2.172 Following on from the Voluntary Code in 2012, and the recent joint consultation with Defra on contracts in the dairy sector, we are looking to

introduce mechanisms by which to address these deficiencies to support variable and productive farm businesses.

Our Proposals

- 2.173 The proposed provision seeks to give the Welsh Ministers the powers to ensure farmers in Wales, and others in the Welsh agriculture and food supply chain, operate in an efficient, transparent and on a fair basis.
- 2.174 The provision would also support the resilience of agricultural business which are vulnerable to price volatility, and improve sustainable agricultural businesses and production in line with the SLM policy framework.

Agricultural Minimum Wage

Case for Change

- 2.175 The Agricultural Advisory Panel for Wales was established by Welsh Ministers via The Agricultural Advisory Panel for Wales (Establishment) Order 2016, in accordance with the requirement of Section 2 of the Agricultural Sector (Wales) Act 2014.
- 2.176 The Act is a key piece of legislation which acknowledges the important contribution agriculture makes to our economy, environment and rural communities. It supports sustainable development of the sector by recognising the distinct nature of agricultural employment and the benefits of increased professionalism of the industry.
- 2.177 The Panel is an independent advisory body to Welsh Ministers that aims to ensure agricultural workers receive fair pay and their terms and conditions of employment are protected. The Panel is responsible for drafting Agricultural Wages Orders and submitting them to Welsh Ministers for approval together with promoting careers in the sector and the development of an appropriately skilled workforce.
- 2.178 Following a review of the Agriculture Sector (Wales) Act 2014 in 2017 the Welsh Government committed to improve upon it wherever possible. The Panel also committed to review its approach to developing draft agricultural wages Orders and identify improvements to its ways of working for the future
- 2.179 The Agricultural Sector Wales Act 2014 does not allow Welsh Ministers to provide strategic direction to the Panel.

Our Proposals

- 2.180 Our intention is to legislate to enable the Welsh Government to develop a strategic partnership approach with the Panel and its development of the

agricultural wages Orders. We will share skills and experience in a more agile manner.

- 2.181 Powers will be taken to enable the Welsh Ministers to further improve the procedures of the Panel whilst maintaining the balance of independence and accountability.

Consultation Questions

- 13 Do you think the dispute resolution procedures described in the proposals should be extended to FBTs?

Please provide additional evidence to support your view e.g. the extent to which this is a problem currently, the likely benefits and impacts.

- 14 Do you think there will be instances where landlords may require the same access to dispute resolution as described above?

Please provide additional evidence to support your view e.g. the extent to which this is a problem currently, the likely benefits and impacts.

- 15 Do you think it would be appropriate to allow joint landlord/tenant SLM scheme agreements?

Please provide evidence to support your views e.g. the extent of the need, the likely benefits, drawbacks and impacts.

- 16 What are your views on the proposals for additional powers for Welsh Ministers to:

- a) Establish Movement Control Zones to control the movement of animals, semen, embryos, animal products, animal by-products and/or other things that can spread infection e.g. equipment and utensils, in the event of a significant, new animal disease threat, where there is currently no or limited power to do this?
- b) Specify 'animal', 'farmed animal', 'livestock', 'pet animal' and 'animals intended for agricultural purposes', beyond the current rigid traditional definitions to ensure animal disease control measures can be applied appropriately and flexibly to any species of kept animal where there is a potential disease risk?

Please provide comments to support your view e.g. potential benefits and impacts.

- 17 What are your views on the proposal for a power to enable increased controls covering such matters as the manufacture, sale and use of snares? Do you think such a power is required? If not, why not? If so, what matters do you think the power should be used to address?

Chapter 3. Our Proposals: Part Two

Section 1

Our proposals to replace powers in the UK Agriculture Act

- 3.1 We have taken powers for the Welsh Ministers through the UK Act, which was introduced to Parliament on 16 January 2020 and became law on 11 November 2020. The Welsh Ministers' powers in Schedule 5 to the Act (and a small number of related provisions) are time limited. The Act provides the Welsh Ministers with powers to enable the continued operation of existing farming support beyond 2020 and to ensure the effective operation of the agricultural sector and agriculture markets in the UK following our departure from the EU.
- 3.2 In our consultations, *Brexit and our Land* and *Sustainable Farming and our Land*, we set out our ambition to bring forward a Bill in the Senedd. The Bill will provide the legislative basis for Welsh agricultural and land policy for the long term and replace the powers taken through the UK Act.
- 3.3 During the passage of the UK Act, we listened carefully to concerns raised by the Climate Change, Environment and Rural Affairs Committee and the Legislative, Justice and Constitutional Affairs Committee in their reports. In response we made a number of amendments to our approach, most significantly we:
- Removed those provisions which would have allowed for transition to new systems of agriculture support and made it clear that these would be brought forward through the Agriculture (Wales) Bill;
 - Added a 'sunset' provision, making legislative provision for the Welsh Ministers' commitment that provisions relating to Wales in Schedule 5 (and a number of related provisions) will expire on 31 December 2024;
 - Published two consultations on our proposals for future agriculture support and published a public consultation in relation to retaining and modifying the legislative framework affecting the BPS and domestic Rural Support legislative framework from 2021.
- 3.4 This Chapter sets out our proposals to replace certain powers that apply in relation to Wales contained in the UK Act with appropriate provision in the Bill. We have carefully considered and continue to consider the extent of the powers in the UK Act, whether they will still be required, and if changes or improvement are needed. These proposals will need further detailed development and assessment and will need to be consistent with the

Senedd's legislative competence as set out in the Government of Wales Act 2006. Subject to that ongoing work, we intend to make appropriate provision in the Bill to replace certain provisions in the UK Act including:

- Powers taken for the Welsh Ministers through the UK Act which will expire ('sunset') on 31 December 2024;
- Certain powers relating to Wales through the UK Act which do not expire on 31 December 2024.

Section 2

‘Sunset’ Powers

Summary

3.5 This Section outlines our proposals in respect of the powers taken for the Welsh Ministers under Schedule 5 to the UK Act which will expire (‘sunset’) on 31 December 2024. It sets out our proposals to take equivalent or similar powers, in whole or in part, in the Bill. This is necessary because primary legislation will be required after the powers in the UK Act expire. A summary of our initial proposals is described below.

Our Proposals

Powers to enable continuity of existing agricultural support

3.6 We propose to take a power which will allow the Welsh Ministers to modify or revoke retained EU law relating to the Basic Payment Scheme (BPS), and Rural Development, by way of regulations. These powers will enable the continuity and closure of existing agricultural support until we are ready to transition to a new scheme. This power will allow the following to be amended:

- Retained EU law which relates to the BPS and relevant subordinate legislation. The UK Act specifies five purposes for which this legislation may be modified and provides powers to terminate greening payments. We propose taking a similar power here but without the sunset clause application;
- Retained EU law relating to the financing, management and monitoring of the Common Agricultural Policy and relevant subordinate legislation (collectively known as the Horizontal Regulations) which establish the controls for the current schemes; and
- Retained EU law relating to support for rural development and relevant subordinate legislation including the wider industry and food supply chain.

Powers to declare exceptional market conditions and intervene in the agricultural markets

Exceptional market conditions

- 3.7 We propose to enable the Welsh Ministers to declare exceptional market conditions, which would allow them to launch market intervention. Exceptional market conditions are defined in the UK Act as those where there is severe market disturbance, or a threat of severe market disturbance, which is likely to have a severely adverse impact on the price agricultural producers will receive for their goods.
- 3.8 Having the power to declare exceptional market conditions will allow Ministers to take the first step in launching financial support schemes in situations where agricultural producers are under great duress. This ability will permit Ministers to support the financial resilience of agricultural sectors in periods of turmoil. As making a declaration of exceptional market conditions would be in response to a crisis, there is no indication of when these powers may be needed. As part of a declaration, Ministers would specify what the nature of the market disturbance is, and which agricultural products are, or are likely to be affected by it.

Public Intervention and Private Storage Aid

- 3.9 We intend to retain the option for the Welsh Ministers to be able to offer Public Intervention and Private Storage Aid schemes to support agricultural producers. This would be done through modification of retained EU legislation pertaining to Public Intervention and Private Storage Aid. The power to undertake such modification is what is proposed here. Such schemes would prevent farmers having to sell their produce at a significant loss, as well as prevent food wastage. Public Intervention is a specific form of government intervention, whereby the Welsh Government would buy agricultural products directly from producers, put them in storage and then sell them at a later date. Private Storage Aid is a mechanism whereby the Welsh Government would pay for the cost, at a certain rate, of private storage for agricultural products. This support lasts for a pre-determined length of time, set for a period of months after which financial support for storage ends. Producers retain ownership over the product in this process.

Marketing Standards and Carcass Classification

- 3.10 We propose taking powers relating to the standards which apply to certain products marketed in Wales. This also enables provision in respect of carcass classification by slaughterhouses in Wales.

Marketing Standards

- 3.11 This would give Welsh Ministers powers over marketing standards in agricultural products, including, but not limited to, technical definitions, classification criteria, labelling, appearance, product components, farming method, preservation and handling, disposal and the use of terms denoting value-adding characteristics. Through this provision, Welsh Ministers would have the power to set standards across a range of products. This would allow Welsh Ministers to maintain the high standards which Wales is recognised for.
- 3.12 The items covered by this provision would be primarily in relation to milk and milk products, spreadable fats, beef and veal, poultry and poultry meat, eggs and egg products, fruit and vegetables, olive oil and table olives, hops, wine and aromatised wine.

Carcass Classification

- 3.13 This would allow Ministers to make any changes to bovine and porcine carcass classification as and when change is required due to improvements to technology or ways of doing business. It will also allow the Welsh Ministers to put in place regulations governing sheep carcass classification, which would improve efficiency in sheep meat sales. The classification of bovine and porcine carcasses has been part of EU agricultural regulations for decades, and in recent years legislation has been passed allowing the classification of sheep carcasses in the same way.

Section 3

Powers which do not expire

Summary

- 3.14 Certain powers relating to Wales within the UK Act do not expire on 31 December 2024 and could continue to apply in Wales after that date. However, we have always been clear that our intention is to legislate through the Senedd for any matter for which the Senedd has legislative competence. Therefore, wherever possible our preference is for appropriate provision to be made in the Bill in respect of those provisions in the UK Act which (a) apply in relation to Wales; (b) are still needed after 31 December 2024; and (c) are not covered by the sunset clause. In doing so we will consider where changes or improvement are needed and make the appropriate legislative provision.
- 3.15 Our initial proposals are outlined below and we will undertake further analysis to determine whether we can make legislative provision in the Bill.

Fertilisers

- 3.16 The provisions in the UK Act are intended to amend and significantly expand the scope of existing powers under section 74A of the Agriculture Act 1970 to make provision by regulations to regulate, in the public interest, the composition or content of fertilisers and of material intended for the feeding of animals. Those provisions currently apply across the UK and include powers to control the import, export, sale or use of fertilisers and to regulate the marketing, labelling and packaging of fertilisers.

Our Proposals

- 3.17 Our policy proposals are to ensure the continuity of fertiliser supply by:
- Re-defining fertilisers (by function and content);
 - Providing new powers for the Welsh Ministers to make provision for fertiliser regulation;
 - Addressing a potential regulatory gap following EU Exit;
 - Ensuring continued access to EC/CE labelled fertilisers post EU Exit;
 - Ensuring adequate supplies of fertilisers from both internal and EU markets.

- 3.18 These policy proposals will ensure Wales keeps pace with developments in EU requirements relating to fertilisers and ensure access to fertilisers produced to EU standards from EU and UK markets. Failure to keep pace may risk a shortfall in fertilisers in Wales necessary for production.

Identification and Traceability of Animals

- 3.19 The UK Act provides the Welsh Ministers with the power to dis-apply the current EU Regulations (Regulation (EC) No 1760/2000) relating to the identification and registration of bovines. The EU legislation impacts on issues such as the reporting of animal movements and pre-movement reporting. The UK Act also provides Wales with powers to dis-apply the current EU Regulations for the identification and registration of ovine and caprine animals (Regulation (EC) No 21/2004).
- 3.20 If the power to dis-apply provisions in the above-mentioned EU legislation were exercised, the intention is that powers under the Animal Health Act 1981 would be relied on to introduce new powers in this policy area, to ensure alignment with the UK and Scottish Governments and enable the same support to Welsh keepers to simplify and modernise business practices.
- 3.21 Introducing these new powers through the proposed Bill will enable the highest standards possible for identification and traceability of animals in Wales to protect human health and promote trade. The electronic identification and movement reporting of all livestock in Wales will not only provide real time data of Welsh livestock, which is crucial for disease prevention and control, but will also allow seamless trade within the UK and align with EU standards for trade as a third country.

Our Proposals

- 3.22 We propose the following:
- The power to allow the Welsh Ministers to dis-apply Regulation (EC) 1760/2000 after the end of the implementation period. This will give the Welsh Ministers the powers to change the livestock reporting window for bovines, legislate for livestock pre movement reporting, allow online herd registers and the capture of transport details to improve traceability;
 - The power to allow the Welsh Ministers to dis-apply Regulation (EC) 21/2004 for the identification and registration of ovine and caprine animals after the end of the implementation period. This will give Welsh Ministers the powers to remove paper reporting as a method of recording animal movements and introduce mandatory electronic identification and movement reporting of all livestock in Wales.

Organic Products

- 3.23 The UK Act confers powers to make provision by regulations in respect of organic products, including the certification of products as organic and import and export controls.
- 3.24 The UK Act confers these powers on the Welsh Ministers if and to the extent that provision made by the regulations would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd (ignoring any requirement for the consent of any person). These powers may also be exercised by the Secretary of State, but only with the consent of Welsh Ministers if the regulations contain provision that could be made by the Welsh Ministers.

Our Proposals

- 3.25 Organic production is a devolved area, so it would be desirable for legislation in this area to be made in Wales. As such, we propose to include primary powers for the Welsh Ministers, or the Secretary of State with the consent of the Welsh Ministers, to create and amend regulations on organic production in Wales. The ability to set standards on organic products would allow Ministers to maintain consumer confidence in organically-certified products, as well as guaranteeing the environmental benefits of organic production.

Chapter 4. Conclusion

- 4.1 This White Paper sets out an ambitious programme for change in the way that the Welsh Government supports the agri-food industry as we complete the transition from EU membership. It paves the way for an Agriculture (Wales) Bill in the next Senedd that will set the direction of travel for farming in Wales for the next 15 to 20 years.
- 4.2 Our regulatory reform proposals are meant to provide increased clarity for all farmers and other stakeholders, as well as introducing a more proportionate approach to enforcement when compliance failures occur.
- 4.3 Our proposals for a new scheme to replace all current direct agricultural support would deliver SLM, enabling current and future generations of farmers to continue to produce food and wider environmental outcomes and be rewarded for doing so. We want to encourage innovation in agricultural practice and will work in partnership with practitioners, academia and other stakeholders to drive this forward.
- 4.4 Our proposals for improved data collection and management will reinforce the proposed regulatory reforms. Our ambition is to develop a data-driven, evidence-based approach to regulation and scheme monitoring which aims to reduce the administrative burden for farmers and enable effective, targeted inspection where it is needed.
- 4.5 We know that this is a time of uncertainty for many farm businesses. We also recognise we have to work together to address the issues causing this uncertainty. This White Paper is the outcome of two years of engagement and consultation on these issues but it is not the last word. We plan to put the proposed Bill before the next Senedd towards the end of the first year of that term, with secondary legislation to follow. Mindful of the sunset clause governing many of the powers for Welsh Ministers in the UK Act, we will be working hard with stakeholders to complete policy development work in support of that legislation as rapidly as is realistically possible.
- 4.6 We want to hear your views on these proposals. An independent external organisation will analyse your responses. As always, those responses will be taken into account when putting forward our detailed proposals for legislation.

Consultation Questions

Regulatory Reform

- 1 What are your views on:
 - (a) The proposed approach to the creation of the National Minimum Standards?
 - (b) The need for flexibility to amend the National Minimum Standards where necessary? Are there any further considerations which are needed?

Please provide comments to support your view e.g. potential benefits and impacts.

- 2 What are your views on:
 - (a) How advice and guidance can effectively support farmers to understand the National Minimum Standards; and
 - (b) The further considerations needed for advice and guidance? For example, what form guidance should take, who should provide it, the scope of guidance and how farm advisory services may support farmers.

Please provide comments to support your view, e.g. potential benefits and impacts associated with the considerations.

- 3 What are your views on the proposals for civil sanctions to enable proportionate enforcement of regulations? Are there any further considerations which are needed?

Please provide comments to support your view, e.g. potential benefits and impacts associated with the considerations.

SLM – Future support

- 4 What are your views on the proposed purposes for funding in support of the delivery of SLM? Are there other purposes which you feel should be considered?

Please provide comments to support your view e.g. potential benefits and impacts.

Industry and Supply Chain

- 5 What are your views on the proposed priorities for industry and supply chain support?

Please provide comments to support your view e.g. potential benefits and impacts.

Collection and sharing of data

- 6 What are your views on the proposed purposes for collecting, sharing and linking data?

Please provide comments to support your view e.g. potential benefits and impacts.

- 7 What are your views on the establishment of a national database for farms and livestock?

Please provide comments to support your view e.g. potential benefits and impacts.

Thinking about the SFS:

- 8 In terms of the future scheme, what are your views on the proposals to enable the data we collect on a farm to be used by farmers to track progress and demonstrate their sustainability credentials?

Please provide comments to support your view e.g. potential benefits and impacts.

Thinking about regulatory compliance:

- 9 What are your views on the proposals for improving the monitoring of regulatory compliance?

Please provide comments to support your view e.g. potential benefits and impacts.

- 10 What do you think needs to be considered in future to enable regulators to effectively monitor regulations?

Forestry and woodland

- 11 What are your views on the proposed amendments to forestry legislation?

Please provide comments to support your view e.g. potential benefits and impacts.

- 12 What are your views on how the Welsh Government can support landowners in Wales to benefit from carbon markets for planting trees?

Tenancies

- 13 Do you think the dispute resolution procedures described in the proposals should be extended to FBTs?

Please provide additional evidence to support your view e.g. the extent to which this is a problem currently, the likely benefits and impacts.

- 14 Do you think there will be instances where landlords may require the same access to dispute resolution as described above?

Please provide additional evidence to support your view e.g. the extent to which this is a problem currently, the likely benefits and impacts.

- 15 Do you think it would be appropriate to allow joint landlord/tenant SLM scheme agreements?

Please provide evidence to support your views e.g. the extent of the need, the likely benefits, drawbacks and impacts.

Animal Health and Welfare

- 16 What are your views on the proposals for additional powers for Welsh Ministers to:
- a) Establish Movement Control Zones to control the movement of animals, semen, embryos, animal products, animal by-products and/or other things that can spread infection e.g. equipment and utensils, in the event of a significant, new animal disease threat, where there is currently no or limited power to do this?
 - b) Specify 'animal', 'farmed animal', 'livestock', 'pet animal' and 'animals intended for agricultural purposes', beyond the current rigid traditional definitions to ensure animal disease control measures can be applied appropriately and flexibly to any species of kept animal where there is a potential disease risk?

Please provide comments to support your view e.g. potential benefits and impacts.

Snares

- 17 What are your views on the proposal for a power to enable increased controls covering such matters as the manufacture, sale and use of snares? Do you think such a power is required? If not, why not? If so, what matters do you think the power should be used to address?

Integrated Impact Assessment

- 18 What are your views on the impacts we have identified in the integrated impact assessments? Are there any further impacts that should be considered?

Welsh Language

- 19 We would like to know your views on the effects that the White Paper proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

- 20 Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Any other comments

- 21 We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them: