

# **Agriculture (Wales) White Paper**

## **Our Response and Forward Plan**

## Introduction

The Agriculture (Wales) White Paper was published on 16 December 2020. It set out our ambition to reform the way in which agriculture is supported by Government in the future and our intention to introduce an Agriculture Bill in the Senedd, consulting on our proposals for:

- Sustainable Land Management: future policy and support;
- 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;
- replacing certain powers contained in the Agriculture Act (UK) 2020.

The consultation ended on 26 March 2021. We received 232 substantive responses and 887 responses submitted through a campaign organised by the League Against Cruel Sports. We are grateful to all those who took the time to respond.

An independent analysis of the responses to this consultation has been published here: [Agriculture \(Wales\) Bill | GOV.WALES](#)

The first section of this publication sets out the intended scope of the Agriculture Bill and our forward plan. The second section sets out our response to the main issues raised in the consultation.

## Engagement

Our proposals represent a major change in agriculture policy. To develop our thinking we have undertaken two prior consultations:

- ***Brexit and our Land 2018*** (1,043 substantive responses and 11,160 campaign responses);
- ***Sustainable Farming and our Land 2019*** (511 substantive responses and 2,816 campaign responses).

These formal consultations have been complemented by a range of stakeholder engagement and co-design crucial for ensuring our proposals are practical and fit for purpose.

Around 2,000 farmers were involved with the first phase of co-design. This process provided a valuable mechanism through which farmers and stakeholders could inform our developing proposals.

An independent report of the co-design project can be found here:

<https://gov.wales/sustainable-farming-scheme-co-design-future-farming>

We will be undertake additional co-design and engagement to allow farmers and stakeholders to further inform development of the proposed Sustainable Farming Scheme. This process will help refine our proposals before the launch of a formal consultation.

## **Section 1 – Scope of the Agriculture Bill and Forward Plan**

### **1. Scope of the Agriculture Bill**

The independent analysis of the Agriculture (Wales) White Paper concluded that, overall, respondents were broadly positive towards the proposals. This was caveated by the need for more detail, particularly around future support for agriculture.

Agricultural reform and responding to the climate and nature emergencies are long term challenges. A sustainable agriculture sector for current and future generations is key to meeting our commitment for Wales to be net zero by 2050 and reversing the decline of biodiversity. The Agriculture Bill will be fundamental to delivering these aims, setting our policy direction for the next fifteen to twenty years.

The Counsel General set out our ambitious legislative programme on 6 July 2021. This confirmed we will introduce a new Agriculture Bill in the first year of the Senedd to establish a new system of farm support, based on the principles of Sustainable Land Management, which will maximise the protective power of nature through farming. We will also replace the time limited powers in the UK Agriculture Act 2020 which we took to provide continuity and much-needed stability for our farmers as we left the EU.

The Bill represents the first stage of our programme of agricultural reform and we will continue to work closely with stakeholders and farmers on our long term proposals. The provisions we intend to be taken forward in legislation are outlined below:

#### *Sustainable Land Management (SLM) and future support (including transition)*

Sustainable Land Management will be established as the overarching principle for future agricultural policy, including future support.

The Agriculture Bill will also provide the powers to establish, administer and close schemes which enable and support the delivery of SLM. This will include our proposed Sustainable Farming Scheme. It will also provide the framework to support the transition from the Basic Payment Scheme (and other rural development schemes) to future schemes.

#### *Sunset powers*

We intend to legislate through the Agriculture Bill on those provisions which were taken for the Welsh Ministers through the Agriculture Act 2020 and which will expire ('sunset') on 31 December 2024.

#### *Tenancies*

We intend to take regulation making powers through the Agriculture Bill to enable tenants of Agricultural Holding Act 1986 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

### *Forestry*

We will include powers within the Agriculture Bill to ensure the Welsh Ministers retain the power to review and amend Environmental Impact Assessment thresholds.

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.

### *Snares*

We will bring forward legislation to amend the Wildlife and Countryside Act 1981 to ban the use of snares and glue traps.

### *National Minimum Standards and Civil Sanctions*

It remains our intention to reduce the regulatory burden on farmers. We want to make it easier for farmers to understand what they must do to comply with the law through the introduction of National Minimum Standards. We also believe enforcement should be proportionate to the severity of the offence and avoid the criminalisation of farmers for less serious offences. However, we recognise these proposals are complex and must be thought through carefully. In the next stage of reform we will work closely with stakeholders to ensure that National Minimum Standards are implemented in time for the introduction of the proposed scheme.

## **2. Forward Plan**

We accept and understand the call from the consultation for more detail on the proposed Sustainable Farming Scheme and our plans for transition to allow the industry time to prepare for future changes. We will continue to work closely with farmers and stakeholders to ensure the future scheme is fit for purpose. This section outlines our forward plan leading up to the proposed launch of the Sustainable Farming Scheme in 2025.

### **2022**

Alongside the introduction of the Agriculture Bill, we will publish a draft of the Sustainable Farming Scheme. This will not be the final Scheme, but it will include detail on the structure and the specific actions which we are proposing farmers will be asked to undertake. This will also enable the Senedd to see how we propose to use the powers contained in the Agriculture Bill.

The actions in the Sustainable Farming Scheme will have undergone a range of analyses to estimate the economic cost to the farm business and wider sector of undertaking them and the resulting environmental benefit. This will be published as a part of the Regulatory Impact Assessment which will accompany the Agriculture Bill.

In Summer 2022, following the publication of the draft Sustainable Farming Scheme, we will begin our next phase of co-design. This process will allow farmers and stakeholders to engage on the technical details of the proposals and ensure the Scheme is practicable and deliverable. The findings of this phase of co-design will further inform the development of the Scheme and our approach to transition.

In 2022, it is also our intention to launch a range of interventions which will run until the Sustainable Farming Scheme is launched in 2025. These interventions will help prepare farmers for Scheme entry and also pilot new processes to inform delivery.

We will also launch a new scheme to fund woodland creation, with separate funding to plan woodland projects. We will seek to carry the improvements from this Scheme forward into the Sustainable Farming Scheme.

## **2023**

In Spring 2023, following co-design and subject to the Agriculture Bill receiving Royal Assent, we will launch a final consultation on the Sustainable Farming Scheme and our transitional plans to move from Basic Payment Scheme. As part of this consultation, we will also publish further economic analyses of the proposed Scheme. A final decision on implementation will be made once we have considered the responses to this consultation.

In the meantime, subject to sufficient funding being provided by the UK Government, it is our intention to continue with the Basic Payment Scheme until 2023 to provide support for farmers as we work together to transition to the Sustainable Farming Scheme.

## **2024**

In 2024 we will launch an outreach programme to engage with farmers on the Sustainable Farming Scheme through a range of demonstration events, workshops and surgeries. Through these events there will be the opportunity for farmers to understand the actions they will need to undertake on their farm and the likely advice, support and payment they will receive in return. We also intend to start the process of entering farmers into the new Scheme by starting to undertake Farm Sustainability Reviews (our proposals for this Review were outlined in *Sustainable Farming and Our Land*).

## **2025**

It is our intention to open the Sustainable Farming Scheme in January 2025. This will be followed by a multi-year transition period to enable those farmers who receive payments through the Basic Payment Scheme to transfer into the Sustainable Farming Scheme.

## **Section 2: Our Response to the Consultation**

### **Introduction**

The following section sets out our response to the proposals outlined in the Agriculture (Wales) White Paper. We welcome the general support for the proposals and accept that more detail is needed which will be addressed through further consultation and co-design as set out in the previous section.

### **Regulatory Reform**

#### *National Minimum Standards*

It is encouraging to see endorsement of proposals surrounding the National Minimum Standards (NMS), specifically to simplify the current regulatory landscape.

Some respondents however, expressed concern the NMS would increase the regulatory baseline, increase operation costs and reduce competitiveness of Welsh farmers.

Proposals for NMS primarily seek to maintain and clarify the legal standards we already have in place, ensuring farmers understand the law which already exists. It is not our intention to raise the legal baseline without further consultation. Therefore, the NMS should not increase costs for those already in compliance with the law.

We noted some respondents felt the NMS doesn't go far enough and were concerned flexibility could lead to a drop in standards.

Welsh Ministers have committed to maintaining high standards in leaving the EU and have been clear we would resist a race to the bottom in terms of standards and to ensure we have continued regulation which is appropriate for Wales.

We continue to work closely with other UK administrations to understand any divergences in regulation between Wales and other parts of the UK.

Some responses to the NMS proposals highlighted the level of detail provided on the scope of the standards was insufficient to determine the impact they may have. Others were sceptical the proposals would be sufficient to address the climate, nature and health emergencies we face.

The Welsh Government recognises an evolving regulatory baseline will be necessary to address these challenges.

Initial detail was provided in the consultation on the scope, format and principles of the NMS. However, further work will need to be carried out on the development of NMS proposals, including exploring both legislative and non-legislative options for delivering our ambitions.

In developing future proposals, the Welsh Government will keep regulation under review to tackle environmental challenges and any such review would also give consideration to trade, comparative standards and competitiveness of Wales' agriculture sector, in line with concerns raised by stakeholders responding on these issues.

## *Civil Sanctions*

We were pleased to see the majority of responses recognised the importance of greater proportionality to enforce regulatory compliance and were in agreement with the aim of proposals for civil sanctions.

We noted there were some differences in interpretation of our proposals. When considering enforcement, some respondents would refer to their experiences of enforcement under the existing farming schemes, which sometimes merged with their views of enforcement of the law.

It is important to note the proposals on the Sustainable Farming Scheme and the civil sanctions are distinct from each other. Proposals for civil sanctions will ensure the law is enforced proportionately and consistently, regardless of whether or not farmers are members of the Scheme. This means members of the Scheme will receive the same civil or criminal sanctions as they would if they were not members, as this relates to compliance with the law.

Civil sanctions are not intended to be a direct replacement for Basic Payment Scheme penalties and will be separate from any sanctions for the new Scheme.

However, we would expect all farmers who apply for the Scheme to comply with the law and continued compliance would be essential to justify continued payments for environmental outcomes.

We recognise detailed consideration and consultation will be needed on the scope and application of civil sanctions and how these interact with the requirements of the new Scheme.

We noted some respondents felt the proposals for civil sanctions would not be a sufficient deterrent for breaking the law. However, it is important to note, existing criminal prosecutions will still be an option for more severe offences, where severe harm has been caused and where other options have proved ineffective.

We remain of the opinion the enforcement tools proposed under civil sanctions including warnings, notices and monetary penalties will complement existing criminal sanctions to give regulators a range of tools which are proportionate to the severity of the offence.

The introduction of civil sanctions is complex and will take time to develop. 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. Civil sanctions proposals will also be consulted on separately in future.

## *Compliance and Wellbeing of Farmers and Transition*

We welcome the general consensus for simplifying the current regulatory landscape and for proportionate enforcement.

We recognise some respondents were concerned the level of regulatory change could have negative impacts on the well-being of farmers. There was a perception



these proposals could increase uncertainty for farmers, including in navigating fluctuations in income and in responding to the changes to regulatory frameworks.

We recognise we are proposing changes to the way the regulatory baseline is monitored and enforced. We understand any change can be unsettling and we will consider the impact of proposals on farmers, including impact on mental health and farm businesses, in greater detail in consultation for secondary legislation.

However, the NMS are not intended to change the existing regulatory baseline. Our intention is not to catch people out, but to ensure farmers have a clear understanding of regulatory requirements, communicated through user friendly advice and guidance. We will also need to work with farmers to consider an appropriate transition period for the introduction of NMS and civil sanctions.

### **Sustainable Land Management: Future Policy and Support**

The White Paper confirmed Sustainable Land Management as the basis for future Welsh Government policy and support for agriculture. Respondents broadly supported the proposals around future support but we accept the need for more detail on the Sustainable Farming Scheme and clarity around the types of environmental outcomes and payment rates which it would support. Following a second phase of co-design and subject to the Agriculture Bill receiving Royal Assent, we will launch a final consultation on the Sustainable Farming Scheme.

Although no decisions have been made on the exact nature of the Sustainable Farming Scheme, we are currently working on scheme design proposals which are being informed by a range of economic, environmental and social analysis. We plan further engagement sessions with stakeholders which will further refine the design of the Sustainable Farming Scheme and ensure it is fit for purpose. This engagement will also cover proposals to support the wider industry and supply chain.

We note the continued requests from the farming unions for a 'stability payment' as part of a future scheme. In response we would point out that crisis and market intervention measures are in place at a UK level and will continue to be part of Government measures to deal with instability or market failure. However, we believe that the best response to market volatility at an individual farm level is to have a range of income streams and to manage costs as well as possible. In this regard the proposed payments we will make for the delivery of environmental outcomes are a new income stream (one incapable of being substituted by farmers elsewhere).

It is proposed the Sustainable Farming Scheme will also provide advice and support to farm businesses on managing costs and increasing net margins as part of a Knowledge Transfer and Innovation Service. We will also consult on our plan to transition to the Sustainable Farming Scheme and phase out the Basic Payment Scheme over a multi-year transitional period. This period will help provide certainty as we make the transition from one scheme to the other.

We proposed that, in some circumstances, landlords and tenants should be able to make joint applications for access to the Sustainable Farming Scheme. This may be

advantageous where tenancy arrangements are short term, but some long term actions such as woodland planting are deemed desirable. There were mixed views on the appropriateness of this approach. We will consider the responses in more detail and engage with stakeholders to consider this proposal further.

## **Collection and Sharing of Data**

We welcome the support for the proposals around collection and sharing of data. We will ensure that both the legislative proposals and scheme design will facilitate improved data usage and streamlined processes. We will test innovative data collection techniques such as earth observation to support scheme monitoring and enforcement of regulation. Further work will be done to explore the practicality of a national database.

### *Reducing Administrative Burden*

We are pleased to see respondents welcome proposals to streamline the monitoring of regulatory compliance to reduce the administrative burden.

In supporting monitoring proposals, some respondents felt this required greater resources such as staff and staff training, remote monitoring and the use of more real time data. We recognise the important role regulators play and agree there are a number of further considerations which will be needed to ensure regulators can carry out their duties effectively. This would include expectations and resource requirements of regulators.

### *Value of On-Farm Inspections*

We noted some respondents felt the proposals undervalued the importance of on-farm inspections in monitoring and ensuring compliance.

We fully acknowledge the value of on-farm inspections, but to make the best use of resources these inspections should be better targeted at those areas with the highest risk. We believe access to remote technology and better data sharing will help us to achieve this and we will continue to investigate how this could work in practice.

## **Forestry and Woodlands**

### *Proposal for the scheme to support woodland creation and management*

Wales needs a step change increase in woodland creation to tackle the climate emergency. We want to do this in a way which safeguards the viability of our agricultural businesses and farmers have a crucial role to play in planting more trees. We propose farmers will be offered support for woodland creation and management via the Sustainable Farming Scheme in future.

## *Carbon markets*

We welcome the support for our proposals in the White Paper and we have established a working group to consider models to attract investment in woodland creation, without disrupting existing communities and patterns of landownership. The new working group will consider how to define the types of investment which will benefit local communities and how we can seek to target support effectively to protect these communities.

## *Woodland Creation*

There was general support for our proposals to take powers to amend Environmental Impact Assessment regulations and we plan to include this in the Agriculture Bill.

## *Licensing tree felling and penalties for illegal felling*

We plan to include powers within the Agriculture Bill to add conditions to felling licenses and powers to allow amendments, suspensions or to revoke licenses after they have been granted.

We recognise the need for clear guidance on how and when these powers will be used and Natural Resources Wales will publish draft guidance ahead of the Bill being introduced.

## *Exemptions to felling licenses for ash dieback.*

Following feedback from stakeholders we will not take forward legislation in this area. We will provide support for landowners dealing with ash dieback through non-regulatory routes and we are currently developing guidance for landowners dealing with ash dieback.

## **Proposals for additional Powers**

### *Agricultural Tenancies*

No clear trends emerged from the few responses to this section, with conditional support appearing to be more prevalent amongst a small subset.

Those in favour of extending the provision for dispute resolution requests for landlord's consent to activities to Farm Business Tenancies (FBT) felt market conditions limit tenants' power and influence to renegotiate agreements. Whereas those opposed noted the flexibility of the FBT framework has resulted in fewer disputes, and felt any further change could undermine the law of contract and confidence in the let sector. Further consideration and exploration of the evidence base, in collaboration with stakeholders (including TRIG), is required to better establish the need for such a change in future.

The majority of respondents to these questions were in favour of extending the provision to landlords, citing fairness as a key consideration. This is at odds with the findings of our previous tenancy reform consultation which found landlords do not

face restrictions in the same way as tenants. Those opposed felt retrospectively changing private property rights was only just in the context of the changing policy environment, and in particular for tenancies under the Agricultural Holdings Act 1986 (AHA) i.e. to support tenants with contracts under the AHA to access future support schemes. On balance, and taking into account the aim of the provision is to enable fair access to future schemes, we are of the opinion extending the provision to landlords would not be the most effective way to achieve our policy aim. Instead we think this is the role of scheme design and eligibility criteria.

Finally, some felt the proposals did not go far enough and suggested additional reforms, such as provisions for FBTs with an initial term of 10 years. Others suggested alternative approaches would better achieve the policy aim, such as an advisory service for tenants and landlords to increase awareness and encourage more detailed consideration and uptake of the flexibility already afforded by the FBT framework. Further legislative reforms would require detailed consideration with stakeholders, outside the scope of this Bill.

### *Common land*

The consultation highlighted the important role of common land and that it should receive greater attention and consideration in terms of how common land is effectively managed and protected. Through our further engagement on the scheme proposals we will ensure the needs of those with common land rights are taken into account and that they will have fair access to the future scheme.

In terms of the specific proposals on common land there were limited responses. We will work to develop the evidence base with stakeholders in this area before taking forward legislation.

### *Animal Health and Welfare*

The consultation indicated general support for additional powers to respond to disease outbreaks, but highlighted a wish for public engagement and consultation on the approach to applying movement controls in the event of a novel or disease outbreak, and the definition of 'animals' to which such controls apply. A key concern highlighted was the need for alignment and collaboration between UK administrations especially in light of cross-border/intra UK trade issues. Animal welfare standards were also raised as an issue as poor animal welfare can contribute to the emergence and spread of animal diseases.

We intend to host a public consultation on the proposal for movement controls. We will further consider the question of alignment between UK administrations and the opportunity for further public engagement on the approach to movement controls. Ensuring welfare standards are maintained aligns with our philosophy of preventing the spread of disease and will be considered as part of a consultation and development of legislation.

### *Regulating the use of Snares*

A large proportion of the consultation responses supported this approach citing animal welfare concerns and capture of non-target animals. As set out in the Programme for Government, we will ban the use of snares and glue traps.

### *Sustainable Agricultural Business Practice*

No significant concerns were raised relating to this policy area, however a number of respondents highlighted the importance of alignment with the rest of the UK given the cross-border nature of the agricultural markets and supply chains.

We will continue to develop our thinking around the issues facing the supply chain and engage with industry to develop the evidence base.

### *Agricultural Minimum Wage*

There were very few responses to this proposal, although those who did respond were generally supportive. We intend to bring forward legislation to address the barriers to effective partnership working at a later date.

### *Exceptional Market Conditions / Crisis Measures / Public Intervention and Private Storage Aid*

Respondents were positive around the proposals, and most regarded the proposed additional powers as valuable, proportionate and necessary due to the expiry of the powers currently included in the Agriculture Act 2020. It is therefore proposed that we continue to seek powers in this area before the expiry of the equivalent powers in the UK Act.

### *Marketing Standards and Carcass Classification*

Overall respondents were supportive of the proposals to take powers for the purpose of Marketing Standards and Carcass Classification. However, there was also a general feeling the Welsh Government should work with, and ensure alignment with, other UK administrations in the case of both Marketing Standards and Carcass Classification.

We will seek powers in this area before the expiry of the equivalent powers in the UK Act.

### *Organic Products*

There was a mixed response, although not many respondents referenced the policy proposal on organics. Both the Farmers Union of Wales and the National Farmers Union Cymru support the making of legislation in a devolved area being done through the Senedd, although they stress the need for regulations to be agreed across the UK. The National Sheep Association raised concerns around powers that would otherwise continue in the UK Agriculture Act 2020 being transferred to the Agriculture Bill.

There is adequate provision for the Welsh Ministers through the Agriculture Act 2020. These provisions are not covered by the sunset clause and Ministers can continue to exercise their powers post 2024.

#### *Fertilisers and Identification and Traceability of Animals*

There were limited responses on these proposals and adequate provision is made for the Welsh Ministers through the Agriculture Act 2020.

#### *Welsh Language*

We agree that a resilient agriculture sector is important for ensuring vibrant rural communities and that this has important links to the protection and promotion of the Welsh language and culture. The economic analyses we will undertake will ensure that we understand the impacts of our proposals by region and by sector. To deliver the outcomes we seek we need to ensure that we have a sustainable farming sector. All issues raised will be considered as a part of the Welsh Language Impact Assessment.

#### *Integrated Impact Assessments*

We welcome the feedback on the draft impact assessments and recognise the need for further detail. We will take into account the feedback given when preparing the next iteration of the impact assessments which will form part of the Regulatory Impact Assessment. We will engage with key stakeholders in the relevant areas to ensure that relevant data is taken into account. This will be an ongoing process. We will publish our final assessment alongside the final proposals for the Sustainable Farming Scheme.