

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee**

Alun Davies AM
Minister for Natural Resources and Food
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



9 July 2013

Dear Minister

Agricultural Sector (Wales) Bill

1. Thank you for appearing before the Committee yesterday to provide evidence on the above Bill, which you introduced yesterday afternoon and which the National Assembly agreed (on 2 July) to consider as a Government Emergency Bill.
2. The evidence session highlighted a number of significant issues and we have agreed that we will undertake a retrospective inquiry on this Bill in the autumn term.
3. However, there are a number of matters that we wish to draw to your attention in readiness for the Stage 1 debate later today and subsequent stages of the legislative process to be considered next week. These matters are discussed in the paragraphs below.

Agricultural Advisory Panel for Wales (section 2)

4. Section 2 of the Bill says that Welsh Ministers “*may*, by order, establish a panel”. Given the urgency with which this Bill is being taken through the legislative process and the role the Agricultural Advisory Panel for Wales has to play in relation to advising on agricultural wages, it is surprising that the Bill does not *require* Welsh Ministers to establish such a panel.

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Recommendation 1: We recommend that the Minister should table an amendment to section 2 of the Bill to require the establishment of an Agricultural Advisory Panel for Wales.

Agricultural wages orders (section 3)

5. As you will be aware, section 3 of the *Agricultural Wages Act 1948* gave the Agricultural Wages Board the power to make orders fixing minimum rates of wages, directing holidays to be allowed and fixing any other terms and conditions of employment for workers employed in agriculture. The orders were made in accordance with the procedure in Schedule 4 to that Act, which required the publication of proposals and the consideration of objections.

6. However, we note that section 3 of the Bill proposes that corresponding orders are made by the Welsh Ministers, and not by the proposed Agricultural Advisory Panel for Wales. The Panel may, under section 2(2)(b), be asked to advise the Welsh Ministers in relation to the making of those orders. We note that the proposal introduces an element of Assembly scrutiny by the use of the negative procedure in accordance with section 14(3). However, in our view, the use of the affirmative procedure would provide a more robust and appropriate level of scrutiny as this element constitutes the core of the Bill.

7. On the other hand, we recognise that the approach you have adopted means that the element of independence that the Board provided has been lost. As such, there is an argument therefore that the orders should be made by the Advisory Panel because it would provide greater independence, albeit, at the price of reducing Assembly scrutiny. This is one issue where we believe it would have been useful for the National Assembly to have been in a position to take account of the views of stakeholders to inform the debate on the general principles of the Bill and also, the later stages of the legislative process.

Recommendation 2: If the Minister considers it appropriate to have the power to make orders under section 3 of the Bill in relation to agricultural wages, we recommend that the Minister should table an amendment to apply the affirmative procedure to such order-making powers.

Orders and regulations (section 14)

8. Unfortunately, we have not had the time to consider whether all the procedures provided in the Bill (under section 14) for making orders and regulations are appropriate and this is an issue we will return to in the autumn.

Drafting of the Bill

9. We have a number of concerns about the way in which certain provisions in the Bill have been drafted.

10. Despite the expressed intention that orders made by the Welsh Ministers would be informed by the advice of the Panel, section 3 of the Bill does not contain a requirement for the Welsh Ministers to have regard to such advice. Indeed, as the Bill is currently drafted, an order under section 3 could be made without the Panel even having been established. We believe that this point needs to be addressed.

11. Extensive enforcement provisions are set out on the face of the Bill, including the creation of a criminal offence in section 5 (enforcement of holiday entitlement), without there being any obligation on the Welsh Ministers to make the wages orders under section 3 upon which the whole system is based. In our view this does not make for good law.

12. The power to make ancillary provision is expressed very broadly in section 13, including the power to modify this Bill or any other enactment. Even then, the Bill repeats such provision in almost identical terms in section 14(1)(a). In our view this repetition is unnecessary.

Recommendation 3: We consider that the Minister should table amendments to address the concerns we have raised regarding the way in which the Bill is drafted.

Sunset section

13. We note that you have not considered the inclusion of a sunset section in the Bill, which would provide it with an 'expiry date' once it has passed into law.

14. Given the lack of time available for scrutiny of the Bill and in the interests of making good, sustainable law that has been robustly scrutinised, we consider that a sunset section would be desirable.

15. We recognise that the inclusion of such a sunset section would, in effect, require the Welsh Government to introduce another Bill on this subject at a later date. In our view, the advantage of this approach is that it would then allow the National Assembly to undertake a more thorough scrutiny of the Welsh Government's policy proposals and, as part of that process, to engage and take evidence from relevant stakeholders during committee proceedings.

Recommendation 4: We consider that the Minister should table an amendment to include a sunset section in the Bill so that the Bill ceases to have effect after a fixed period of time. Such an approach would result

in the Welsh Government introducing, at an appropriate time, a further Bill that can then be subject to the usual, more robust procedures for legislative scrutiny in the National Assembly.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail on the final letter.

**David Melding AM
Chair**