



**Law Commission**

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**Comisiwn y Gyfraith**

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# Agricultural Law in Wales Scoping Report



Law Com No 424



**Law  
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Reforming the law

Law Com No 424

# **Agricultural Law in Wales: scoping report**



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# Glossary

**Agriculture:** we adopt the definition of agriculture set out in section 51 of the Agriculture (Wales) Act 2023. Section 51 explains that “agriculture” means horticulture, farming arable crops, dairy farming, keeping and breeding livestock, using land as grazing land, using land as farm woodland or for agroforestry, controlled environment agriculture, otherwise growing plants for sale or for the sale of part of a plant, and maintaining land in a state that makes it suitable for the above activities. In Chapter 3 we explain why we adopt this definition.

**Assimilated law:** law originating from the European Union, but which remains part of the UK’s domestic law as a result of the European Withdrawal Act 2018 and the Retained EU Law (Revocation and Reform) Act 2023.

**Codification:** classifying the law on a particular subject, bringing it together in a series of discrete enactments which form part of a code of law on the subject, publishing the legislation forming part of that code together and taking steps to preserve the structure of the legislation. The meaning we adopt for this report is consistent with the meaning used in the wider Welsh Government programme of work on the future of Welsh law and we explain this further in Chapter 1.

**Common frameworks:** a mechanism to facilitate common approaches between the four UK nations. These frameworks are jointly agreed between the UK Government and devolved governments.

**Counsel General for Wales:** the legal adviser to, and representative in the courts of, the Welsh Government. A member of the Welsh Government and although the office is of “ministerial” status, the holder is not one of the Welsh Ministers.

**Crops:** a plant or plant product which can be grown and harvested for profit.

**Cross-border farms:** farms, situated on or near the border, that are made up of land located in Wales and land located in England, regardless of whether the land in question physically straddles the border. We discuss this further in Chapter 4.

**Executive powers:** powers that rest with the government (in this case, either the Welsh Government or UK Government). These include the power to initiate primary and secondary legislation.

**European Union:** an economic and political union between 27 European countries.

**Farmers:** persons engaged in any activity that satisfies the definition of agriculture, as set out in section 51 of the Agriculture (Wales) Act 2023. When we refer to farmers, this includes horticulturists and other workers in the agricultural sector whose activity is understood to mean agriculture.

**Good estate management:** rules that require a landowner to manage the agricultural land they own to a standard which enables an occupier of the land reasonably skilled in “husbandry” to maintain efficient production. We consider this in further detail in Chapter 9.

**Good husbandry:** rules that require an occupier of agricultural land to farm the land they occupy in accordance with a reasonable standard of management to allow for efficient production in the present and in the future. We consider this in further detail in Chapter 9.

**Government of Wales Act 1998:** established the National Assembly for Wales as a corporate body. The Assembly acquired the executive functions of the former Welsh Office under that Act and subsequent executive functions via Acts of Parliament and transfer of functions orders.

**Government of Wales Act 2006:** created a formal separation between the legislature (now the Senedd) and the executive (now the Welsh Government). It also enhanced legislative powers for the National Assembly for Wales (now the Senedd) so that it could pass primary legislation.

**Horticulture:** the activity of growing plants or the cultivation of a garden.

**Legislative powers:** powers to enact legislation. In this case, they rest with the Senedd and the UK Parliament.

**Livestock:** animals kept to produce food, drink, oils, fibres or leathers, or to graze land. This will include, but is not limited to, cattle, pigs, sheep, poultry and goats.

**Natural Resources Wales:** the term used for the Natural Resources Body for Wales, established by article 3 of the Natural Resources Body for Wales (Establishment) Order 2012. Natural Resources Wales is a Welsh Government sponsored body, whose purpose is to ensure that the natural resources of Wales are sustainably maintained, enhanced and used.

**Primary legislation:** the main laws passed by the legislative bodies of the UK. In this scoping report, we are concerned with laws passed by the Senedd and UK Parliament.

**Primary enabling power:** a power contained in primary legislation (whether it be an Act of the Senedd or the UK Parliament) which is conferred on Ministers (Welsh or UK) or a public body.

**Reserved powers model:** a model which allows the Senedd to enact primary legislation on matters that are not reserved to the UK Parliament. The Wales Act 2017 established a reserved powers model of devolution for Wales. A more detailed account can be found in Chapter 2.

**Secondary legislation:** delegated legislation made by a person or a body authorised to do so in primary legislation. Powers to make secondary legislation may be conferred on the Welsh Ministers, UK Ministers or on public bodies.

**Senedd:** the democratically elected body which makes legislation for Wales (within certain subject areas). It is known both as the Welsh Parliament and Senedd Cymru. In this scoping report we refer to it by its commonly used Welsh name, the Senedd.

**Sewel Convention:** a convention that establishes that the UK Parliament will not normally legislate in areas that are devolved without the agreement of the devolved legislatures. We explain this further in Chapter 2.

**Signposting:** where there exists a webpage publishing a code of Welsh law on a particular subject, the act of providing links to copies of legislation which fall outside of the scope of the code, but which may be of interest to its readers.

**Statutory definition:** a definition contained in either primary or secondary legislation.

**Supply chain:** a network of individuals and organisations that produce, process and distribute products for sale.

**Sustainable land management:** the framework for agricultural support and regulation in Wales, underpinned by four objectives set out in section 2 of the Agriculture (Wales) Act 2023. The framework is designed to align with the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.

**The prospective code of agricultural law for Wales:** a comprehensive statement of the primary legislation, secondary legislation, and relevant guidance law on agriculture. The meaning we adopt for this report is consistent with the meaning of a code of Welsh law as referred to in the Legislation (Wales) Act 2019 and the Welsh Government's programme of work on the future of Welsh law.

**UK Ministers:** members of the UK Government, responsible for specific areas of public policy and government function in the UK.

**Welsh law:** includes primary legislation made by the Senedd, secondary legislation enacted under powers provided for in Acts of the Senedd or Assembly Measures, any other secondary legislation made by the Welsh Ministers, and any other enactment or rule of law so far as it could be provided for in an Act of the Senedd. We adopt the same meaning as that set out in section 1(3) of the Legislation (Wales) Act 2019.

**Welsh Ministers:** members of the Welsh Government, responsible for specific areas of public policy and government function in Wales.



# Abbreviations

**ALT for Wales:** Agricultural Land Tribunal for Wales

**AHA tenancy:** a tenancy under the Agricultural Holdings Act 1986

**APHA:** Animal and Plant Health Agency

**CAP:** Common Agricultural Policy

**Defra:** Department for Environment, Food and Rural Affairs

**EU:** European Union

**EUWA 2018:** European Union (Withdrawal) Act 2018

**FSA:** Food Standards Agency

**FUW:** Farmers' Union of Wales

**GoWA 1998:** Government of Wales Act 1998

**GoWA 2006:** Government of Wales Act 2006

**NFU Cymru:** National Farmers' Union Cymru

**NRW:** Natural Resources Wales

**REULA 2023:** Retained EU Law (Revocation and Reform) Act 2023

**SSSIs:** Sites of Special Scientific Interest

**The 2023 Act:** Agriculture (Wales) Act 2023

# Chapter 1: Introduction

- 1.1 Agriculture is vital to the culture, economy and environment of Wales. Approximately 90% of the land in Wales is used for agriculture.<sup>1</sup> In 2022, the agricultural, fishing and forestry sectors together accounted for 1.8% of employment in Wales.<sup>2</sup> In addition, agriculture contributed 1.1% to the national gross value added for Wales in 2023, compared with 0.6% to the UK national gross value added.<sup>3</sup>
- 1.2 Agriculture also makes a wider contribution towards Welsh tourism and the nation's food and drink sector. Farming businesses supply the raw produce relied upon by the Welsh food and supply chain which produced a turnover of £27 billion in 2024.<sup>4</sup> With the majority of land in Wales being used for agriculture, farmers also help maintain the country's rich landscape which attracts millions of visitors from across the world each year.<sup>5</sup>
- 1.3 In addition, the agricultural sector plays a central role in maintaining the "social fabric of rural communities".<sup>6</sup> Sector evidence reports that farming communities in Wales have long "supported and reinforced all aspects of rural services, from ensuring schools, shops and pubs remain open, to being a stronghold of the Welsh language".<sup>7</sup> There is a strong connection between the Welsh language and agriculture. In 2021, the same three counties - Gwynedd, Carmarthenshire and Ceredigion - appeared in the top five counties for both the proportion of the population employed in agriculture, forestry and fishing and for the proportion of people speaking Welsh.<sup>8</sup>

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<sup>1</sup> Welsh Government, *Survey of agriculture and horticulture* (June 2025) <https://www.gov.wales/survey-agriculture-and-horticulture-june-2025-html>.

<sup>2</sup> Senedd Research, "The Farming Sector in Wales Research Briefing" (July 2022) <https://research.senedd.wales/media/iuch3jz1/22-47-farming-sector-in-wales.pdf>.

<sup>3</sup> Welsh Government, "Gross Value Added in Wales by industry" (2023) <https://stats.wales.gov.wales/Catalogue/Business-Economy-and-Labour-Market/Regional-Accounts/Gross-Value-Added-GDP/gvawales-by-industry>; Department for Environment, Food and Rural Affairs, "Agriculture in the United Kingdom 2023" (June 2023) <https://assets.publishing.service.gov.uk/media/669e4777ab418ab055592a2c/auk-2023-06jun24iii.pdf>.

<sup>4</sup> Welsh Government, "Welsh Food and Drink Economic Appraisal – 2024" (July 2025) [https://business.wales.gov.wales/foodanddrink/sites/foodanddrink/files/documents/52187\\_F%26D\\_Econ%20Ap%202024\\_E%20FINAL%20WEB.pdf](https://business.wales.gov.wales/foodanddrink/sites/foodanddrink/files/documents/52187_F%26D_Econ%20Ap%202024_E%20FINAL%20WEB.pdf).

<sup>5</sup> National Farmers' Union Cymru ("NFU Cymru"), *Farming – Bringing Wales Together* (May 2017) <https://www.nfu-cymru.org.uk/media/oq2jdr3a/farming-bringing-wales-together.pdf>. In 2022, tourism contributed 5.1% of the national gross value added in Wales: Welsh Government, "Wales Visitor Economy Profile: 2024" (July 2024) <https://www.gov.wales/wales-visitor-economy-profile-2024>.

<sup>6</sup> Welsh Government, "Written Evidence HIL0004 submitted to the House of Commons Welsh Affairs Select Committee" (September 2021) <https://committees.parliament.uk/writtenevidence/40189/pdf/>.

<sup>7</sup> Conwy County Borough Council, "Written Evidence HIL0003 submitted to the House of Commons Welsh Affairs Select Committee" (September 2021) <https://committees.parliament.uk/writtenevidence/39591/pdf/>.

<sup>8</sup> Office for National Statistics, *Census 2021* (2021).

- 1.4 Agriculture also has a deep, enduring connection to the environment with the sector being reliant upon natural resources such as land, water and soil. Farmers, through their skilled cultivation of the land, are often described as custodians of the Welsh countryside.<sup>9</sup> Agricultural land use can, however, have both positive and negative consequences for the environment. Furthermore, while agriculture is vulnerable to the effects of climate change, the sector is a contributor to greenhouse gas emissions. Consequently, there is a substantial body of legislation that applies to the agricultural sector to prevent or reduce harm to the environment and wildlife.
- 1.5 In the light of agriculture’s multifaceted contribution to Wales, it is vital that the sector is able to rely upon a clear and cohesive legal framework. Accordingly, in this report we examine whether the existing body of agricultural law applicable in Wales is suitable for codification and, if so, what legislation should clearly form part of the prospective code of agricultural law for Wales (“the prospective Code”).<sup>10</sup> Given the volume of laws that apply to agriculture in Wales, we also consider whether the prospective Code could comprise multiple Acts of the Senedd.
- 1.6 In addition, we evaluate those areas of the statute book for which there are both arguments for inclusion in the prospective Code, or in a possible broader version of such a code which encompasses the law on additional subjects.<sup>11</sup> Where relevant, we also consider whether the inclusion of such legislation in the prospective Code may be influenced by the form and content of potential future codes of Welsh law on other subjects of law.
- 1.7 Alongside the above issues, we consider whether there are technical issues with existing agricultural legislation that may require changes or adjustments to the law in order to arrive at a simplified and modernised prospective Code. Finally, we seek to identify those issues that may require further consideration or analysis in the context of establishing the prospective Code.

## BACKGROUND TO THIS PROJECT

- 1.8 At the request of the Welsh Government, the Law Commission agreed in April 2024 to undertake a project on agricultural law in Wales. Our work for this project follows our earlier report on the Form and Accessibility of the Law Applicable in Wales (“the form and accessibility report”).<sup>12</sup> In that report we concluded that the law applicable in Wales had become increasingly difficult to access and understand; a problem we

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<sup>9</sup> Welsh Government, “Written Statement: Farming in Wales” (February 2024) <https://www.gov.wales/written-statement-farming-wales>; and NFU Cymru, *Framing the future for the next generation* (June 2023) <https://www.nfu-cymru.org.uk/media/gxdeoifz/nfu-cymru-next-generation-report-final-english.pdf>, p 1.

<sup>10</sup> In this report, we either refer to a prospective code of agricultural law for Wales by its full (prospective) title; or, for the sake of brevity, we refer to it as the prospective Code.

<sup>11</sup> For example, in Chs 7 and 8 we examine whether laws relating to animal health, animal welfare, plant health and plant varieties could be brought together under a code of Welsh law relating to agriculture, animals and plants.

<sup>12</sup> [Form and Accessibility of the Law Applicable in Wales](#) (2016) Law Com No 366.

concluded was not unique to Wales, but which had been compounded by the process of devolution.<sup>13</sup>

1.9 Our form and accessibility report identified a number of key factors that have contributed to the inaccessibility of the law applicable in Wales.

- (1) The statute book for England and Wales is voluminous and continues to be subject to rapid growth.
- (2) The law on a particular subject does not tend to be available in one place but can be found across a patchwork of primary and secondary legislation.
- (3) The law is commonly subject to amendment by subsequent legislation. Legislative amendments can include non-textual amendments, which means the relevant changes are not incorporated into the text of the amended legislation itself but instead are contained in a separate piece of legislation.<sup>14</sup> In such instances, it is necessary to refer to the original legislation and the amending legislation to understand the effect of the law.
- (4) There are limited resources to undertake work to consolidate the law.
- (5) The Welsh devolution settlement means that the law which applies to Wales has been, and continues to be, made respectively by both the Senedd and the UK Parliament.
- (6) The increasing divergence of the law applicable in England and that applicable in Wales on devolved subjects can make it difficult to identify the exact law which applies in Wales.<sup>15</sup>

1.10 In consideration of the above issues, we recommended that the Welsh Government pursue a policy of codification;<sup>16</sup> an innovative approach to law-making in Wales aimed at making the law applicable in Wales clearer, simpler and easier to access. We explained our vision for codification in the terms set out below.

- (1) The existing fragmented bodies of law applicable in Wales should, for each subject matter, be restated under a single Act of the Senedd or series of Acts (a process known as consolidation).
- (2) Alongside the process of consolidation, the opportunity should be taken to introduce legislative reforms aimed at improving the functioning and accessibility of the law applicable in Wales.
- (3) The resulting consolidated Act, or where relevant Acts, should stand as a code of law for a particular subject matter.

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<sup>13</sup> [Form and Accessibility of the Law Applicable in Wales](#) (2016) Law Com No 366, para 1.19 to 1.26.

<sup>14</sup> Non-textual amendments made to legislation are sometimes also referred to as glossing provisions.

<sup>15</sup> [Form and Accessibility of the Law Applicable in Wales](#) (2016) Law Com No 366, paras 1.19 to 1.23, 1.26 to 1.27 and para 2.76.

<sup>16</sup> [Form and Accessibility of the Law Applicable in Wales](#) (2016) Law Com No 366, para 2.76.

- (4) The integrity of the resulting codes of law should be protected by the concept of “code discipline” that would ensure that any amendments to a code of law are made to, and contained within, the code itself.<sup>17</sup>
- 1.11 Subsequently, a number of the recommendations made in our form and accessibility report were implemented by way of the Legislation (Wales) Act 2019. Under section 2 of the Legislation (Wales) Act 2019, the Welsh Ministers and Counsel General are required to prepare a programme setting out what they intend to do to improve the accessibility of Welsh law for each term of the Senedd.<sup>18</sup> Among other matters, that programme must include activities that are intended to:
- (1) contribute to an ongoing process of consolidating and codifying Welsh law; and
  - (2) maintain the form of Welsh law (once codified).<sup>19</sup>
- 1.12 “The future of Welsh law: revised accessibility programme for 2021 to 2026” is the current programme issued by the Welsh Ministers and Counsel General under the Legislation (Wales) Act 2019 (“the revised programme on the future of Welsh law”).<sup>20</sup>
- 1.13 That programme confirms the Welsh Government’s commitment to codifying the law applicable in Wales and outlines its current and planned consolidation and codification work. For example, the programme refers to ongoing work to reframe the existing planning legislative framework into a streamlined code of Welsh law: thereby implementing recommendations in the Law Commission’s Planning Law in Wales report.<sup>21</sup> In September 2025, the Welsh Government introduced a Bill before the Senedd that will, if enacted, establish a code of Welsh law relating to planning.
- 1.14 This report is therefore set against a wider ambitious programme of work to restructure the law applicable in Wales into codes of Welsh law on devolved subjects. It further builds upon the efforts of earlier Law Commission reports which lay the foundations for this innovative approach to law-making in Wales.

## THE MEANING OF A CODE OF WELSH LAW

- 1.15 The term “code of law” can be understood in a number of different ways. In civil law jurisdictions, a code of law is a systematically organised and comprehensive collection of legal rules enacted by a legislature to govern a specific area of law. Although the nature of a code of law varies significantly across different civil law jurisdictions, the civil law model of a code will generally provide for legal principles which the courts apply to individual cases. In contrast, the legal jurisdiction of England and Wales

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<sup>17</sup> [Form and Accessibility of the Law Applicable in Wales](#) (2016) Law Com No 366, paras 16.2, 16.8 to 16.9.

<sup>18</sup> Legislation (Wales) Act 2019 (anaw 4), ss 2(1) and (2).

<sup>19</sup> Legislation (Wales) Act 2019 (anaw 4), s 2(3).

<sup>20</sup> Welsh Government, *The Future of Welsh law: revised accessibility programme 2021 to 2026* (January 2024) <https://www.gov.wales/future-welsh-law-revised-accessibility-programme-2021-2026-html#:~:text=The%20government%27s%20first%20programme%20to,be%20laid%20before%20the%20Senedd>.

<sup>21</sup> [Planning Law in Wales](#) (2018) Law Com No 383.

operates on a common law model. As explained in our form and accessibility report, this means the law is:

made both by judicial precedent and by legislation; the legislation is detailed, and judicial interpretation of it is focussed on determining the legislative intention underlying its wording.<sup>22</sup>

- 1.16 The shorthand expression for a code of law - “a code” - is also sometimes used to refer to a code of practice which may be issued under statutory powers and will typically provide guidance on compliance with the law. An example is the code of good agricultural practice, issued under powers provided for under the Water Resources Act 1991, which provides guidance on compliance with certain legislative requirements. The term “a code” can also be used to refer to an Act which comprises the fundamental primary legislation on a particular topic. For instance, the Sentencing Act 2020 is known as the Sentencing Code and represents a comprehensive statement of criminal sentencing procedure and law.<sup>23</sup>
- 1.17 In the Welsh context, the term a “code of law” has a distinct meaning. In this section, we explain what a code of Welsh law means by reference to the Legislation (Wales) Act 2019 and the Welsh Government’s revised programme on the future of Welsh law.
- 1.18 A code of Welsh law is a comprehensive statement of the primary and secondary legislation and relevant guidance on a particular devolved subject.<sup>24</sup> “Welsh law” is a term used to describe the primary and secondary legislation that applies in Wales and which is made respectively by the Senedd and the Welsh Ministers.<sup>25</sup> Although Welsh law applies only in Wales, it forms part of the law of England and Wales as would any code of law on a devolved subject.
- 1.19 A code of Welsh law is not intended to be a formal legal instrument in its own right.<sup>26</sup> Instead, a code of Welsh law:
- would generally be published once some or all of the primary legislation on a particular subject has been consolidated, or has been created afresh following wholesale reform.<sup>27</sup>
- 1.20 Consolidation generally involves bringing fragmented laws on a particular topic together in a single Act or series of related Acts, incorporating any amendments made to the original legislation since it was enacted and modernising the language, drafting style and structure.<sup>28</sup> The Senedd’s standing orders set out the amendments to

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<sup>22</sup> [Form and Accessibility of the Law Applicable in Wales](#) (2016) Law Com No 366, para 2.9.

<sup>23</sup> The Sentencing Act 2000, s 1.

<sup>24</sup> Explanatory Notes to the Legislation (Wales) Act 2019 (anaw 4), paras 23 and 24; Welsh Government, *The future of Welsh law: revised accessibility programme 2021 to 2026* (January 2024), para 24.

<sup>25</sup> Government of Wales Act 2006, s A2.

<sup>26</sup> Explanatory Notes to the Legislation (Wales) Act 2019 (anaw 4), para 24.

<sup>27</sup> Explanatory Notes to the Legislation (Wales) Act 2019 (anaw 4), para 23.

<sup>28</sup> See the Explanatory Notes to the Legislation (Wales) Act 2019 (anaw 4), para 21 and the [Form and Accessibility of the Law Applicable in Wales](#) (2016) Law Com No 366, para 2.7.

legislation which may be introduced by way of a consolidation Act of the Senedd.<sup>29</sup> By comparison, an Act of the Senedd that delivers wholesale reform is one which replaces the existing law with a different legal framework underpinned by new policy objectives.

- 1.21 A code of Welsh law can comprise multiple Acts of the Senedd. This means that the primary legislation which forms part of a code of Welsh law may take the form of one or more consolidation Acts of the Senedd, one or more Acts of the Senedd which deliver wholesale reform, or a mixture of consolidation Acts and Acts delivering wholesale reform.
- 1.22 The provisions of an Act can make it explicitly clear that the Act is to form part of a code of Welsh law on a particular subject. For example, section 1 of the Historic Environment (Wales) Act 2023 states that the Act “forms part of a code of law relating to the historic environment of Wales”.<sup>30</sup>
- 1.23 Alongside bringing together the primary legislation for a subject, creating a code of Welsh law will usually involve a process of rationalising the secondary legislation for that subject.<sup>31</sup> This could involve restating the secondary legislation on a particular subject in a new set of Welsh statutory instruments. Alternatively, it could involve revoking the statutory instruments in question and enacting new Welsh statutory instruments which deliver wholesale reform of the law in question. For example, five sets of regulations made under the Historic Environment (Wales) Act 2023 each contain provisions confirming that the regulations “form part of a code of law relating to the historic environment of Wales”.<sup>32</sup>
- 1.24 Taken together, the process of developing a code of Welsh law involves bringing the law on a devolved subject together in a discrete collection of enactments which are stated to form part of the code of Welsh law on that subject. Once legislation has been brought together under a code of Welsh law, the question arises as to how the public accesses the content of a code and understands it to form part of a code of Welsh law.
- 1.25 The explanatory notes to the Legislation (Wales) Act 2019 explain that the enactments forming part of a code of law on a particular subject are to be made available together. The manner in which codes of Welsh law are published is a matter for the Welsh

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<sup>29</sup> Senedd Cymru, *Standing Orders of the Welsh Parliament* (January 2026), Standing Order 26C.

<sup>30</sup> Historic Environment (Wales) Act 2023 (asc 3), s 1.

<sup>31</sup> Explanatory Notes to the Legislation (Wales) Act 2019 (anaw 4), para 23.

<sup>32</sup> The Applications for Scheduled Monument Consent (Wales) Regulations 2024, SI 2024/932 (W 156); the Listed Building and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024, SI 2024/930 (W 155); the Scheduled Monuments (Partnership Agreements) (Wales) Regulations 2024, SI 2024/929 (W 154); the Listed Buildings (Exempt Religious Buildings) (Wales) Regulations 2024, SI 2024/927 (W 153); and the Listed Buildings (Partnership Agreements) (Wales) Regulations 2024, SI 2024/926 (W 152).

Government. We understand, however, that the legislation forming part of a code of Welsh law is to be presented together and made accessible via a webpage.<sup>33</sup>

- 1.26 Although a code of Welsh law is intended to be a comprehensive statement of the law on a particular subject, it may not be possible or practical for a code to encompass all legislation on the relevant subject. For example, as explained by the Welsh Government, “the process of codification can only apply to matters that fall within the legislative competence of the Senedd”.<sup>34</sup> Even where a particular subject falls within the Senedd’s legislative competence there may be elements of the law on that subject relating to reserved matters and which would therefore fall outside of any code of law on that subject.
- 1.27 The tool of signposting can, however, assist in such circumstances. A webpage which publishes a code of Welsh law on a particular subject could direct or “signpost” readers to those laws that fall outside of the code, but which may nonetheless be of relevance. Where we refer to the term “signposting” throughout this report, we do so in line with the meaning set out in this paragraph.<sup>35</sup>
- 1.28 Once the law on a subject has been organised into a code of Welsh law, the order achieved by way of codification is to be preserved.<sup>36</sup> This means that where an Act that forms part of a code of Welsh law requires amendment then any changes should be made to the Act itself rather than making a new Act that sits alongside it. This approach to amending legislation therefore helps to ensure that the structure of the code of Welsh law in question is maintained.<sup>37</sup>
- 1.29 Taken together, organising the law on a devolved subject into a code of Welsh law will ensure the legislation in question can be more easily accessed. The introduction of amendments aimed at modernising and simplifying the law also means that the legislation contained within a code of Welsh law can be more easily understood and applied. Importantly, legislation brought within a code of Welsh law will be made in both Welsh and in English,<sup>38</sup> contributing towards the Welsh Government’s strategy on the Welsh language: *Cymraeg 2050*.<sup>39</sup> We discuss the specific benefits of establishing a code of agricultural law for Wales in Chapter 11.

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<sup>33</sup> Senedd Cymru Legislation Justice and Constitution Committee, *Report on the Planning (Wales) Bill and the Planning (Consequential Provisions) (Wales) Bill* (November 2025) para 267.

<sup>34</sup> Welsh Government, *The future of Welsh law: classification, consolidation, codification* (October 2019), para 103.

<sup>35</sup> For the avoidance of doubt, our meaning of “signposting” in this report is distinct to the legislative technique of using overview sections in Acts to refer to laws which form part of a wider legislative framework or context.

<sup>36</sup> Welsh Government, *The future of Welsh law: revised accessibility programme 2021 to 2026* (January 2024), para 24.

<sup>37</sup> Welsh Government, *The future of Welsh law: revised accessibility programme 2021 to 2026* (January 2024), para 24

<sup>38</sup> Explanatory Notes to the Legislation (Wales) Act 2019 (anaw 4), para 23.

<sup>39</sup> Welsh Government, *Cymraeg 2050: A million Welsh speakers* (2017) <https://www.gov.wales/sites/default/files/publications/2018-12/cymraeg-2050-welsh-language-strategy.pdf>.



## PROBLEMS WITH THE EXISTING LAW

- 1.30 Over time the body of agricultural law applicable in Wales has become voluminous, complex and, in places, difficult to understand. Similarly to the law applicable in England, agricultural law in Wales is not set out in one place. Instead, it is scattered across a patchwork of primary and secondary legislation, including law that originates from the European Union (“EU”) but now forms part of our domestic law. Indeed, our review of agricultural law for the purposes of this report has involved consideration of approximately 150 individual pieces of legislation that apply in the agricultural context in Wales. It is reported that a similar volume of legislation applies to and regulates the agricultural sector in England.<sup>40</sup>
- 1.31 In our form and accessibility report, we concluded that the inaccessibility of the law applicable in Wales had been compounded “by the nature and process of devolution”.<sup>41</sup> We consider this to be equally true in respect of agricultural law.
- 1.32 Devolution ensures that the Welsh Government and the Senedd are respectively empowered to deliver policies and laws that are tailored to the unique profile and needs of the Welsh agricultural sector. This means that the agricultural law applicable in Wales and that in England continue to diverge from each other as the respective governments pursue distinctive agricultural policies. Consequently, the laws applicable to the agricultural sector in Wales comprise legislation enacted by the Senedd and separately by the UK Parliament. Furthermore, there are numerous provisions contained in Acts of the UK Parliament that apply to the agricultural sector, and which have been amended so that they make different provision for Wales or for England. Acts of the UK Parliament may also contain provisions that apply to Wales only or, alternatively, do not apply to Wales at all.
- 1.33 In addition, agricultural law applicable in Wales comprises secondary legislation that has been enacted by the Welsh Ministers, UK Ministers or, in some cases, a combination of both. Secondary legislation can also be subject to frequent amendment. Those secondary laws that are applicable to both England and Wales can also contain provisions which apply to Wales differently than to England or provisions which apply to only one country and not the other.
- 1.34 Partly because of this piecemeal amendment of primary and secondary legislation, it is increasingly difficult to identify the exact legal provisions that apply in Wales – even for experienced legal professionals. It also means it can be challenging to identify how executive responsibility for agriculture is divided between the Welsh Government and UK Government.
- 1.35 Furthermore, legislation enacted by the Senedd is available bilingually. However, laws enacted by the UK Parliament are available in English only; an issue of particular

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<sup>40</sup> Department for the Environment, Food and Rural Affairs, “Understanding and improving farming regulation” (March 2022) <https://defrafarming.blog.gov.uk/2022/03/02/understanding-and-improving-farming-regulation/>; Farm Inspection and Regulation Review, *Interim report* (July 2018), annex 4; Dan Corry, *Delivering economic growth and nature recovery: An independent review of Defra’s regulatory landscape* (April 2025), p 36.

<sup>41</sup> [Form and Accessibility of the Law Applicable in Wales](#) (2016) Law Com No 366, para 1.26.

significance for the 43% of workers in the agriculture, forestry and fishing sectors who speak Welsh.<sup>42</sup>

- 1.36 As outlined above, the law that applies to the agricultural sector in Wales also encompasses law which originates from the EU and now forms part of our domestic law as assimilated law following the UK's departure from the EU. Chapter 2 considers how the UK's membership of the EU, and the UK's decision to leave the EU, has influenced the development of agricultural law applicable in Wales. In many cases, the assimilated laws that apply to the agricultural sector in Wales have been amended to ensure that those laws can continue to operate effectively following the UK's withdrawal from the EU. Consequently, it is often necessary to read those assimilated laws alongside other statutory instruments in order to understand the effect of the law.
- 1.37 In addition, agricultural law applicable in Wales dates back in some cases to the nineteenth century and, in places, uses outdated language. There are also instances where agricultural legislation may not reflect modern farming practices or current policy objectives in the agricultural context. Separately, we further consider that agricultural law is a body of law without a commonly or universally agreed scope. Indeed, there is an abundance of legislation – notably which delivers upon environmental objectives – that applies in practice to the agricultural sector, but also to other sectors and in wider contexts unrelated to agriculture.
- 1.38 Taken together, the above factors mean it is challenging to demarcate the boundaries of agricultural law and further to identify, and understand the effect of, such law as applicable in Wales.

## OUR SCOPING REPORT

- 1.39 As explained on our website, projects undertaken by the Law Commission typically progress through set stages.<sup>43</sup>
- 1.40 This is a scoping report, published at the conclusion of a scoping stage. During a scoping stage, we undertake detailed research into an area of the law to identify potential issues with the law and possible solutions to those issues. Although a scoping stage does not typically involve consultation, we will speak with stakeholders to test and develop our understanding of the area of law under review.
- 1.41 As this is a scoping report which has not followed formal consultation,<sup>44</sup> we do not make formal recommendations for substantive reform of agricultural legislation in this report. For example, we do not recommend legislative reforms that would involve changes to the agricultural policy underpinning the law. Similarly, we do not recommend reforms to the law that would involve changes to significant legal rights and obligations applicable in the agricultural context. Instead, as discussed further below, we examine the existing body of agricultural law applicable in Wales and

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<sup>42</sup> Welsh Government, *Agriculture in Wales* (2019) <https://www.gov.wales/sites/default/files/publications/2021-03/agriculture-in-wales-evidence.pdf>.

<sup>43</sup> The Law Commission, "About the Law Commission" <https://lawcom.gov.uk/about-us/how-we-work/>.

<sup>44</sup> Our work has, however, involved engaging with a wide range of stakeholders as discussed at paragraphs 1.48 to 1.50.

consider how that legislation could be simplified, modernised and streamlined through the development of the prospective code of agricultural law for Wales.

- 1.42 In some cases, the scoping stage of a project will be followed by additional project stages which may involve consultation, policy development and the publication of a final report making formal recommendations for law reform. However, not all projects will progress through each stage. In some instances, where a scoping report has been published, the relevant government may decide to take forward itself the issues identified in the report without the need for the Law Commission to undertake further work on the issue. Alternatively, the relevant government may decide to embark upon a different direction to that outlined in a scoping report, negating the need for the subsequent stages.

## TERMS OF REFERENCE

- 1.43 Our terms of reference for the project are set out in full in Appendix 1. In summary, we have been asked to review agricultural law that applies in Wales and identify the legislation that should be brought together under the prospective Code. The purpose of codifying agricultural law in this way would be to simplify, modernise and otherwise improve the accessibility of the law in this area.
- 1.44 As we outline above, the scope of our work also involves identifying technical issues that might require changes or adjustments to the law in order to simplify, modernise and streamline agricultural legislation into the prospective Code.
- 1.45 We also highlight those issues that may require further consideration or analysis in the context of establishing the prospective Code.

## AREAS OF LAW NOT INCLUDED IN OUR REVIEW

- 1.46 As we explain above, a code of Welsh law is intended to be a comprehensive statement of the law on a particular devolved subject. However, as envisioned by the Welsh Government: “the process of codification can only apply to matters that falls within the legislative competence of the Senedd”.<sup>45</sup> Accordingly, our report does not examine laws relating to reserved subject matters such as tax.<sup>46</sup> For instance, our report does not consider the law on inheritance tax and related reliefs such as agricultural property relief.

## OUR APPROACH

- 1.47 To inform our work, we have undertaken a high-level, methodical review of the laws applicable to the agricultural sector in Wales. To determine the laws we consider suitable for inclusion in the prospective Code, we apply consistent criteria to assess suitability (as we discuss further in Chapter 3). In broad terms, our criteria for inclusion involve consideration of the subject matter of the law under review and its practical application to the Welsh agricultural sector. Where possible, we rely upon statistical

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<sup>45</sup> Welsh Government, *Consultation Document The future of Welsh law: classification, consolidation, codification* (October 2019), para 103.

<sup>46</sup> While tax is generally reserved to the UK Parliament, there are specific taxes which are devolved to Wales; Government of Wales Act 2006, para 15 of Sch 7A.

information and other authoritative sources of information, including external expertise, when making these assessments. We also critically examine any areas of law that appear to us to be particularly inaccessible or otherwise in need of simplification or modernisation.

## STAKEHOLDER ENGAGEMENT

- 1.48 This scoping report was undertaken without a formal consultation. Our task has been to undertake preliminary research into an area of law with a view to determining the scope of the prospective Code. As we explain above, we are not making recommendations for substantive law reform. Our work for this report is therefore distinct from that undertaken for a final law reform report that would include a formal consultation and recommendations for substantive reform of the law.
- 1.49 Nevertheless, in working on this scoping report, we have spoken to a wide range of individuals and groups with expertise or interests in this area to help inform our understanding of agricultural law. In total, we held meetings with many different stakeholders including individual farmers, charities, legal practitioners, regulatory bodies, members of the judiciary, academics, public bodies, unions and other organisations representing the agricultural sector and related sectors.<sup>47</sup> We have also benefited from discussions with a range of policy teams in the Welsh Government.
- 1.50 Alongside meeting individual stakeholders, members of the project team attended the following events to discuss our work.
- (1) The Agricultural Law Association's inaugural course on agricultural law in Wales in 2024.
  - (2) The Royal Welsh Show for 2024.
  - (3) The Rural Law in Wales Conference for 2024.
  - (4) The Legal Wales Conferences for 2024 and 2025.
  - (5) Meetings of the Wales Advisory Committee throughout 2024 and 2025.
  - (6) The National Farming Union Cymru's Sustainable Farming Conference in 2025.

## THE PURPOSE OF THIS REPORT

- 1.51 In 2011, a comprehensive independent report into the regulation of agriculture in Wales, the *Working Smarter* report, concluded that:

The single biggest weakness across government and agencies in striving to achieve better regulation is failing to communicate clearly and effectively. ... Farming related

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<sup>47</sup> A list of stakeholders can be found in Appendix 2 to this scoping report. In that appendix, we list those stakeholders that have consented to be named.

regulations are many in number and are often complex which presents a significant communication challenge.<sup>48</sup>

- 1.52 Improving the accessibility of the law applicable in Wales is the core aim of codification. Accessibility in this context means the extent to which the law is clear, logically organised, up to date, easy to understand, certain in its effect and readily available (in both Welsh and English languages).<sup>49</sup> A code of Welsh law aims to be a comprehensive statement of the law on a particular subject which is published together. Consolidating legislation can also involve making technical adjustments to the law which do not change its legal effect, but which improve the clarity and presentation of the law and make it easier to understand. Establishing the prospective Code therefore presents an important opportunity to enhance the clear communication of requirements, standards and principles contained in agricultural legislation. Ultimately, we consider that this can be achieved through bringing existing agricultural legislation together in a modernised, simplified and bilingual code of agricultural law for Wales.
- 1.53 To that end, this scoping report examines the legislation applicable to the agricultural sector in Wales to determine which laws could be brought together under the prospective Code. Having undertaken that examination, we are of the opinion that it would be feasible to bring together the laws relating to agriculture in Wales to form a simplified and modernised code of agricultural law for Wales.
- 1.54 Consequently, Chapter 11 provides a list of the core agricultural legislation that we consider suitable for inclusion in an initial Act of the Senedd forming part of the prospective Code. These are provisions spread across at least nine different Acts, including Acts of the UK Parliament and Acts of the Senedd. We also identify provisions spread across another six pieces of primary legislation which we consider could potentially be brought within the same initial consolidation Act of the Senedd, subject to discrete issues that require further consideration.
- 1.55 Given the volume of laws affecting agriculture in Wales, we suggest that the prospective Code could sensibly comprise more than one Act of the Senedd with each stated to form part of the prospective Code. Chapter 11 sets out a possible sequence of work that would involve bringing the subject matter of other existing pieces of primary legislation within the scope of the prospective Code.
- 1.56 In relation to secondary legislation, we identify at least 69 different statutory instruments that we consider to be suitable for inclusion in the prospective Code. In certain instances, we propose that instruments relating to the same subject matter, or similar subject matters, could be restated in a single Welsh statutory instrument to reduce the overall volume and complexity of the existing legal framework.<sup>50</sup>
- 1.57 In addition, we highlight potential opportunities to declutter the legal framework governing agriculture by identifying those legal provisions that no longer appear to be

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<sup>48</sup> G Williams, *Working Smarter: A report of recommendations to the Welsh Government on better regulation in Farming* (December 2011).

<sup>49</sup> Legislation (Wales) Act 2019 (anaw 4), s 1(2).

<sup>50</sup> See Ch 6 at paras 1.138 to 1.139 and Ch 7 at paras 1.161 to 1.164.

of practical use, effect or value. As our work has not involved a consultation stage, we acknowledge that further work or engagement may be considered necessary to confirm whether such provisions are in fact ripe for repeal.

- 1.58 Having identified the legislation we consider suitable for inclusion in the prospective Code, we form the view that the creation of a prospective Code would simplify, modernise and improve the accessibility of agricultural law applicable in Wales. In Chapter 11, we summarise the benefits that we consider codification would deliver, while acknowledging the potential limitations of our proposed model of the prospective Code.
- 1.59 Furthermore, we outline examples of technical issues which would involve changes or adjustments to the law in order to simplify, modernise and streamline agricultural legislation into a code of Welsh law. For example, we identify where the wording of legislation may benefit from changes to clarify the existing effect of the law. In other instances, we identify legislative provisions that may benefit from modernisation to reflect how the law operates in practice. A summary of the technical issues we have identified is presented in Chapter 12.
- 1.60 Finally, we are conscious that there are calls within the agricultural sector for an independent review of “the cumulative burden and red-tape and bureaucracy facing the agricultural sector”.<sup>51</sup> As we outline above, our report is concerned with improving the accessibility of agricultural law applicable in Wales through the process of consolidation, restatement and codification.
- 1.61 Decisions as to whether certain activities or land uses in the agricultural context should be subject to regulation are typically policy decisions which, dependent on subject matter, may be best informed by sound scientific advice. Laws that regulate agriculture will typically impose mandatory rules or measures to follow or standards to achieve. The extent to which any such legislative requirements are prescriptive, stringent or rigid in nature will also be informed, at least in part, by policy-based considerations.<sup>52</sup> Our terms of reference do not extend to making proposals or recommendations for law reform that would involve changes to the policy underpinning agricultural law. Accordingly, our report does not consider changes to the law that may fall within the categories above.

## THE STRUCTURE OF THIS REPORT

- 1.62 This scoping report is divided into 12 chapters. Chapter 2 considers the wider context within which our work for this report has taken place. We examine the historical context together with the effects of Welsh devolution and EU policy on the

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<sup>51</sup> NFU Cymru, *Welsh farming: Growing forward Senedd Election Manifesto 2026* (June 2025); and Farmers' Union of Wales, *Tir Teulu Treftadaeth Standing Strong for Family Farms Manifesto Senedd 2026 Manifesto* (September 2025).

<sup>52</sup> Department for Business, Energy and Industrial Strategy, *Goals-Based and Rules-based approaches to regulation* (May 2018)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/714185/regulation-goals-rules-based-approaches.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714185/regulation-goals-rules-based-approaches.pdf), pp 28 to 40.

development of the law in this area. We also highlight other laws that may influence the process of codifying agricultural law applicable in Wales.

- 1.63 Chapter 3 sets out our approach to determining whether legislation is suitable for inclusion in the prospective Code. In this chapter, we outline the guiding criteria that we have adopted to help determine whether an enactment is suitable for inclusion in the prospective Code.
- 1.64 Chapter 4 considers overarching issues that span most of the legislation under consideration. Some issues that we have identified include how to approach the codification of laws that may require or benefit from substantive reform, and separately how the varying statutory definitions of agriculture could affect the accessibility of the prospective Code. We raise these issues because they form an important part of the landscape and often raise difficult questions when considering whether a particular law should form part of the prospective Code.
- 1.65 Chapters 5 to 9 deal with specific areas of law that apply to the agricultural sector in Wales. For each of these chapters, we set out the relevant law and consider whether those laws are suited to form part of the prospective Code.
  - (1) Chapter 5: Agriculture Acts and other Acts primarily concerned with agriculture.
  - (2) Chapter 6: laws that apply to agriculture and concern the environment and wildlife.
  - (3) Chapter 7: laws governing the health and welfare of livestock.
  - (4) Chapter 8: forestry, plant health and plant varieties laws.
  - (5) Chapter 9: laws concerning agricultural tenancies, housing and land development in an agricultural context.
- 1.66 Within each of the above chapters, we outline technical issues that may require changes or adjustments to the area of agricultural law in question and provide illustrative examples of such issues.
- 1.67 In Chapter 10, we consider where to draw the boundaries of the prospective Code in terms of the laws that apply through the agricultural production and supply chain.
- 1.68 In Chapter 11, we set out the legislation we consider suitable for inclusion in the prospective Code and a possible sequence for the work involved in establishing the prospective Code. We examine the benefits and limitations of our proposed model for the prospective Code.
- 1.69 Chapter 12 summarises the technical issues we have identified throughout this report and provides context to what we mean by the term “technical issues” in the context of establishing the prospective Code. It further provides an overview of additional key issues that may require further consideration or analysis in this context.
- 1.70 This paper also includes 5 appendices.
  - (1) Appendix 1 sets out our terms of reference.

- (2) Appendix 2 lists the stakeholders with whom we have engaged.
- (3) Appendix 3 lists various statutory definitions of the term “agriculture”.
- (4) Appendix 4 lists those statutory provisions contained in Acts examined in Chapter 5 that we consider unsuitable for inclusion in the prospective code of agricultural law for Wales.
- (5) Appendix 5 lists additional laws we have identified as being suitable for inclusion in the prospective code of agricultural law for Wales.

## **NEXT STEPS**

- 1.71 It is now for the Welsh Government to consider the findings of our scoping report. Under the Protocol between the Welsh Ministers and the Law Commission of England and Wales, the Welsh Ministers will provide an interim response to a report to the Commission as soon as possible and in any event within six months of publication of the report unless otherwise agreed with the Commission.<sup>53</sup> The Welsh Ministers will provide a full response as soon as possible after the interim response and in any event within 12 months of publication of the report, unless otherwise agreed with the Commission.

## **WEB LINKS AND REFERENCES**

- 1.72 All web links and references to documents have been checked and are accurate as of 4 February 2026.

## **ACKNOWLEDGEMENTS AND THANKS**

- 1.73 We are grateful to all the individuals and organisations who have taken the time to discuss this project with us. We have benefited substantially from the expertise and experience they have generously shared with us.
- 1.74 We also wish to thank the Agricultural Law Association for kindly facilitating our engagement with their members at the Rural Law in Wales annual conference for 2024.

## **THE TEAM WORKING ON THIS PROJECT**

- 1.75 The Commissioners would like to record their thanks to the following members of staff who worked on this report: Henni Ouahes (team manager of the Public Law and Law in Wales team); Laura Jones (team lawyer); Georgina Withers-Boalch (research assistant) and Emma-Jane Harris (research assistant).

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<sup>53</sup> Protocol between the Welsh Ministers and the Law Commission (July 2015) [https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2015/07/Law\\_Commission\\_Welsh\\_Protocol.pdf](https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2015/07/Law_Commission_Welsh_Protocol.pdf).



# Chapter 2: The wider context

## INTRODUCTION

- 2.1 This chapter considers the historical and legislative context in which the existing body of agricultural law applicable in Wales has developed. It examines how EU policy and the process of Welsh devolution has influenced and shaped the existing mosaic of laws that apply to the agricultural sector in Wales. It further provides an overview of the existing legislative and administrative devolved powers available in respect of agriculture. The final part of this chapter considers other laws which may influence and shape the process of establishing the prospective code of agricultural law for Wales.

## THE HISTORY OF WELSH DEVOLUTION AND AGRICULTURE

- 2.2 The devolution of powers to Wales has been memorably described as a “process, not an event”.<sup>1</sup> Since the twentieth century, there has been a gradual but steady expansion of powers devolved to Wales.
- 2.3 Limited administrative devolution took place in Wales during the early twentieth century across a number of policy areas including education, health and agriculture.<sup>2</sup> In 1912, the Agricultural Council for Wales was created, whose remit was exclusively concerned with agricultural education.<sup>3</sup> Further administrative powers were subsequently devolved in 1919 with the creation of a Welsh department of the Ministry of Agriculture and Fisheries.<sup>4</sup>
- 2.4 In 1951, Winston Churchill’s government created a Ministry for Welsh Affairs. The Ministry was headed by a Minister of Welsh Affairs who undertook an ambassadorial role, rather than exercising any executive powers in relation to Wales.<sup>5</sup>
- 2.5 Subsequently, a Welsh Office was created in 1964. The Office was headed by the Secretary of State for Wales who exercised executive powers in relation to local government, road transport, planning, health and agriculture.<sup>6</sup> Following recommendations by the Kilbrandon Commission in 1973 to create elected bodies for Wales and Scotland, the Wales Act 1978 was passed.<sup>7</sup> The Act made provision for a Welsh Assembly and required a post-legislative referendum to approve its coming into

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<sup>1</sup> The former Secretary of State for Wales, R Davies, “Devolution: A Process Not an Event” (1999).

<sup>2</sup> [Form and Accessibility of the Law Applicable in Wales](#) (2015) Law Commission Consultation Paper No 223.

<sup>3</sup> Ministry of Agriculture, Fisheries and Food, Welsh department, “Ministry of Agriculture and Fisheries: Welsh Department Correspondence and Papers” (1912 to 1956) <https://discovery.nationalarchives.gov.uk/details/r/C10471>.

<sup>4</sup> T G Watkin, *The Legal History of Wales* (2nd ed 2012) p 191.

<sup>5</sup> *Hansard* (HC), 13 November 1951, vol 493, col 49.

<sup>6</sup> T G Watkin, *The Legal History of Wales* (2nd ed 2012) p 192.

<sup>7</sup> Report of the Royal Commission on the Constitution (1973) Cmnd 5460.

force. The referendum was held on 1 March 1979, with a majority voting against proposals for a Welsh Assembly.<sup>8</sup>

- 2.6 During the 1980s and 1990s, there were increased calls for further devolution of powers to Wales. A referendum on the creation of a devolved institution in Wales was held on 18 September 1997. With a majority vote in favour of devolution, the UK Parliament enacted the Government of Wales Act 1998 (“GoWA 1998”) which established the National Assembly for Wales (“the Assembly”). The Assembly could not make primary legislation nor raise revenue through taxes. It could, however, determine how revenue received from Westminster was to be spent in Wales.
- 2.7 GoWA 1998 also allowed for executive functions to be transferred from the UK Ministers to the Assembly. A series of orders transferred a broad range of functions to the Assembly, including powers to make secondary legislation such as regulations and orders. Upon transfer of such powers, the Assembly enacted secondary legislation relating to a range of policy areas including laws affecting the agricultural sector in Wales.<sup>9</sup>
- 2.8 In 2002, the Commission on the Powers and Electoral Arrangements of the National Assembly for Wales (“the Richard Commission”) was established. In its 2004 report, the Richard Commission recommended the separation of the executive and legislature and the devolution of primary law-making powers to Wales.<sup>10</sup> The majority of the recommendations in the report were implemented by way of the Government of Wales Act 2006 (“GoWA 2006”).
- 2.9 GoWA 2006 effected a formal separation between the executive and the legislature in Wales. It established the Assembly as the legislative body.<sup>11</sup> GoWA 2006 also established the (then) Welsh Assembly Government as a separate entity which comprised of the First Minister, the Welsh Ministers, the Deputy Welsh Ministers and the Counsel General. As the executive, the Welsh Assembly Government became responsible for policy, decision-making, and making subordinate legislation.<sup>12</sup>
- 2.10 Executive functions formerly vested in the Assembly were also transferred to the Welsh Ministers. The Welsh Ministers exercised these newly transferred powers to enact further secondary laws affecting the agricultural sector in Wales. Examples include the Welfare of Farmed Animals (Wales) Regulations 2007<sup>13</sup> and the Heather

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<sup>8</sup> As a result of the referendum, the operative provisions of the Wales Act 1978 never took effect and the Act was repealed by the Wales Act 1978 (Repeal) Order 1979, SI 1979/933.

<sup>9</sup> The Feeding Stuff (Wales) Regulations 2001, SI 2001/343 (W 15) were enacted under powers conferred under the Agriculture Act 1970 and subsequently transferred to the Assembly by way of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672.

<sup>10</sup> The Richard Commission further recommended an increase in the number of Assembly members.

<sup>11</sup> Under the Government of Wales Act 2006, s 1, the Assembly which existed under the Government of Wales Act 1998 ceased to exist, meaning the Assembly was no longer a corporate body with both legislative and executive powers.

<sup>12</sup> Government of Wales Act 2006, s 45.

<sup>13</sup> SI 2007/3070 (W 264).

and Grass etc Burning (Wales) Regulations 2008 (regulating the burning of certain types of vegetation on rural land).<sup>14</sup>

- 2.11 Under GoWA 2006, the Assembly could make primary legislation, in the form of Assembly Measures. Assembly Measures could make provision relating to matters falling within specified policy areas known as “devolved fields”.<sup>15</sup> Matters were added to the devolved fields incrementally. This was done by way of statutory instruments known as legislative competence orders.<sup>16</sup> Primary law-making powers in additional policy areas could also be devolved to the Assembly by Acts of the UK Parliament.
- 2.12 In 2009, the red meat industry was added as a devolved subject matter to the devolved field of “agriculture, fisheries, forestry and rural development”.<sup>17</sup> Shortly afterwards, the Assembly enacted the Red Meat Industry (Wales) Measure 2010 which aims to develop and promote the red meat industry in Wales.<sup>18</sup>
- 2.13 On 4 March 2011, a third referendum was held on whether the Assembly’s primary law-making powers should be extended. 63.5% of voters voted in favour of further devolution. Following the result of the vote, the Assembly was granted powers to pass primary legislation, in the form of Assembly Acts, relating to any of the devolved matters listed in Schedule 7 to GoWA 2006. This was commonly known as the conferred powers model of devolution.
- 2.14 The devolved matters in respect of which the Assembly could legislate included:
- Agriculture, including animal health and welfare. Plant health. Plant varieties and seeds. Horticulture. Fisheries. Fish health. Forestry. Rural development.<sup>19</sup>
- 2.15 Various matters were listed as exceptions to the devolved subject matter of agriculture including, for example, hunting with dogs, and the authorisation of veterinary medicines or medicinal products. These exceptions fell outside of the Assembly’s legislative competence.
- 2.16 Under the conferred powers model, the Assembly enacted a further piece of primary legislation in the agricultural context: the Agricultural Sector (Wales) Act 2014. That Act established the Agricultural Advisory Panel for Wales whose remit covers making recommendations as to the minimum wage payable to agricultural workers in Wales.
- 2.17 In *Attorney General v Counsel General for Wales*, the Supreme Court examined the Assembly’s powers to enact the Agricultural Sector (Wales) Act 2014.<sup>20</sup> Finding that

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<sup>14</sup> SI 2008/1081 (W 115).

<sup>15</sup> The relevant devolved fields, and matters falling within those fields, were listed in the Government of Wales Act 2006, Sch 5.

<sup>16</sup> [Form and Accessibility of the Law Applicable in Wales](#) (2015) Law Commission Consultation Paper No 223.

<sup>17</sup> The National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2009, SI 2009/1758.

<sup>18</sup> See the Explanatory Notes to the Red Meat Industry (Wales) Measure 2010 (nawm 3), para 5.

<sup>19</sup> Government of Wales Act 2006, Sch 7.

<sup>20</sup> *Attorney General for England and Wales v Counsel General for Wales* [2014] UKSC 43, [2014] 1 WLR 2622.

the Assembly had the necessary legislative competence to pass the Act, the Supreme Court held that the devolved subject matter of agriculture:

should be understood in a broader sense as designating the industry or economic activity of agriculture in all its aspects, including the business and other constituent elements of that industry, as it is to that broader subject matter that legislative activity is directed.<sup>21</sup>

- 2.18 Further legislative powers were devolved to Wales in 2014 under the Wales Act 2014. The Wales Act 2014 implemented recommendations made by the Commission on Devolution for Wales (also known as the Silk Commission) including the devolution of certain taxes to the Assembly. The 2014 Act also renamed the Welsh Assembly Government to the Welsh Government, reflecting the separation of powers between the executive and the National Assembly for Wales.
- 2.19 The next major Act to expand Welsh devolution was the Wales Act 2017, which amended GoWA 2006 by establishing a new devolution settlement for Wales: a reserved powers model (discussed further at paragraphs 2.21 to 2.26 below). The Wales Act 2017 further established a new constitutional basis for the National Assembly, making it a permanent feature of the UK constitution.
- 2.20 The National Assembly was recognised as a Parliament by the Senedd and Elections (Wales) Act 2020. The Act changed the name of the National Assembly to Senedd Cymru or the Welsh Parliament (“the Senedd”) to reflect its constitutional status as a Parliament.

## **CURRENT LEGISLATIVE AND EXECUTIVE COMPETENCE IN RELATION TO AGRICULTURE**

### **Senedd legislative competence and agriculture**

- 2.21 The Senedd is the elected law-making body in Wales. Legislative competence refers to the powers of the Senedd to pass primary legislation relating to particular subjects or policy areas, such as agriculture. GoWA 2006, as amended by the Wales Act 2017, confers law-making powers on the Senedd. The Wales Act 2017 established a reserved powers model of devolution for Wales, replacing the former conferred powers model.
- 2.22 The reserved powers model allows the Senedd to enact primary legislation, known as Acts of the Senedd, on any matter that is not reserved to the UK Parliament. Agriculture is not a reserved matter and therefore falls within the Senedd’s legislative competence. This means that the Senedd can enact primary legislation relating to agriculture, and indeed has done so by enacting the Agriculture (Wales) Act 2023: an Act which provides the framework for the support and regulation of agriculture in Wales.<sup>22</sup> The Senedd can also enact laws which modify UK Acts of Parliament in so

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<sup>21</sup> *Attorney General for England and Wales v Counsel General for Wales* [2014] UKSC 43, [2014] 1 WLR 2622 at [49].

<sup>22</sup> Welsh Government, “The Agriculture (Wales) Act 2023 Introducing the Sustainable Land Management Framework” (November 2023) <https://www.gov.wales/sites/default/files/publications/2023-11/agriculture-wales-act-2023-introducing-sustainable-land-management-framework.pdf>.

far as the law applies to Wales and where those modifications relate to subject matters falling within the Senedd's legislative competence.<sup>23</sup>

- 2.23 Alongside reserved matters, there are other limits to the Senedd's legislative competence. For example, the Senedd cannot enact primary legislation which is incompatible with the European Convention on Human Rights.<sup>24</sup>
- 2.24 The Welsh devolution settlement does not limit the power of the UK Parliament to make laws for Wales. However, the UK Parliament will not normally legislate on a devolved matter without the consent of the Senedd. This is recognised by GoWA 2006, which refers to the Sewel Convention.<sup>25</sup>
- 2.25 The Sewel Convention was adopted as a means of establishing cooperative relationships between the UK Parliament and the devolved governments.<sup>26</sup> The convention establishes that the UK Parliament will not normally legislate in areas that are devolved without the agreement of the devolved legislatures.
- 2.26 The Sewel Convention is supplemented by the 2013 Memorandum of Understanding on devolution. The memorandum is not legally binding. It is a statement of political intent as to the principles that underpin the relations between the UK Government and the devolved governments: the Welsh Government, the Scottish Government, and the Northern Ireland Executive. With regards to legislative competence, the Memorandum of Understanding on devolution outlines that:

the United Kingdom retains authority to legislate on any issue whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature.<sup>27</sup>

If the UK Parliament wishes to legislate in a devolved area then, in accordance with the Sewel convention, the Senedd's consent will normally be sought.<sup>28</sup>

### Executive competence in relation to agriculture

- 2.27 There are numerous Acts of the UK Parliament that confer statutory functions relating to agriculture exercisable by the Welsh Ministers. In many instances, those statutory

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<sup>23</sup> The Senedd cannot however modify certain Acts of the UK Parliament that are defined as protected enactments: Government of Wales Act 2006, Sch 7B.

<sup>24</sup> Government of Wales Act 2006, s 108A(2).

<sup>25</sup> Government of Wales Act 2006, s 107(6); *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5.

<sup>26</sup> House of Commons Library, "The Sewel Convention and legislative consent" (August 2025) 8 <https://commonslibrary.parliament.uk/research-briefings/cbp-8883/>, 8.

<sup>27</sup> Cabinet Office, "Devolution: Memorandum of Understanding and Supplementary Agreements" (October 2013) [https://assets.publishing.service.gov.uk/media/5a7e2e6ce5274a2e87db0159/MoU\\_between\\_the\\_UK\\_and\\_the\\_Devolved\\_Administrations.pdf](https://assets.publishing.service.gov.uk/media/5a7e2e6ce5274a2e87db0159/MoU_between_the_UK_and_the_Devolved_Administrations.pdf), para 14.

<sup>28</sup> Senedd Cymru, "Legislative Consent" <https://senedd.wales/senedd-business/legislative-consent/>. See also Standing Order 29 contained in the "Standing Orders of the Welsh Parliament" (January 2025).

functions were originally conferred on the UK Ministers and subsequently transferred to the Welsh Ministers insofar as the functions are exercisable in relation to Wales.<sup>29</sup>

- 2.28 In some cases, the Welsh Ministers' statutory functions relating to agriculture are contained in Acts of the UK Parliament which explicitly refer to agriculture or farming in the title. Examples include the Hill Farming Act 1946, the Agriculture Act 1947 and the Agricultural Tenancies Act 1995. As indicated by their titles, these Acts tend to have a remit which is primarily or exclusively concerned with agriculture.
- 2.29 There are other Acts of the UK Parliament concerning different subject matters which also provide the Welsh Ministers with powers to regulate the agricultural sector in Wales. For example, the Water Resources Act 1991 – an Act primarily concerned with the management of water as a natural resource – provides the Welsh Ministers with the powers relied upon to enact the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021.<sup>30</sup>
- 2.30 Acts of the Senedd also confer statutory functions on the Welsh Ministers. For example, the Agriculture (Wales) Act 2023 empowers the Welsh Ministers to provide support for, or in connection with, agriculture in Wales and ancillary activities that take place in Wales.<sup>31</sup>

## EUROPEAN UNION COMPETENCE AND AGRICULTURE

### Common Agricultural Policy

- 2.31 The Common Agricultural Policy ("CAP") is the EU's strategic policy on agriculture that applies to all EU member states. The CAP was created under the first Treaty of Rome in 1957.<sup>32</sup> It is funded from the resources of the EU's budget and is the longest running policy of the EU.<sup>33</sup>
- 2.32 The UK joined the CAP when it became a member of the European Economic Community ("EEC") in 1973. Following, the UK's departure from the EU, the UK is no longer subject to the CAP.
- 2.33 Since its inception, the CAP has undergone a series of reforms to reflect evolving societal interests and policy objectives.
- 2.34 The objectives of the CAP in its modern form are set out below.
- (1) To increase agricultural productivity by promoting technical progress and ensuring the optimum use of the factors of production, in particular labour.

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<sup>29</sup> Such functions have been transferred by way of transfer of functions orders and provisions of the Government of Wales Act 2006, Sch 11, para 30.

<sup>30</sup> SI 2021/77 (W 20).

<sup>31</sup> Agriculture is defined in the Agriculture (Wales) Act 2023 (asc 4), s 51 and ancillary activities are defined in s 52 of that Act.

<sup>32</sup> See Treaty of Rome (Consolidated version 2002), OJ C 325, 24.12.2002, arts 38 to 47.

<sup>33</sup> Eur-Lex, "Summaries of EU Law: Agriculture" <https://eur-lex.europa.eu/summary/chapter/03.html>.

- (2) To ensure a fair standard of living for farmers.
- (3) To stabilise markets.
- (4) To ensure the availability of supplies.
- (5) To ensure reasonable prices for consumers.<sup>34</sup>

#### Pillars 1 and 2 of the CAP

- 2.35 In the present day, the objectives of the CAP are delivered through two overarching financial policies, referred to as “Pillar 1” and “Pillar 2”.
- 2.36 Pillar 1 is the system of the CAP payments which provide direct income support to farmers in the EU. Pillar 2 of the CAP is a financial policy which promotes investment in rural communities.
- 2.37 Under Pillar 1, farmers who satisfy specified eligibility criteria receive direct income through a financial support scheme.<sup>35</sup> In the UK, this scheme is known as the “Basic Payment Scheme”. Under the Basic Payment Scheme, farmers receive payments according to the number of hectares of land farmed.
- 2.38 In order to qualify for payment under the Basic Payment Scheme, farmers must comply with certain standards known as “cross-compliance”.
- 2.39 Cross compliance standards fall into two categories: statutory management requirements and good agricultural and environmental conditions. Statutory management requirements are legislative requirements which regulate matters relating to the environment, animal health and welfare, plant health and human health. Good agricultural and environmental conditions are a set of standards for farming practices which, broadly speaking, aim to promote sustainability in agriculture.<sup>36</sup>
- 2.40 Failure to comply with cross compliance standards can result in a reduction of payments received under the Basic Payment Scheme, or in serious instances, the removal of all payments.
- 2.41 Although the UK has left the EU, farmers in Wales continue to receive funding under the Basic Payment Scheme.<sup>37</sup> From 1 January 2026, a new system of funding will be introduced in Wales as discussed in paragraphs 2.47 to 2.48 below: the Sustainable Farming Scheme, which will include similar regulatory controls to cross compliance under the Basic Payment Scheme.

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<sup>34</sup> Treaty on the Functioning of the European Union (Consolidated version 2012) OJ C 326/63, 26.10.2012, art 39.

<sup>35</sup> As provided for in UK Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.

<sup>36</sup> European Commission, “Good agricultural and environmental conditions” <https://knowledge4policy.ec.europa.eu/glossary-item/good-agricultural-environmental-conditions>.

<sup>37</sup> However, since the UK left the EU, the payments made under the BPS no longer come from EU funding.



## EU legislation relevant to agriculture

- 2.42 Pillar 1 and Pillar 2 of the CAP are each implemented via a set of EU regulations. In addition, the EU has legislated to impose certain standards relevant to the production and marketing of agricultural produce and animal feed. It has further enacted laws aimed at reducing the risk of agricultural pollution. There are also EU laws imposing rules related to the production and sale of genetically modified organisms.<sup>38</sup>
- 2.43 Alongside the agricultural legislation described above, the EU enacted legislative frameworks which regulate and impose common standards across a range of subject areas including the environment, animal health and welfare, food safety and public health. Much of the EU legislation enacted in these areas also forms part of the regulatory landscape applicable to the agricultural sector and will be considered in the substantive chapters of this report.
- 2.44 In some cases, the EU has legislated for prescriptive requirements which leave member states with minimal derogation as to how they implement the relevant requirements domestically. In other cases, the EU has directed that a particular objective be pursued but allowed for considerable autonomy as to how member states are to achieve the stated objective. This meant the UK had some latitude as to how certain EU legislative requirements were implemented. Furthermore, where those requirements related to devolved subjects, the four nations of the UK could each take their own distinct approach to implementation.

## UK WITHDRAWAL FROM THE EU (“BREXIT”)

- 2.45 On 23 June 2016, the UK held a referendum in which 51.9% of voters opted to leave the EU.<sup>39</sup> While the UK was a member of the EU, it was not necessary for the UK to develop “a comprehensive domestic agricultural policy, because many decisions were already being made under the [CAP]”.<sup>40</sup> However since leaving the EU, the UK is no longer bound to comply with the CAP and each of the four nations of the UK are able to determine their respective domestic agricultural policies.
- 2.46 Since the UK’s withdrawal from the EU, the UK Government, and the respective governments of Wales and Scotland have each brought forward primary legislation to give effect to their respective domestic agricultural policies.<sup>41</sup> The Agriculture (Wales) Act 2023 provides the framework for agricultural support and policy making in Wales by establishing the Sustainable Land Management objectives. In doing so, the intention is that:

agricultural support and regulation in Wales will be consistent with Welsh Government’s obligations under the Well-being of Future Generations (Wales) Act

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<sup>38</sup> Genetically modified organisms are plants, animals or microbes which have had their genes altered into order to produce or enhance specific traits.

<sup>39</sup> European Parliament, “Factsheets of the European Union: The United Kingdom” (2024) <https://www.europarl.europa.eu/factsheets/en/sheet/216/the-united-kingdom>.

<sup>40</sup> House of Commons Library, “Retained EU Law (Revocation and Reform) Act 2023 Research Briefing” (July 2023) <https://researchbriefings.files.parliament.uk/documents/CBP-9841/CBP-9841.pdf>, p 8.

<sup>41</sup> Agriculture (Wales) Act 2023 (asc 4); Agriculture Act 2020; and the Agriculture and Rural Communities (Scotland) Act 2024 (asp 11).



2015, helping to contribute to the well-being goals under section 4 of that Act, and the Environment (Wales) Act 2016.<sup>42</sup>

- 2.47 As outlined at paragraph 2.41, from 1 January 2026, the Sustainable Farming Scheme will be the Welsh Government's "primary mechanism to support farmers, sustainable land management and sustainable food production".<sup>43</sup> Farmers in Wales will have the option of joining the Sustainable Farming Scheme or temporarily continuing with the Basic Payment Scheme which is intended to be phased out by 2029. Both schemes are voluntary, meaning there is no requirement for farmers to join either scheme.
- 2.48 Under the Sustainable Farming Scheme, farmers in Wales will be paid to undertake certain actions, known as universal actions, relating to matters such as hedgerow maintenance, soil quality and animal health and welfare. Farmers can also receive additional payments under the scheme by undertaking optional actions or by working with other farmers to deliver collaborative actions.

## ASSIMILATED LAW

- 2.49 While the UK was a member of the EU, laws enacted by the EU formed part of our domestic legal framework. EU law can take many forms, including regulations, directives and decisions. Some of the legislation enacted by the EU, such as regulations, applied directly to the UK without the need for further domestic legislation for it to take effect. Other types of EU legislation, such as directives, needed to be transposed or implemented by domestic legislation. The principle of supremacy applied to EU law while the UK remained a member of the EU. This principle required that, to the extent there was a conflict, EU law was to be applied rather than UK law. During the UK's membership of the EU, this principle was predominantly accepted in the UK,<sup>44</sup> even requiring Acts of the UK Parliament to be disapplied.<sup>45</sup>
- 2.50 When the UK left the EU on 31 January 2020, the European Union Withdrawal Act 2018 ("EUWA 2018") repealed the European Communities Act 1972 ("ECA 1972"). Despite that repeal, the UK needed a way to preserve most of EU law that applied domestically to prevent our domestic statute book being littered with significant gaps and to allow for a stable withdrawal from the EU.<sup>46</sup>

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<sup>42</sup> Welsh Government, "The Agriculture (Wales) Act 2023: Introducing the Sustainable Land Management Framework" (November 2023) <https://www.gov.wales/sites/default/files/publications/2023-11/agriculture-wales-act-2023-introducing-sustainable-land-management-framework.pdf>.

<sup>43</sup> Welsh Government, "Sustainable Farming Scheme 2026: scheme description" (July 2025) <https://www.gov.wales/sustainable-farming-scheme-2026-scheme-description.html>. Comprehensive scheme guidance on the Universal layer was published on 17 December 2025: Welsh Government, "Sustainable Farming Scheme – Universal Layer – Guidance 2026" (December 2025) <https://www.gov.wales/written-statement-sustainable-farming-scheme-sfs-universal-layer-guidance-2026>.

<sup>44</sup> *R v Secretary of State for Transport ex parte Factortame Ltd (No 2)* [1991] 1 AC 603; *R (HS2 Action Alliance Ltd) v Secretary of State for Transport and another* [2014] UKSC 3.

<sup>45</sup> *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs* [2017] UKSC 62.

<sup>46</sup> Department for Exiting the European Union, *Legislating for the United Kingdom's withdrawal from the European Union* (March 2017) <https://www.gov.uk/government/publications/the-repeal-bill-white-paper/legislating-for-the-united-kingdoms-withdrawal-from-the-european-union>, para 1.13.

- 2.51 Accordingly, EUWA 2018, as amended by the European Union (Withdrawal Agreement) Act 2020, enabled the provisions of the ECA 1972 to continue to have effect from 31 January 2020 until 31 December 2020. Thereafter, EUWA 2018 provided a framework for preserving EU law domestically after 31 December 2020. This body of law was known as retained EU law. It was a type of domestic law which intended to provide legal continuity and certainty at the end of the transition period.<sup>47</sup>
- 2.52 Since 1 January 2024, the position has changed once more. The commencement of the Retained EU Law (Revocation and Reform) Act 2023 (“REULA 2023”) means that all retained EU law that had not been revoked by the end of 2023 has become assimilated law. Assimilated law includes legislation originating from the EU which applied directly to the UK while a member state and which now forms part of our domestic legislative framework. It also encompasses domestic legislation which implemented or transposed law originating from the EU.
- 2.53 Under REULA 2023, the principle of supremacy does not apply to assimilated law.<sup>48</sup> This means that there will no longer be a presumption that law originating from the EU takes precedence over domestic legislation. REULA 2023 further ensures that assimilated law is no longer subject to EU principles of statutory interpretation.<sup>49</sup> Instead, assimilated law is now interpreted in line with domestic principles of statutory interpretation and further so as to be compatible with, and subject to, all domestic law.<sup>50</sup> The re-labelling from retained EU law to assimilated law therefore reflects the change in the status and force of such legislation.
- 2.54 REULA 2023 grants the Welsh Ministers powers to make secondary legislation which amends, revokes or replaces assimilated law. The deadline for exercising such powers under REULA is 23 June 2026. After this deadline has passed, it is still possible to amend, revoke or replace assimilated law by enacting primary legislation, or potentially via existing statutory powers, provided doing so falls within the scope of such powers (also known as the “vires” of the powers).<sup>51</sup>
- 2.55 The volume of assimilated law applicable to the agricultural context is difficult to quantify definitively. However, the retained EU law and assimilated law dashboard, maintained by the UK Government, provides an indication of the amount of assimilated law that exists. For example, there are a total of 1,926 assimilated laws which are identified as falling within the policy remit of the Department for

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<sup>47</sup> Department for Business and Trade, “Retained EU law and assimilated law dashboard” (2022) <https://www.gov.uk/government/publications/retained-eu-law-dashboard>.

<sup>48</sup> Retained EU Law (Revocation and Reform) Act 2023, s 3.

<sup>49</sup> Exceptionally, the Welsh Ministers and the UK Ministers, when enacting regulations to restate secondary retained or assimilated law, may provide for its provisions to have a similar effect to the supremacy of EU law. This means that, where these restated provisions contradict national law then the restated provisions would be applied rather than national law. This power is provided in the Retained EU Law (Revocation and Reform) Act 2023, ss 11(4) and 12(4).

<sup>50</sup> European Union Withdrawal Act 2018, s 5(A2).

<sup>51</sup> Amending, revoking, or revoking and replacing assimilated law by enacting primary legislation is likely to involve longer timescales than relying upon relevant delegated powers to make such changes by way of secondary legislation (such as the powers provided for under REULA 2023).

Environment, Food and Rural Affairs.<sup>52</sup> Although the dashboard does not include any assimilated law made by the Welsh Ministers, it includes UK legislation which falls under areas of devolved competence, such as agriculture.

## COMMON FRAMEWORKS

2.56 The UK's departure from the EU saw many powers held at an EU level being returned to the UK. Many of these powers intersect with policy areas that fall within devolved competence. Consequently, the UK Government and the devolved governments decided to establish a mechanism to ensure some regulatory consistency in such areas. Common frameworks intend to facilitate common approaches between the four UK nations and are jointly agreed between the UK Government and devolved governments. The Secretary of State is empowered to add an agreement which forms part of a common framework to the list of exclusions from the market access principles under the UK Internal Market Act 2020 ("UKIMA 2020") (as discussed further at paragraphs 2.63 to 2.65 below).<sup>53</sup>

2.57 Those common frameworks which have been provisionally approved by the relevant government ministers, but require further ratification, are called provisional common frameworks. There are several provisional common frameworks relevant to the agricultural sector. These include the following:

- (1) agricultural support: provisional common framework;
- (2) animal health and welfare: provisional common framework;
- (3) plant health: provisional common framework;
- (4) plant varieties and seeds: provisional common framework; and
- (5) fertilisers: provisional common framework.

2.58 In practice, a decision to diverge from an existing policy position in an area captured by a common framework may need to progress through any process established by the relevant framework.<sup>54</sup> However, common frameworks vary in their objectives and operation. While some aspire towards achieving a common regulatory baseline across the UK, other common frameworks exist to support and facilitate engagement between the four nations in the context of their policy development.

## INTERNATIONAL LAW

2.59 The UK is subject to a number of international legal obligations that are relevant to agriculture. A detailed consideration of the international laws affecting agriculture is

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<sup>52</sup> Department for Business and Trade, "Retained EU law and assimilated law dashboard" (2022) <https://www.gov.uk/government/publications/retained-eu-law-dashboard>.

<sup>53</sup> United Kingdom Internal Market Act 2020, s 10(3).

<sup>54</sup> In addition, if legislation that is captured by a common framework is intended to be consolidated in an Act of the Senedd or replaced by an Act delivering wholesale reform then any such provision would need to fall within the legislative competence of the Senedd. In Ch 11 we discuss further how the comprehensiveness of the Code may be restricted by the limits placed on the Senedd's legislative competence.

outside of the scope of this report. For context, however, we provide below an overview of key international laws affecting agriculture.

2.60 International law includes international agreements between states, creating legal obligations for the signatory parties. As a member of the World Trade Organization (“WTO”), the UK is subject to the WTO Agreement on Agriculture. The WTO Agreement on Agriculture provides WTO members with a framework for agricultural trade and their respective domestic agricultural policies. It aims to promote fairer competition and reduce distortion in the agricultural market.<sup>55</sup> The agreement governs the following key matters:

- (1) market access including the use of trade restrictions such as import tariffs;
- (2) domestic support including the use of subsidies and other support programmes that directly stimulate production or distort trade; and
- (3) export competition including the use of export subsidies.<sup>56</sup>

2.61 Other international agreements relevant to agriculture include agreements concerning wildlife conservation and the protection of the environment. Examples of such agreements include: the United Nations Framework Convention on Climate Change of 1992,<sup>57</sup> the United Nations International Treaty on Plant Genetic Resources for Food and Agriculture,<sup>58</sup> and the Paris Agreement.<sup>59</sup>

2.62 Free trade agreements are another form of international law. Trade agreements set out rules for the trade of goods and services between two or more countries and can therefore impose rules relating to the international trade of agricultural produce. Since leaving the EU, the UK has entered into free trade agreements with countries including New Zealand and Australia.

## OTHER RELEVANT DOMESTIC UK ACTS

### UK Internal Market Act 2020

2.63 In addition to establishing common frameworks, UKIMA 2020 governs the trading relationship between Wales, England, Scotland and Northern Ireland following the UK’s departure from the EU. Central to this Act are two market access principles: mutual recognition and non-discrimination.

- (1) Mutual recognition means that if a good is compliant with the legal rules relating to its sale in the part of the UK in which it was produced or imported to, then it

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<sup>55</sup> World Trade Organization, “Agriculture” [https://www.wto.org/english/tratop\\_e/agric\\_e/agric\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/agric_e.htm).

<sup>56</sup> World Trade Organization, “Agriculture” [https://www.wto.org/english/tratop\\_e/agric\\_e/agric\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/agric_e.htm).

<sup>57</sup> United Nations Framework Convention on Climate Change 1992, <https://unfccc.int/resource/docs/convkp/conveng.pdf>.

<sup>58</sup> United Nations International Treaty on Plant Genetic Resources for Food and Agriculture 2009, <https://www.fao.org/4/i0510e/i0510e.pdf>.

<sup>59</sup> United Nations Paris Agreement 2016, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-7-d&chapter=27&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en).

can automatically be sold in other parts of the UK. Similarly, a service provider who is authorised to provide services in one part of the UK is automatically authorised to provide that service in the other parts of the UK.

- (2) Non-discrimination is concerned with how goods or services are provided. Any rule in one part of the UK about how a good must be sold, or how a service must be provided, that directly or indirectly discriminate against goods or services from another part of the UK, do not apply.

2.64 The market access principles in UKIMA 2020 allow goods imported, made and sold in one part of the UK to be sold in any other part of the UK. This would be the case even if regulations are different in the other nations of the UK.

2.65 Even though the UKIMA 2020 does not prohibit the Senedd from legislating on a matter of devolved legislative competence, it may impact the practical effect of the law once in force.<sup>60</sup> For example, the Senedd could legislate to provide for certain standards or requirements that are to apply to goods or products in Wales. However, the effect of UKIMA 2020 is that goods or products which did not conform to those standards from the other three UK nations could nonetheless be circulated in Wales. In addition, once imports enter the UK, they would be in free circulation even if the Senedd has legislated to implement higher standards than the rest of the UK.

## INTERCONNECTED LEGISLATION APPLICABLE IN WALES

2.66 As outlined at paragraph 2.46, the Agriculture (Wales) Act 2023 introduces the sustainable land management objectives as the framework for agricultural support and regulation in Wales. In doing so, the intention is that:

agricultural support and regulation in Wales will be consistent with Welsh Government's obligations under the Well-being of Future Generations (Wales) Act 2015, helping to contribute to the well-being goals under section 4 of that Act, and the Environment (Wales) Act 2016.<sup>61</sup>

2.67 Linking these three Acts – the Well-being of Future Generations (Wales) Act 2015, the Environment (Wales) Act 2016 and the Agriculture (Wales) Act 2023 – is a commitment to sustainable development to improve the well-being of Wales now and for future generations.<sup>62</sup> In the following sections we provide an overview of the Well-

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<sup>60</sup> Senedd Cymru Economy, Trade and Rural Affairs Committee, *Agriculture (Wales) Bill Committee Stage 1 Report* (January 2023) <https://senedd.wales/media/d4befhvr/cr-ld15627-e.pdf>, p 27; Senedd Cymru Legislation, Justice and Constitution Committee, *Report on the Environmental Protection (Single-Use Plastic Products) (Wales) Bill* (October 2022) <https://senedd.wales/media/prbfkwrh/cr-ld15383-e.pdf>, pp 4 to 5.

<sup>61</sup> Welsh Government, "The Agriculture (Wales) Act 2023: Introducing the Sustainable Land Management Framework" (November 2023) <https://www.gov.wales/sites/default/files/publications/2023-11/agriculture-wales-act-2023-introducing-sustainable-land-management-framework.pdf>.

<sup>62</sup> The Planning (Wales) Act 2015 (anaw 4) is another integral Act of the Senedd which supports the principle of sustainable development. It requires public authorities in Wales to exercise their functions relating to development plans and planning permission application in such a way as to promote sustainable development. The Planning (Wales) Bill, which is currently progressing through the Senedd will, if enacted, consolidate the provisions of the Planning (Wales) Act 2015 (anaw 4) along with other planning legislation applicable in Wales.

being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016. The Agriculture (Wales) Act 2023 is considered in further detail in Chapter 5.

### **Well-being of Future Generations (Wales) Act 2015**

- 2.68 The Well-being of Future Generations (Wales) Act 2015 (“the 2015 Act”) is aimed at “improving the social, economic, environmental and cultural well-being of Wales”.<sup>63</sup> It sets a framework within which specified Welsh public authorities must seek to ensure the needs of the present are met without compromising the ability of future generations to meet their own needs (“the sustainable development principle”).<sup>64</sup>
- 2.69 Section 4 of the 2015 Act sets out seven well-being goals for Wales, which certain Welsh public authorities are to pursue in order to improve well-being now and in the future.<sup>65</sup> Those well-being goals include working towards a prosperous, resilient and healthier Wales. The 2015 Act further provides for a well-being duty which requires public authorities to carry out sustainable development by publishing objectives and taking all reasonable steps, in exercising their functions, to meet those objectives.<sup>66</sup>
- 2.70 Section 1 of the Agriculture (Wales) Act 2023 confirms that each of the sustainable land management objectives as provided for in that Act should be achieved or delivered in a way which:
- (1) meets the needs of the present without comprising the ability of future generations to meet their own needs; and
  - (2) contributes to achieving the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015.<sup>67</sup>

### **Environment (Wales) Act 2016**

- 2.71 The Environment (Wales) Act 2016 (“the 2016 Act”) “enshrines in law principles and policies for managing natural resources in a sustainable way”.<sup>68</sup> It imposes duties on the Welsh Ministers, Natural Resources Wales,<sup>69</sup> and public authorities which are aimed at upholding the principles of sustainable management of natural resources. For example, the 2016 Act requires all public authorities in Wales to seek to “maintain and enhance biodiversity” where it is within the proper exercise of their functions and, in doing so, “promote the resilience of ecosystems”.<sup>70</sup> In complying with this duty,

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<sup>63</sup> Welsh Government, “Well-being of Future Generations (Wales) Act 2015: the essentials” (2024) <https://www.gov.wales/sites/default/files/publications/2024-07/well-being-future-generations-wales-act-2015-the-essentials-2024.pdf>.

<sup>64</sup> Well-being of Future Generations (Wales) Act 2015 (anaw 2), s 5.

<sup>65</sup> Well-being of Future Generations (Wales) Act 2015 (anaw 2), s 4.

<sup>66</sup> Well-being of Future Generations (Wales) Act 2015 (anaw 2), s 3.

<sup>67</sup> Agriculture (Wales) Act 2023 (asc 4), s 1(2).

<sup>68</sup> National Assembly for Wales Research Service, “Key Issues for the Fifth Assembly” (May 2016) <https://research.senedd.wales/media/3jolzszw/key-issues-english-linked.pdf>.

<sup>69</sup> Natural Resources Wales is a statutory body established by art 3 of the Natural Resources Body for Wales (Establishment) Order 2012, SI 2012/1903 (W 230).

<sup>70</sup> Environment (Wales) Act 2016 (anaw 3), s 6.

public authorities must have regard, among other factors, to the sustainable land management report published under section 6 of the Agriculture (Wales) Act 2023.<sup>71</sup>

- 2.72 The Agriculture (Wales) Act 2023 and the Environment (Wales) Act 2016 are further explicitly linked by way of the Welsh Ministers' duty to measure progress against the achievement of the sustainable land management objectives. Under section 4 of the Agriculture (Wales) Act 2023, the Welsh Ministers are required to publish indicators and targets to measure progress towards achieving the sustainable land management objectives. In preparing those targets and indicators, the Welsh Ministers must have regard to the most recent natural resources policy and the State of Natural Resources report published under the Environment (Wales) Act 2015.<sup>72</sup>

## CONCLUSION

- 2.73 In this chapter, we set out the wider legislative context within which the existing body of agricultural law applicable in Wales has developed. These wider laws form the backdrop against which we have undertaken our review of agricultural legislation in Wales for the purposes of this report.

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<sup>71</sup> Under the Agriculture (Wales) Act 2023 (asc 4), s 6, the Welsh Ministers must publish a report for each reporting period setting out their assessment of the progress made against achieving the sustainable land management objectives.

<sup>72</sup> In addition, the Welsh Ministers must have regard to any national indicators published under the Well-being of Future Generation (Wales) Act 2015 (anaw 2), s 10.



# Chapter 3: Our criteria for inclusion in the prospective code of agricultural law for Wales

## INTRODUCTION

- 3.1 Our primary task is to identify what legislation is suitable for inclusion in the prospective code of agricultural law for Wales (“the prospective Code”). We take a two-stage approach to this task. First, we consider what legislation forms part of the existing body of agricultural law applicable in Wales. Second, we decide which elements of this legislation could, in whole or in part, form part of the prospective Code. In this chapter, we explain this approach, setting out what we categorise as agricultural law for the purposes of this report, and the test we have developed to help decide whether a law should be included in the prospective Code.

## WHAT IS AGRICULTURAL LAW?

- 3.2 The potential scope of agricultural law is vast. To impose structure on our work for this report, we began by compiling a list of laws that apply to the Welsh agricultural sector. However, this was not a straightforward task. Firstly, agricultural law is not a body of law with a commonly recognised meaning or scope. Secondly, textbook coverage of agricultural law as it applies to Wales is limited (at least in relation to certain areas). Thirdly, the law which applies to the agricultural sector in Wales is voluminous, highly fragmented, and broad and disparate in its content. We consider each of these factors in turn.

### Agricultural law: scope and meaning

- 3.3 Our starting point for this report was to identify what is meant by the term “agricultural law”. But as Professor Alabrese succinctly puts it: “defining ‘agricultural law’ is not easy”.<sup>1</sup> We agree that agricultural law lacks a commonly agreed meaning or scope, and in this chapter, we highlight the difficulties in determining the meaning of agricultural law.
- 3.4 The law which applies to the agricultural sector is not contained in a select few statutes. Rather, as the Agricultural Law Association notes:

agricultural law is a vast subject encompassing all the subjects to which law is divided: commercial law, company law, contract law, environmental law, land law, animal welfare, probate law, negligence, health and safety, planning, divorce and ... tax.<sup>2</sup>

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<sup>1</sup> M Alabrese and others, *Agricultural Law Current Issues from a Global Perspective* (1st ed 2017) p 2.

<sup>2</sup> Agricultural Law Association, “Starter for Ten 2024: What is Agricultural Law?” (April 2024).



In this sense, agricultural law can be compared to environmental law which “consists of a diverse collection of laws that draw on all parts of UK and EU legal culture as well as international legal cultures”.<sup>3</sup>

- 3.5 Agricultural policies also change over time. This makes it difficult to identify longstanding legal principles that can be used to help determine the scope of agricultural law. In the early twentieth century, agricultural policy in the UK was primarily concerned with securing the nation’s food supply and stabilising the agricultural sector following the aftermath of two world wars. Since then, the policy underpinning agricultural law has developed to reflect evolving societal priorities, technological advancements and changing attitudes. As explained by Professor Alabrese and others:

It can no longer be asserted that the only objective of agricultural law is to regulate the produce and market of food and fibre. The “classical” concept of agricultural law revolved chiefly around the regulation of farmland. From the 1990s, environmental concerns and the rapid industrialization of agriculture have added new subjects to the field of agricultural law.<sup>4</sup>

- 3.6 Greater awareness about the agricultural sector’s capacity to both benefit and harm the environment has led to shifts in agricultural policy at a domestic and EU level. In response, a large body of law has emerged which regulates the use of agricultural land to provide protection for the environment and wildlife. Similarly, agricultural policy has increasingly had to account for the agricultural sector’s vulnerability to climate change, while recognising that the sector contributes to greenhouse gas emissions.<sup>5</sup>
- 3.7 Various factors have also led to an increased focus on the welfare of livestock. Examples include developments in the science of animal welfare, independent reports examining the treatment of livestock,<sup>6</sup> and a greater emphasis on welfare in the training programmes of veterinary students and farmers.<sup>7</sup> Surveys conducted in the UK over the last three decades indicate that “consumers are increasingly concerned about the welfare of food-producing animals”.<sup>8</sup> Furthermore, the increased globalisation of our economy has the potential to accelerate the spread of infectious animal diseases.<sup>9</sup> Consequently, there exists a substantial volume of legislation that is concerned with the health and welfare of livestock.

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<sup>3</sup> E Fisher, B Lange and E Scotford, *Environmental Law: Text, Cases and Materials* (2nd ed 2019) p 4.

<sup>4</sup> M Alabrese and others, *Agricultural Law Current Issues from a Global Perspective* (1st ed 2017).

<sup>5</sup> Parliamentary Office of Science and Technology, “Climate Change and Agriculture” (May 2019).

<sup>6</sup> For example, the Bramble Committee report in 1965 and the Farm Animal Welfare Council report in 2009.

<sup>7</sup> Farm Animal Welfare Council, *Farm Animal Welfare in Great Britain: Past, Present and Future* (October 2009) p 7.

<sup>8</sup> The Food Ethics Council, *Farm Animal Welfare: Past, Present and Future* (September 2014) pp 4 and 22. See also reports of a survey conducted by the Institute of Grocery Distribution in January 2024 as reported by the Agriculture and Horticulture Development Board: <https://ahdb.org.uk/news/consumer-insight-animal-welfare-seen-as-important-by-84-of-shoppers>.

<sup>9</sup> World Organisation for Animal Health, *The state of the world’s animal health* (May 2025) p 51.

- 3.8 In the Welsh context, the sustainable land management objectives, as provided for under the Agriculture (Wales) Act 2023, provide the “framework for ... agricultural support and regulation within Wales”.<sup>10</sup> The sustainable land management objectives, considered further in Chapter 5, seek to promote interests relating to the sustainable production of food, nature conservation and sustaining the Welsh language (among other matters).
- 3.9 The diverse range of policy aims and objectives which underpin agricultural law applicable in Wales can add to the challenge of identifying its scope and meaning. In particular, this policy context has given rise to overlapping provisions of agricultural law, environmental law and the law relating to animal welfare. As highlighted by Professor Alabrese, agricultural law intersects with “closely connected branches of law, such as food law and environmental law”.<sup>11</sup>
- 3.10 There are a substantial number of laws which impose restrictions on the way agricultural land is used in order to protect the environment. The significant overlap between the areas of environmental law and agricultural law is unsurprising when considering agriculture’s inherent dependence on natural resources. Nevertheless, environmental law is commonly recognised as a distinct practice area, if not a body of law in its own right. Consequently, it is difficult to classify laws by subject matter when those laws deliver a multitude of policy aims and apply to contexts including, but not limited to, the agricultural sector.
- 3.11 Agricultural law can also mean different things to different people. Individual farmers may view agricultural law through the lens of the legal requirements which apply to the specific farming activity they undertake. Professional advisors may naturally focus upon the laws they most commonly advise on.
- 3.12 At the outset of our work, Dr Nerys Llewelyn Jones remarked that agricultural law can arguably be viewed as a practice area. In this respect parallels can be drawn between agricultural law and other bodies of law. For example, Professor Elizabeth Fisher and others describe environmental law as “an ‘applied subject’ in that it involves the application of basic legal concepts (albeit differently derived and influenced) to environmental problems”.<sup>12</sup>
- 3.13 In a similar manner, agricultural law is best understood as a series of rules and legal concepts which apply to those working in and regulating the agricultural sector.

### **Agricultural law: fragmentation across legislation originating from different sources**

- 3.14 The task of drawing together a list of existing legislation which applies to agriculture in Wales has also posed challenges because of the fragmented nature of agricultural law. As highlighted above, agricultural legislation is not contained within a select few statutes. Instead, the law that applies to the agricultural sector is sprawled across a range of legal instruments originating from different sources. These include legislation enacted by the UK Parliament, legislation enacted by Senedd Cymru (“the

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<sup>10</sup> Welsh Government, “The Agriculture (Wales) Act 2023: Introducing the Sustainable Land Management Framework” (November 2023) 3.

<sup>11</sup> M Alabrese and others, *Agricultural Law Current Issues from a Global Perspective* (1st ed 2017) p 8.

<sup>12</sup> E Fisher, B Lange and E Scotford, *Environmental Law: Text, Cases and Materials* (2nd ed 2019) p 4.

Senedd”), assimilated law enacted by the institutions of the EU, and secondary legislation made by the Welsh Ministers or, in some cases, the UK Ministers.<sup>13</sup>

- 3.15 While there is a growing body of agricultural law enacted by the Senedd, much of the agricultural legislation which applies to Wales is still contained in Acts of the UK Parliament. Additionally, Acts of the UK Parliament can contain provisions that have different territorial applications. This means that an Act of Parliament can, for example, include provisions that apply to the whole of the UK, to England and Wales, to England only or to Wales only (among other potential variations).
- 3.16 In addition, primary legislation - whether enacted by the Senedd or the UK Parliament - often provide the UK Ministers and the Welsh Ministers with powers to make secondary legislation. In some cases, the secondary legislation relevant to the agricultural sector in Wales will have been made by the UK Ministers and will apply to England and Wales.<sup>14</sup> In other instances, the Welsh Ministers will have made secondary legislation applicable to Wales only.
- 3.17 Furthermore, while the UK was a member of the EU, the EU institutions had competence to pass laws in relation to agriculture and other related areas. Although the UK is no longer a member of the EU, much of the law originating from the EU which applies in the agricultural context has been incorporated into our domestic statute book as assimilated law. Taken together these various different legislative sources means it can be challenging to identify the exact legislative instruments and provisions that apply in Wales.

### **Agricultural law textbook coverage, commentary and other resources**

- 3.18 We have benefited from referring to several established leading texts and academic works on areas of agricultural law. Examples include *Scammell, Densham & Williams Law of Agricultural Holdings*, Dobbs and Petetin’s *Brexit and Agriculture* and Professor Christopher Rodgers’ *Agricultural Law*.<sup>15</sup> It was particularly helpful that the texts and works in question took care to identify where the law applicable in Wales and that in England diverge.
- 3.19 However, we did not identify any text that focuses solely on agricultural law as it applies in Wales. Furthermore, we also found that there was a lack of academic works and practitioner texts in certain areas of law which significantly affect agriculture. By way of example, we were unable to identify any recent comprehensive texts on the area of animal health legislation: a complex and unwieldy area of law in its own right.<sup>16</sup>

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<sup>13</sup> In some instances, secondary legislation applicable in Wales may be made jointly by the Welsh Ministers and the UK Ministers.

<sup>14</sup> Certain statutory instruments which extend and apply to England and Wales will also have been enacted by the UK Ministers and the Welsh Ministers acting jointly.

<sup>15</sup> P Williams, *Scammell, Densham and Williams Law of Agricultural Holdings* (11th ed 2023); L Petetin and M Dobbs, *Brexit and Agriculture* (1st ed 2022); C Rodgers, *Agricultural Law* (4th ed 2016).

<sup>16</sup> There are however texts focused on animal welfare law which, given the close relation between the two subjects, do cover aspects of animal health law.

- 3.20 This lack of wider textbook coverage accords with some perceptions that agricultural law in the UK is “mainly studied as a field of land law”.<sup>17</sup> A similar point is advanced by Professor Christopher Rodgers:

Until comparatively recently, lawyers and agriculturalists have primarily been concerned with the complexities of farm tenancy law and the landlord and tenant relationship.<sup>18</sup>

## **DETERMINING THE PARAMETERS OF OUR REVIEW**

- 3.21 As is illustrated above, presently there is no single, cohesive legislative framework that can easily be identified as forming the existing body of agricultural law applicable in Wales. Consequently, it has been challenging to determine with precision how widely to cast our net when identifying those laws which merit review for the purposes of this report.
- 3.22 To determine the parameters of our task, we have relied on the core aim of codification: to make the law on a particular subject easier to find, access and understand. In that regard, we are conscious that the prospective Code, which seeks to encompass all the laws farmers may need to comply with, or refer to, risks becoming unwieldy and inaccessible. This would be contrary to the intended objectives of codification.<sup>19</sup> Such an approach would also likely result in the prospective code of agricultural law for Wales which is disparate in content, encompassing those laws which apply in practice to agriculture, but which more closely concern other subjects. Furthermore, we consider it would be undesirable for the prospective code of agricultural law for Wales to encompass legislation that may be better suited to falling within other future, possible codes of Welsh law for different subjects.

## **THE SCOPE OF AGRICULTURAL LAW**

- 3.23 As outlined at paragraph 3.2, the scope of agricultural law is potentially vast. In the following section, we explain how we have identified those areas of law that apply to the agricultural sector and which merit review for the purposes of determining the form and content of the prospective Code.

### **Areas of law that do not form part of the body of agricultural law**

- 3.24 In order to place sensible parameters on the scope of our review, we exclude from our consideration those general laws which apply to farmers in the same way as they do to other members of the public. This means we exclude those laws that apply in the agricultural context, but which do not make specific or distinct provision for agriculture. For example, farmers will be subject to general contract law when entering into contracts to purchase goods in the course of their farming business.<sup>20</sup> The provisions

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<sup>17</sup> M Alabrese and others, *Agricultural Law Current Issues from a Global Perspective* (1st ed 2017) p 5.

<sup>18</sup> C Rodgers, *Agricultural Law* (4th ed 2016) para 1.01.

<sup>19</sup> See Ch 1 for further discussion.

<sup>20</sup> We note that general contract law will also apply when farmers enter into contracts for sale of agricultural produce, but there are certain agricultural specific laws which may apply to specific contracts. For example,

of contract law, as they apply to farmers, do not form part of the body of agricultural law. They form part of the body of contract law.

- 3.25 In addition, we exclude from the scope of our review the law relating to aquaculture. Aquaculture is defined in legislation as meaning the breeding, rearing, growing or cultivation of any fish or other aquatic animal, seaweed or other aquatic plant and any other aquatic organism.<sup>21</sup> There are differing views as to whether aquaculture forms part of the agricultural sector, or whether it amounts to a distinct sector.<sup>22</sup> Regardless of whether, conceptually, aquaculture can be considered as part of agriculture, it is clear that the laws applicable to aquaculture form part of a body of law that is distinct from agricultural law. There is a complex legal framework governing marine and coastal management and fisheries, which includes the Salmon and Freshwater Fisheries Act 1975, the Marine and Coastal Access Act 2009 and the Fisheries Act 2020.
- 3.26 We also exclude the law concerning horses. The law concerned with horses predominantly regulates the keeping of horses for purposes other than agriculture, such as in livery stables, for horse riding or for professional horse-racing.<sup>23</sup> Agricultural legislation will, in theory, apply to horses to the extent that they are kept as livestock, a practice which is rare domestically.<sup>24</sup> Certain agricultural laws can also apply to horses that are used for agricultural activities, such as horses used for grazing, or to plough agricultural land.<sup>25</sup> There is a relatively substantial body of case law which examines the question of when the keeping of horses is considered agricultural.<sup>26</sup> A detailed examination of such case law is beyond the scope of this report. However, we note that in *Belmont Farm Ltd v the Minister of Housing and Local Government*, the keeping and breeding of horses for showjumping was not considered to be “agricultural” for the purposes of planning legislation.<sup>27</sup> In a later case, the High Court held that the operation of a stud farm for the breeding of horses fell outside of the ordinary meaning of “agriculture”.<sup>28</sup>
- 3.27 Therefore, while we examine those agricultural laws that can apply in practice to horses, we do not consider those laws which are more generally concerned with horses to fall within the scope of agricultural law. Consequently, we do not examine

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the Fair Dealing Obligations (Milk) Regulations 2024, SI 2024/537 and the Fair Dealing Obligations (Pigs) Regulations 2025, SI 2025/610.

<sup>21</sup> Fisheries Act 2020, s 52.

<sup>22</sup> See for example a UK Parliamentary debate as to whether aquaculture ought to be deemed part of agriculture: *Hansard* (HC), 19 October 1976, vol 917, cols 1131 to 1170. Notably, the Welsh Government typically publish separate policies and strategies for agriculture and for fisheries and aquaculture.

<sup>23</sup> Department for Environment, Food and Rural Affairs, *Guidance keeping horses commercially* (February 2023) <https://www.gov.uk/guidance/keeping-horses-commercially>.

<sup>24</sup> P Williams, *Scammell, Densham and Williams Law of Agricultural Holdings* (11th ed 2023), para 17.25.

<sup>25</sup> The use of horses to plough agricultural land is however increasingly becoming a rare practice as modern ploughing generally involves the use of machines.

<sup>26</sup> For an overview of the relevant case law, see P Williams, *Scammell, Densham and Williams, Law of Agricultural Holdings* (11th ed 2023) para 17.24.

<sup>27</sup> *Belmont Farm Ltd v Minister of Housing and Local Government* (1962) 13 P&CR 417.

<sup>28</sup> *Dutta v Hayes* [2012] EWHC 1727 (Ch); [2012] All ER (D) 52.

laws such as those relating to the licensing of horse-riding establishments,<sup>29</sup> the control of horses,<sup>30</sup> or laws relating to the identification of horses.<sup>31</sup>

- 3.28 Finally, we have excluded the law on bees from the scope of our report for two reasons. Firstly, bees may not always fall within the meaning of “livestock” in the context of statutory definitions of agriculture. Secondly, there exists a distinct body of law that governs bees.<sup>32</sup> For example, the Bees Act 1980 empowers the Welsh Ministers to draw up new Orders for the purpose of preventing the introduction into, or spreading within, Great Britain of pests or diseases which affect bees.<sup>33</sup>

### Our areas of focus

- 3.29 We now turn to those areas of law which have the most significant effect on agriculture in Wales. To this end, we have sought to review those laws which shape or determine the way agricultural land is managed or used or the way in which agricultural activities (such as dairy farming, livestock rearing or crop farming) are conducted. These are the areas of law which stakeholders told us form a core part of the body of agricultural law, and which also feature in leading texts and key resources on agricultural law (see, respectively paragraph 3.18 above, and paragraph 3.31 below).
- 3.30 While this scoping report did not include a consultation, we have undertaken significant engagement across the agricultural sector, including attendance at key seminars and events on agricultural law. Members of the project team also spoke to numerous stakeholders including farmers, unions representing the agricultural sector, enforcement authorities, regulatory bodies, legal professionals and academics. All of them generously offered their time and expertise to help identify the laws which should form part of our review.
- 3.31 In seeking to determine the scope of agricultural law, we also considered those resources listed below which present an overview of agricultural law as a body of law.
- (1) The section of the Welsh Government’s Law Wales website dedicated to the topics of agriculture and horticulture. Law Wales is a Welsh Government website which “provides information and explanation about Welsh law and the

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<sup>29</sup> For example, the Riding Establishments Act 1964.

<sup>30</sup> Such as the Control of Horse (Wales) Act 2014 (anaw 3).

<sup>31</sup> The Equine Identification (Wales) Regulations 2019, SI 2019/57 (W 20). We acknowledge, however, that a farmer keeping horses would have to comply with the relevant identification requirements imposed under these Regulations.

<sup>32</sup> While the Animal and Plant Health Agency’s National Bee Unit reports that the majority of honey bees in the UK are kept in hives as livestock, there are also around 270 species of wild bees. The Animal and Plant Health Agency’s National Bee Unit, “Honey bees in the UK” (October 2024): [https://www.nationalbeeunit.com/assets/PDFs/3\\_Resources\\_for\\_beekeepers/Fact\\_Sheets/Fact\\_15\\_Honey\\_bees.pdf](https://www.nationalbeeunit.com/assets/PDFs/3_Resources_for_beekeepers/Fact_Sheets/Fact_15_Honey_bees.pdf).

<sup>33</sup> The Bee Diseases and Pest Control (Wales) Order 2006, SI 2006/1710 (W 172) empowers measures to be taken by the Welsh Ministers to control infections that would otherwise seriously injure bees.

constitution of Wales”.<sup>34</sup> It further provides detailed commentary on specific topics of law.

- (2) The Law Reform Commission of Ireland’s classified list of legislation for the subjects of agriculture and food. The list is “a searchable list of in-force Acts and statutory instruments organised under 36 Subject Headings”.<sup>35</sup>
- (3) DefraLex: an online searchable portal hosting legislation relating to topics or policy areas falling within the remit of the Department for Environment, Farming and Rural Affairs.<sup>36</sup> DefraLex does not, however, host legislation that applies only in relation to Wales.
- (4) The EU’s overview of EU agricultural law,<sup>37</sup> which is a webpage on agriculture that offers an overview of agricultural law originating from the EU.
- (5) Halsbury’s Laws for England: Agricultural Land and Allotments (Volume 1) and Agricultural Production and Marketing (Volume 1A 2023).<sup>38</sup>
- (6) The Agricultural Law Association’s webpage of key legislation.<sup>39</sup>

### Areas of law which are the focus of our review

3.32 The table sets out those areas of law which our approach and engagement identified as areas of focus for our review on what the prospective code for agricultural law for Wales should contain.

Area of law	Summary of rationale
The Agriculture Acts and other Acts, Measures or laws which can be readily discerned from their title and content as being primarily or solely concerned with agriculture. Examples include the Agriculture Act 1947, the Hill Farming Act 1946 and the Agriculture (Wales) Act 2023.	Together these Acts provide the Welsh Ministers, and other public authorities or statutory bodies, with powers and duties to regulate or support agriculture in Wales.
Laws that regulate agricultural activity or agricultural land use, and which are aimed at protecting the environment and wildlife, mitigating against climate change, managing natural resources and access to	Approximately 90% of land in Wales is used for agriculture meaning that the agricultural sector has the potential to

<sup>34</sup> Welsh Government, “About Law Wales” <https://law.gov.wales/>.

<sup>35</sup> Law Reform Commission of Ireland, “Classified List of Legislation in Force in Ireland” <https://revisedacts.lawreform.ie/classlist/intro>.

<sup>36</sup> The National Archives, “Defralex: the online portal to Defra legislation” <https://www.legislation.gov.uk/defralex>.

<sup>37</sup> Eur-Lex, “Summaries of EU legislation: Agriculture” [https://eur-lex.europa.eu/summary/chapter/agriculture.html?root\\_default=SUM\\_1\\_CODED%3D03](https://eur-lex.europa.eu/summary/chapter/agriculture.html?root_default=SUM_1_CODED%3D03).

<sup>38</sup> B Monnington (ed), *Halsbury’s Laws of England: Agricultural Land and Allotments* (vol 1 2022).

<sup>39</sup> Agricultural Law Association, “Legislation and Codes of Practice” <https://ala.org.uk/legislation/>.



the countryside. Examples include the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 and the Crop Residues Burning Regulations 1993. <sup>40</sup>	significantly affect the environment, natural resources and wildlife of Wales.
Laws that concern animal health and welfare, and which apply to livestock. Examples include the Animal Health Act 1981 and the Welfare of Farmed Animals (Wales) Regulations 2007. <sup>41</sup>	78% of agricultural land in Wales is used for livestock farming. 78% of farm types in Wales are livestock grazing farms. <sup>42</sup>
Laws that concern plants (including agricultural crops), forests and hedges and which apply in the agricultural context. Examples include the Plant Health Act 1967, the Plant Varieties Act 1997 and the Hedgerows Regulations 1997. <sup>43</sup>	Approximately 6% of agricultural land is used for horticulture and arable crops. <sup>44</sup>  In addition, 7.5% of agricultural land in Wales is used as farm woodland <sup>45</sup> and 42% of all woodland in Wales is located on Welsh farms. <sup>46</sup>
Laws relating to the lease of agricultural land, housing of agricultural workers and other land management or development laws applicable to agricultural land. Examples include the Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1995.	Approximately one third of agricultural land in Wales and England is tenanted. <sup>47</sup>  It is reported that diversification activities on Welsh farms, which can engage wider land management and development laws, have grown over the past decade. In 2017, diversification activities represented, on

<sup>40</sup> SI 2021/77 (W 20); SI 1993/1366.

<sup>41</sup> SI 2007/3070 (W 264).

<sup>42</sup> Welsh Government, *Farm Incomes: April 2023 to March 2024* (January 2025) <https://www.gov.wales/farm-incomes-april-2023-march-2024-html#:~:text=LFA%20grazing%20livestock%20make%20up,of%20the%20land%20in%20Wales.>

<sup>43</sup> SI 1997/1160.

<sup>44</sup> Welsh Government, *Survey of agriculture and horticulture* (December 2025) <https://www.gov.wales/sites/default/files/pdf-versions/2025/12/2/1765272643/survey-agriculture-and-horticulture-june-2025.pdf>, p 6.

<sup>45</sup> Forestr Research reported 132,000 hectares of farm woodland in Wales whilst the survey of agriculture and horticulture identified a total of 1,77,100 hectares of agricultural land in total.

<sup>46</sup> NFU Cymru, "Growing Together: A strategy for sustainably increasing tree cover in Wales" (September 2021) <https://www.nfu-cymru.org.uk/media/rx5jui5k/growing-together.pdf>, 2.

<sup>47</sup> House of Lords Library, "Agricultural Tenancy Reform" (January 2021) <https://lordslibrary.parliament.uk/agricultural-tenancy-reform/>.



	average, 3.4% of farm revenues in Wales. <sup>48</sup>
Laws that apply to the supply chain for agricultural produce and goods. <sup>49</sup>	Agricultural activities form part of the initial stage of the supply chain for agricultural produce (“the agricultural supply chain”). Other stages in the agricultural supply chain can include processing, packaging, transport and retail. There are a relatively substantial number of laws which apply to activities that take place throughout the agricultural supply chain.

3.33 Each of the above areas is considered in more detail in Chapters 5 to 10 of this report. Those chapters consider those laws which fall in the broad categories outlined above and examine whether the laws in question are suitable for inclusion in the prospective code of agricultural law for Wales.

### **CRITERIA FOR INCLUSION IN THE PROSPECTIVE CODE OF AGRICULTURAL LAW**

3.34 Our task is to determine what existing legislation should be brought within the prospective code of agricultural law for Wales. As outlined above, we consider there is ambiguity as to what legislation forms part of the existing body of agricultural law applicable to Wales.

3.35 In light of this ambiguity, we consider it is important to be clear about our rationale for proposing certain laws which apply to those working in or regulating the agricultural sector be included in the prospective code of agricultural law for Wales while others be excluded. Specifically, we must be clear about the type and nature of law we propose is suitable for inclusion in the prospective Code.

3.36 In that respect, we suggest that the prospective Code ought to encompass those laws that:

- (1) are concerned with the subject of agriculture; and
- (2) have a practical application that is limited to, or primarily concerned with, agriculture.

#### **Our first criterion: concerned with the subject of agriculture**

3.37 When assessing whether laws or legislative provisions are concerned with the subject of agriculture, we focus on identifying the aim of the law or legislative provision in question. Where available, we refer to authoritative sources in making this

<sup>48</sup> Senedd Research, “Diversification and resilience of Welsh farming: prospects after Brexit” (December 2019) 6.

<sup>49</sup> Our report does not, however, consider all laws that apply throughout the agricultural supply chain. For example, laws regulating veterinary surgeons fall outside of the scope of this report as such laws relate to reserved matters (for further detail see para 7.101 of the report).

assessment. Examples of such sources include case law, parliamentary debates during readings of draft legislation, explanatory notes to legislation, explanatory memoranda for Bills, government guidance, academic works or practitioner texts. We consider that the first criterion will allow us to identify those laws which are aimed at regulating or supporting the agricultural sector in Wales. It will further help us to exclude those laws which may apply in the agricultural context, but which have an aim that is unconnected with agriculture.

### **Our second criterion: practical application that is limited to, or primarily concerned with, agriculture**

- 3.38 Our first criterion casts the net wide by requiring an evaluation of whether the aim of legislation under review is concerned with agriculture. We are conscious, however, that a particular piece of agricultural law may have multiple policy aims, not all of which will be concerned with agriculture, and we have often found that to be the case.
- 3.39 In addition, many laws applicable to the agricultural sector will also apply in practice to other sectors or in other contexts. In such instances, it may be difficult to justify including those laws within the prospective code of agricultural law for Wales when other sectors or industries may also have a need to refer to the laws in question.
- 3.40 Our second criterion therefore helps us balance such competing considerations by focusing on the practical application of the law. For example, we typically consider whether farmers are the main group of individuals who must comply with a particular law.<sup>50</sup> Determining whether a law applies in practice primarily to the agricultural sector involves an evaluative judgement. So, to inform this assessment, we rely on evidence, such as statistics, and other informative resources, such as Welsh Government, UK Government or industry publications. We also consider whether the legislation regulates an industry or activity that exists to serve or support the agricultural sector, but which may not be regarded as forming part of the sector.<sup>51</sup> Our second criterion therefore helps us to draw sensible parameters around the prospective Code.
- 3.41 Finally, we have encountered some instances where the assessment of whether a law satisfies our criteria for inclusion is finely balanced. In those instances, we have found it helpful to assess the proportion of provisions within a piece of legislation that either make direct reference to the term “agriculture”, or which apply primarily or solely apply in practice to agriculture. We only apply this test as a pragmatic means of assessing suitability for inclusion where the arguments for and against including a law in the prospective Code are finely balanced.

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<sup>50</sup> As explained in our glossary we use the term farmer to refer to any individual engaged in any activity that satisfies the definition of agriculture, as set out in s 51 of the Agriculture (Wales) Act 2023. Where we refer to farmers, this includes horticulturists and other workers in the agricultural sector whose activity is understood to fall within the meaning of “agriculture” under the 2023 Act.

<sup>51</sup> For example, in Ch 8, we conclude that the law governing plant varieties is suitable for inclusion in the prospective Code. This is despite the fact that the industry producing plant varieties protected by plant breeders’ rights might not be regarded as forming part of the agricultural sector. More broadly, we explain in Ch 10 that our review of agricultural law does not extend to any legislation that apply to the post-farm stage of the agricultural supply chain.

### Criteria for inclusion: what do we mean by agriculture?

- 3.42 Our criteria for determining which laws belong in the prospective code of agricultural law for Wales are in part shaped by our understanding of the term “agriculture”. However, “agriculture” is not a term with a singular accepted definition.
- 3.43 Some may think of agriculture in traditional terms as being concerned with the practices of cultivating crops, rearing livestock or dairy farming. Indeed, one dictionary defines “agriculture” as “the science or practice of cultivating the soil and rearing animals”.<sup>52</sup>
- 3.44 Others may have a broader perception of what agriculture encompasses. The above dictionary definition does not explicitly refer to horticultural activity which includes not only the production of consumable crops, such as fruit, but also the growing of ornamental plants and flowers.<sup>53</sup> Furthermore, the meaning of agriculture continues to evolve in line with technological advancements that shape and influence farming practices. For example, controlled environment agriculture is a modern form of farming that involves using technology to control the conditions under which agricultural crops are grown.
- 3.45 Where there is ambiguity as to the meaning of a term, it can be helpful to turn to statutory definitions to identify, at least in the legislative context, what a term is understood to mean. However, within primary legislation, we have identified 33 different Acts that contain provisions defining the term “agriculture” which are currently in force and apply in Wales. Across those Acts, we have identified 13 distinct definitions of “agriculture” as contained in legislative provisions applicable in Wales.<sup>54</sup>
- 3.46 It is evident, therefore, that the term “agriculture” can have different meanings according to context. The meaning of the term is also continually evolving in line with advancements in the sector. Consequently, for the purposes of this project, we consider it would be unhelpful to strictly confine ourselves to a particular definition of “agriculture” when seeking to identify the body of law that should be classified as agricultural law.
- 3.47 Nonetheless, for the purpose of determining whether a law should be brought within the prospective code of agricultural law for Wales, we consider it is helpful to have at least a reference point as to what “agriculture” currently means in Wales. In that respect, we propose to refer to the definition of agriculture as provided for under the Agriculture (Wales) Act 2023 (“the 2023 Act”). Section 51 of that Act provides that “agriculture” means:

- (1) horticulture;

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<sup>52</sup> The Oxford English Dictionary.

<sup>53</sup> We also acknowledge that there will be different perspectives as to whether horticulture is its own sector or part of a wider agricultural sector.

<sup>54</sup> In Ch 5, we consider whether the consolidation of agricultural legislation into an Act forming part of the prospective Code would present an opportunity to streamline or modernise the various existing statutory definitions of agriculture.

- (2) farming arable crops;
- (3) dairy farming;
- (4) keeping and breeding livestock;
- (5) using land as grazing land;
- (6) using land as farm woodland or for agroforestry;
- (7) controlled environment agriculture;
- (8) otherwise growing plants for sale, or for the sale of part of a plant; and
- (9) maintaining land in a state that makes it suitable for an activity listed in sub-paragraphs (1) to (8).

3.48 It is our understanding that the definition of “agriculture” as provided for under section 51 of the 2023 Act is intended to reflect both modern and traditional farming activities undertaken in Wales and to account for emerging, innovative practices. The explanatory notes to the 2023 Act confirm that the statutory definition of “agriculture” as provided for under section 51 is:

intended to reflect the broad range of farming activities currently undertaken in Wales, and to capture activities that are commonly considered to be traditional farming activities, e.g. the growing of crops for food, as well as more modern farming activities, e.g. controlled environment agriculture which captures more recent developments such as vertical farming.<sup>55</sup>

3.49 In addition to providing a starting point for our definition of the term “agriculture”, section 51 of the 2023 Act has further assisted us with drawing sensible parameters around the scope of our work. It provided us with a framework against which we have been able to focus our efforts on those laws applicable to activities and land uses most commonly recognised as falling within the meaning of agriculture.

### **Applying our criteria for inclusion**

3.50 As outlined above, our criteria for inclusion are intended to guide our consideration as to what laws belong within the prospective code of agricultural law for Wales. The criteria have helped ensure that we approach our task in a consistent manner and that we are transparent about our method.

3.51 Our criteria have not, however, been drawn up with the same precision which might be applied when drawing up a legal test found in statute. This is, in part, because we have referred to the criteria as a guide for our exercise, rather than applying them as a determinative test. Indeed, there are instances where we have concluded that a law belongs in the prospective Code, even if it is not entirely clear whether the legislation fully satisfies our criteria. Where such instances have arisen, we take care to explain our rationale for reaching this conclusion. Furthermore, we acknowledge there are many possible models of the prospective code of agricultural law for Wales and

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<sup>55</sup> Explanatory Notes to the Agriculture (Wales) Act 2023 (asc 4), para 267.

sometimes the evaluations to be made regarding the boundaries of the prospective Code are highly fact dependent.<sup>56</sup>

- 3.52 Our criteria for inclusion also help us to consider whether laws that apply in the agricultural context but also to other sectors or contexts, may more naturally fit within another possible future code of Welsh law. It is difficult to draw conclusions about the form and content of other codes of law as work to codify the law applicable in Wales is ongoing: a programme of work which has been aptly described as requiring a generational effort.<sup>57</sup>
- 3.53 We have nonetheless found it helpful to refer to the Welsh Government's draft taxonomy of codes as an illustrative indication of what additional codes of Welsh law might be developed in the future.<sup>58</sup> Our criteria for inclusion have been developed in recognition of the fact that our work for this report is set against a broader, innovative programme of work to codify the law on devolved subjects. In turn, the criteria assist our assessment of where the boundaries of the prospective code of agricultural law for Wales ought to be drawn.

## **CONCLUSION: OUR APPROACH TO ESTABLISHING THE SCOPE OF THE PROSPECTIVE CODE OF AGRICULTURAL LAW FOR WALES**

- 3.54 This scoping project involved a review of a significant number of individual laws. The key question is which among them can, and should, form part of a coherent prospective code of agricultural law for Wales. A vast number of statutes are relevant and apply to the agricultural sector in Wales, and this chapter has sought to explain how we prioritised the areas of focus for this review, particularly after engaging with stakeholders. The result has been a strategic focus on areas of law that appear most central to the agricultural sector in Wales.
- 3.55 Identifying legislation that is suitable for inclusion in the prospective Code has therefore necessarily been based on a high-level but methodical consideration of the laws engaged by our work. Furthermore, even though we have approached our work with a broad initial scope, it is possible that there are some laws with which Welsh farmers need to comply, or to which they need to refer, that have not been specifically addressed in this report.
- 3.56 Finally, as illustrated in this chapter, there are fine judgements to be made as to the appropriate boundaries of the prospective code of agricultural law for Wales. By applying criteria to our considerations, we have sought to be consistent and transparent about our approach to identifying the legislation that we consider suitable for inclusion in such a code. Therefore, this report is intended to lay the foundations for any resulting work involved in the development of the prospective code of agricultural law for Wales.

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<sup>56</sup> For example, the fact that the agricultural sector in Wales is dominated by livestock farming has informed our conclusion in Ch 8 that the law governing animal health is suitable for inclusion in the Code.

<sup>57</sup> Welsh Government, *Consultation on the future of Welsh law: classification, consolidation, codification* (October 2019) p 6.

<sup>58</sup> Welsh Government, *Consultation on the future of Welsh law: classification, consolidation, codification* (October 2019) pp 35 to 45.

# Chapter 4: Overarching issues engaged by the codification of agricultural law

## INTRODUCTION

- 4.1 This chapter examines the distinctive characteristics of the Welsh agricultural sector that may influence the form, content and presentation of the prospective code of agricultural law for Wales (“the prospective Code”). It further explores overarching considerations, as set out below, that may also inform the process of establishing the prospective Code.
- (1) The extent to which the different readers or audiences of the prospective Code may inform which legislation is brought within its scope.
  - (2) The powers available to bring assimilated law within the scope of the prospective Code and the benefit of doing so as a means of improving accessibility of the law.
  - (3) The relationship between the volume of legislation contained in the prospective Code and its accessibility.
  - (4) The proliferation of different statutory definitions of key terms such as agriculture and livestock in existing agricultural legislation.
  - (5) Calls for substantive legislative reform which may influence the timing or sequencing of the establishment of the prospective Code.

## CROSS-BORDER FARMS IN WALES

- 4.2 It is often cited that there are approximately 500 cross-border farms situated on or near to the border between Wales and England (“the border”).<sup>1</sup> We have been unable to identify an official source for this figure and there is limited information available on what is precisely meant by the term “cross-border farms” in this context. From our engagement with stakeholders, the term “cross-border farms” generally refers to those farms, situated on or near the border, that are made up of land located in Wales and land located in England, regardless of whether the land in question physically straddles the border. We note that this definition of a cross-border farm is also adopted in the provisional common framework for agricultural support provisionally approved by respective ministers for the Welsh Government, the UK Government, the Scottish Government and Department of Agriculture, Environment and Rural Affairs.<sup>2</sup> In this section, we examine how the creation of the prospective Code may affect

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<sup>1</sup> Farmers’ Union of Wales, “Flintshire farmers raise cross border concerns with local AM” (11 April 2017) <https://fuw.org.uk/en/news/12646-flintshire-farmers-raise-cross-border-concerns-with-local-am>.

<sup>2</sup> Agricultural Support Common Framework: Provisional framework outline agreement and concordat (2022) CP 613, p 46.

farmers operating cross-border farms (“cross-border farmers”) who must comply with the law applicable in both Wales and in England.

- 4.3 Although England and Wales share a single legal jurisdiction, the legislation applicable in each country continues to diverge following devolution and, more recently, the UK’s decision to leave the EU.<sup>3</sup> Consequently, cross-border farmers must comply with the legislation applicable in both Wales and England and understand where that law differs.
- 4.4 For example, if the law applicable in one country imposes more stringent measures than the law applicable in the other country, then a cross-border farmer will, in most instances, need to comply with the law imposing the more stringent standard. That is, at least, in respect of any land falling within the country where the law imposing the more stringent standard applies.<sup>4</sup> There may also be instances where the nature of the law means that a cross-border farmer has to comply with a more stringent regulatory standard set in one country across the whole of their cross-border farm. For instance, a hypothetical law could impose mandatory vaccination for sheep in Wales. A cross-border farmer may in theory need to comply with such a requirement for all sheep on a cross-border farm in circumstances where that farmer keeps the sheep in rotation across farmland situated in Wales and farmland situated in England.
- 4.5 Differences in the agricultural law applicable in Wales and that in England can also create practical challenges and uncertainty for cross-border farmers. A recent outbreak in England of bluetongue virus, a disease affecting livestock, led to the Welsh Ministers imposing restrictions on livestock movements from England into Wales. However, there were some reports of uncertainty regarding how the restrictions applied to livestock movements between cross-border farms and livestock markets located in England.<sup>5</sup>
- 4.6 Divergence of agricultural law as it applies in Wales and in England is, however, an inherent consequence of devolution. Senedd Cymru (“the Senedd”) has been afforded powers to enact primary legislation relating to agriculture since 2011.<sup>6</sup> In addition, the devolution of executive powers to Wales relating to agriculture dates back to the mid-twentieth century.<sup>7</sup> The devolutionary framework that allows for agricultural legislation applicable in Wales and that in England to differ is therefore already firmly embedded.
- 4.7 As we discuss in Chapter 1, a code of Welsh law aims at being a comprehensive statement of the law on a particular subject. Establishing the prospective code of agricultural law for Wales will involve bringing together the existing primary agricultural law applicable in Wales into an Act of the Senedd, or a series of such Acts. There are

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<sup>3</sup> While the UK was a member of the EU, agricultural policy was largely coordinated at an EU level. Following the UK’s decision to leave the EU, the four UK nations each have greater scope to embark upon distinct agricultural policies and legislative frameworks.

<sup>4</sup> Subject to the effect of the United Kingdom Internal Market Act 2020 as discussed further in Ch 2.

<sup>5</sup> D Gregory-Kumar, “Bluetongue restrictions worry farmers on Shropshire-Wales border” *BBC News* (25 June 2025), <https://www.bbc.co.uk/news/articles/c98w1511ew8o>.

<sup>6</sup> See Ch 2 which provides an overview of the process of devolution of legislative and administrative powers.

<sup>7</sup> See Ch 2.



currently instances where cross-border farmers have to refer to provisions contained in an Act of the UK Parliament that apply to both England and Wales. The creation of the prospective Code may involve extracting legislative provisions from an Act of the UK Parliament that applies to England and Wales and restating those provisions in an Act of the Senedd applicable to Wales only. In such cases, provisions relevant to cross-border farms will be spread across two enactments. These are the original Act of the UK Parliament containing the law applicable in England, and any new Act of the Senedd that consolidates and codifies the relevant legislative provisions on a Wales-only basis.

- 4.8 Notwithstanding the above, we think that cross-border farmers will benefit from the codification of agricultural law applicable in Wales. An Act of the UK Parliament that applies to both England and Wales may not apply to each country in the same way. For example, an Act of the UK Parliament may provide that certain provisions are to apply to Wales in a different manner than to England, or that certain provisions are to apply to Wales only. This means it can be challenging to identify where the law applicable in Wales differs from that in England. Alongside delivering other benefits, consolidation and codification of agricultural law can tackle this issue. The consolidation of agricultural legislation into an Act of the Senedd will make it easier for readers of the law to identify the exact body of agricultural law that applies in Wales. We consider this prospective benefit to be of particular assistance to cross-border farmers who will have a particular need to understand where the law applicable in Wales and that in England diverges from one another.
- 4.9 Once the law on a subject has been brought together under a code of Welsh law then the order achieved by way of codification is to be maintained. This means that legislative amendments to an Act that forms part of a code of Welsh law should be made to, and contained within, the Act itself. The creation of the prospective Code should therefore mean that cross-border farmers will no longer have to piece together fragmented legal provisions to understand the effect of law as it applies in Wales. In the above section, we acknowledge that the creation of the prospective code of agricultural law for Wales may present advantages and disadvantages for cross-border farmers. On balance, we think that the advantages outweigh the disadvantages, and that codification should, in principle, improve the accessibility of agricultural law as it applies to cross-border farms.

## ONLINE ACCESSIBILITY

- 4.10 Codification is intended to improve the accessibility of the law. To deliver upon this aim, the intention is that a code of Welsh law is published so that members of the public can access the legislation which forms part of the code.
- 4.11 Our understanding is that the legislation contained in a code of Welsh law will be published and made accessible online via a webpage. The code of law relating to the historic environment of Wales is accessible via the Law Wales website. The Law Wales webpage for the Historic Environment (Wales) Act 2023 provides a summary of the Act's main provisions. It also explains that the Act forms part of a code of law relating to the historic environment of Wales and lists the secondary laws made under the Act. The webpage also provides links to electronic copies of the relevant primary



and secondary legislation, as published on the UK's legislation database service: [legislation.gov.uk](https://www.legislation.gov.uk).

- 4.12 Legislation.gov.uk is a free-to-access website hosted by The National Archives. It publishes most, but not all, primary and secondary legislation applicable in the UK and aims to publish newly enacted legislation within 24 hours of its printed publication.<sup>8</sup> Legislation can be searched for by its title, year of enactment and by using key words. However, it is not possible to search for legislation by subject matter.<sup>9</sup> The limitations of legislation.gov.uk in this respect were considered by the House of Lords Select Committee on the Constitution:

Although the legislation.gov.uk website can track changes made to legislation, this does not help those seeking to understand the law in a particular area if relevant legislation is spread across a number of different statutes and instruments.<sup>10</sup>

- 4.13 Furthermore, legislation.gov.uk does not allow users to filter search results to identify the secondary legislation made under a particular provision or set of provisions in an Act. Therefore, creating and publishing the prospective code of agricultural law for Wales online means it will be easier for individuals to locate online the primary and secondary legislation relating to agriculture which applies in Wales.
- 4.14 However, we acknowledge that not everyone who has a need to understand agricultural law will use online resources. Whether individuals use online resources to access or understand the law can be influenced by various factors including their access to computers, their level of skill in using the internet and their access to reliable internet.
- 4.15 The vast majority of premises in Wales have internet access. Ofcom reports that, in 2025, 98% of premises in Wales had access to at least "decent broadband" via a fixed-line connection.<sup>11</sup> However, there are around 32,000 premises in Wales "not able to access decent broadband via a fixed-line connection".<sup>12</sup> In 2022, Ofcom reported that most of the premises in Wales unable to access decent broadband, via a fixed line connection, were located in rural areas.<sup>13</sup>
- 4.16 Those working in the agricultural sector in Wales, who are more likely to be based in or near rural areas, may therefore face barriers when accessing an online publication of the prospective Code. Indeed, there is a correlation between those local authority areas in Wales with the highest rates of employment in the agricultural, fishing and forestry sectors and those with the highest number of premises without internet

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<sup>8</sup> The National Archives, "legislation.gov.uk: help" <https://www.legislation.gov.uk/help>.

<sup>9</sup> It is however possible to search on legislation.gov.uk for secondary legislation by subject heading.

<sup>10</sup> The Legislative Process: Preparing Legislation for Parliament, Report of the Select Committee on the Constitution (2017-2019) HL 27, para 137.

<sup>11</sup> Ofcom, *Connected Nations 2025: Wales report* (November 2025) p 10. However, the percentage of premises without access to decent broadband in Wales is lower when taking into account those premises that can access decent broadband via either a fixed-line connection or fixed wireless access: 0.4% of premises.

<sup>12</sup> Ofcom, *Connected Nations 2025: Wales report* (November 2025) p 10.

<sup>13</sup> Ofcom, *Connected Nations 2022: Wales report* (December 2022) p 13.

access. In 2022, Powys, Pembrokeshire, Carmarthenshire and Gwynedd featured in Ofcom's list of the ten local authorities in Wales with the highest number of premises without access to "decent broadband".<sup>14</sup> The same four local authority areas are among those areas in Wales recording the highest proportion of workers employed in the agricultural, fishing and forestry sectors.<sup>15</sup>

- 4.17 In 2021, a survey conducted by organisations including the National Farmers' Union Cymru ("NFU Cymru") and the Farmers' Union of Wales reported that 50% of survey respondents from a rural area in Wales felt that their internet access was not fast or reliable.<sup>16</sup> The Farmers' Union of Wales also emphasises the connection between internet access and the accessibility of the law:

given the rate at which rules relating to agriculture change and will change in future, and the penalties associated with slight errors, it is essential that such changes are communicated with the industry in accessible formats for all. [...] With access to reliable broadband still evidently below the national average in many of our rural areas, and farm businesses representing a large proportion of those with no broadband access, it is essential that the limitations of online services and communications are recognised and that rural access to broadband is increased.<sup>17</sup>

- 4.18 Separately, some stakeholders have highlighted to us that the demographic make-up of the agricultural sector in Wales may have a bearing on whether farmers will refer to the prospective Code which is published online. It is reported that the average age of Welsh farmers is over 60.<sup>18</sup> In addition, a 2016 agricultural survey for Wales reported that approximately 3% of principal farmers in Wales were under the age of 35. By contrast, approximately 39% of principal farmers were reported to be aged 65 or over.<sup>19</sup>
- 4.19 A national survey for Wales on internet use and digital skills records that rates of internet usage are relatively high across all age groups. However, the survey indicates that the proportion of internet users is higher in younger age brackets.<sup>20</sup> Research

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<sup>14</sup> Ofcom, *Connected Nations 2022: Wales report* (December 2022) p 15. The lack of wider digital infrastructure in some rural areas was cited as a potential barrier to farmers adopting new technologies by the UK Farm Assurance Review, *The UK Farm Assurance Review Report* (January 2025) p 15.

<sup>15</sup> StatsWales statistics for 2019 record that Powys, Pembrokeshire, Carmarthenshire and Gwynedd all fall within the top five local authority areas with the highest proportion of workers in the agricultural, fishing and forestry sectors: <https://statswales.gov.wales/Catalogue/Business-Economy-and-Labour-Market/People-and-Work/Employment/Jobs/Whole-Workforce/workplaceemployment-by-welshlocalareas-industry>.

<sup>16</sup> National Farmers' Union Cymru, "Survey highlights digital urban-rural divide" (May 2021) <https://www.nfu-cymru.org.uk/en/news-and-information/survey-highlights-digital-urban-rural-divide/>.

<sup>17</sup> Farmers' Union of Wales, "Digital Connectivity" <https://fuw.org.uk/media/attachments/2025/04/11/digital-connectivity-1.pdf>.

<sup>18</sup> Farmers' Union of Wales, Written evidence to the Welsh Affairs Committee, <https://committees.parliament.uk/writtenevidence/125155/html/>.

<sup>19</sup> Welsh Government, "Welsh Agricultural Statistics: 2016" (January 2018). The statistical report describes principal farmers as being "the person who makes the day to day decisions about the running of the farm. This is likely to be the senior partner in the business....".

<sup>20</sup> Welsh Government, "Internet use and digital skills (National Survey for Wales), April 2018 to March 2019" (September 2019) p 5. The survey records that 98% of 16 to 49 year olds, 91% of 50 to 64 years old, and 79% of 65 to 74 year olds are internet users.

conducted by academics at Aberystwyth University reports that the age profile of the agricultural workforce in Wales can act as a barrier to the adoption of technology, including the use of tools and resources hosted online.<sup>21</sup> Similarly, a 2012 survey conducted in England by the Department for Food, Environment and Rural Affairs (“Defra”) found that proficiency in use of IT was highest among those farmers aged under 40 years old.<sup>22</sup>

- 4.20 Through our research and engagement across the agricultural sector, we have encountered numerous examples of farmers across all generations who have successfully integrated technology use into their farming practices. As noted by the Farmers’ Union of Wales, “farmers of all ages are now required to use computer technology for their online business transactions”.<sup>23</sup> Furthermore, the adoption of digital technology on farms in Wales continues to be championed by various Welsh Government and UK Government strategies and wider initiatives. Examples include the Welsh Government’s Agri-tech action plan for Wales,<sup>24</sup> and Innovate UK’s programme of investment into the use of technology in the agricultural and food sectors in Wales.<sup>25</sup> However, making generalised assumptions about access to digital services risks marginalising and discriminating against those who do not have such access for a whole range of possible reasons.
- 4.21 There may also be other demographic factors that influence whether those working in the Welsh agricultural sector will access the prospective code of agricultural law for Wales which is published online. It is beyond the scope of this report to identify and examine each of those factors. Nonetheless, the preceding paragraphs illustrate that the unique characteristics of the agricultural workforce in Wales may influence whether farmers access an online version of the prospective Code.
- 4.22 In any event, it is our understanding that the prospective Code will complement rather than replace existing resources that aim to improve the accessibility of the law. Stakeholders have told us that farmers rely on a variety of resources and services to understand the law. Examples include seeking advice from professional advisers or farming unions, referring to written guidance, codes of practice or industry newsletters, and accessing online resources such as webinars. The Welsh Government also

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<sup>21</sup> R Bowen and W Morris, “Digital entrepreneurship in agrifood business” (2024) 30 (2-3) *International Journal of Entrepreneurial Behaviour and Research* 482.

<sup>22</sup> Department for Environment, Food and Rural Affairs, “Computer usage by farmers in England 2012” (March 2013) <https://assets.publishing.service.gov.uk/media/5a7a3856ed915d1fb3cd64e9/defra-stats-foodfarm-envirom-fps-statsrelease2012-computerusage-130320.pdf>. The survey reported 85% of those farmers under the age of 40 surveyed were proficient in use of word, excel, email and web searching, compared to 54% of those farmers aged 65 or over.

<sup>23</sup> Farmers’ Union of Wales, “Digital Connectivity” <https://fuw.org.uk/media/attachments/2025/04/11/digital-connectivity-1.pdf>.

<sup>24</sup> Welsh Government, *An agri-tech action plan for Wales* (November 2023) <https://www.gov.wales/sites/default/files/publications/2023-11/agri-tech-action-plan.pdf>.

<sup>25</sup> J Hutton, “Wales wins £400,000 for agri-tech innovation” *Agri-tech Insights* (18 February 2025) <https://agritechinsights.com/index.php/2025/02/18/wales-wins-400000-for-agri-tech-innovation/>.

operates a service, Farming Connect, that offers training, advice and networking opportunities to farmers.<sup>26</sup>

- 4.23 Therefore, any webpage that publishes the prospective code of agricultural law for Wales will be one of a range of resources farmers may rely on to aid their understanding of agricultural law. Furthermore, even those farmers who may not access the prospective Code themselves may still benefit indirectly from its existence. For instance, professional advisers or representative bodies, such as the farming unions, may refer to the prospective Code when providing support and advice to farmers.

## AUDIENCES OF THE PROSPECTIVE CODE

- 4.24 In the preceding section we focus on the factors that may influence whether farmers in Wales are inclined to access the prospective code of agricultural law for Wales which is published online. Farmers are, however, one of many groups who may have an interest in accessing the legislation contained in the prospective Code. Other groups or individuals who may want to refer to the legislation contained in the prospective Code will include:

- (1) representative bodies for the agricultural sector such as the farming unions;
- (2) Welsh Government officials;
- (3) the Welsh Ministers;
- (4) members of the Senedd;
- (5) legal advisers;
- (6) other professional advisers, such as land agents;
- (7) members of the judiciary;
- (8) academics; and
- (9) regulatory bodies and enforcement authorities.

In this section we use the term “audiences” to refer to those individuals and groups who may wish or have cause to access the prospective code of agricultural law for Wales.

- 4.25 The different audiences of legislation have typically been considered when evaluating whether legislation is sufficiently clear and accessible in terms of its drafting style. The Welsh Government’s guidance on legislative drafting, *Writing Laws for Wales*, highlights the importance of considering the different audiences of draft legislation:

In considering these issues, drafters should be guided by the interests of the readers of the legislation, bearing in mind that there will be a number of different audiences and that one group of readers may well have different needs from another. Those

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<sup>26</sup> Farming Connect, “About Us” <https://businesswales.gov.wales/farmingconnect/about-us>.

groups may include individuals who will be affected by the legislation, public bodies that will administer it, lawyers who will advise on its meaning, courts which may be required to decide disputes under it, legislators and other interested parties.<sup>27</sup>

- 4.26 Lord Justice Haddon-Cave, the former Senior Presiding Judge for England and Wales, also recently examined the different audiences of legislation in his lecture *English Law and Descent into Complexity*:

Formerly, legislation was principally accessed by lawyers; but over the last 20 years legislation has become far more accessible. Legislation.gov.uk has between 2 and 3 million visitors per month. This group of people will range from small businesses trying to understand their regulatory environment, to litigants in person who are bringing a small personal injury claim to students who volunteer in Citizen Advice Bureaus. All these users have the same needs: that legislation is simply drafted and easy to understand.<sup>28</sup>

- 4.27 The House of Lords Select Committee for the Constitution considered the needs of different audiences of legislation in its report *The Legislative Process: Preparing Legislation for Parliament*. In providing evidence to the Committee, Dr Mark Ryan commented:

There is [...] an inherent tension in drafting legislation which is crystal clear (but somewhat simplistic and lacking in necessary detail with the result that the courts become involved in the lacuna) and legislation which is so detailed (for the purposes of the law/courts) that it becomes impenetrable to the non-lawyer. Ultimately, the question is who is the clarity aimed at: the lawyer/courts or the lay general public?"<sup>29</sup>

- 4.28 A similar question arises in the present context: at whom is the prospective code of agricultural law for Wales aimed? Farmers – one of the primary audiences of the prospective Code – may expect the prospective Code to serve as a comprehensive guide to all the legislative requirements they must comply with in the agricultural context. However, in Chapter 3 we set out why we consider it undesirable and impracticable to establish a code of agricultural law for Wales that seeks to encompass all laws applicable to the agricultural sector. In short, we consider that such a broadly drawn code risks becoming disparate in its content and potentially too unwieldy to navigate easily. In turn, a code of law that cannot be navigated with ease risks undermining one of the core aims of codification: to improve the accessibility of the law applicable in Wales.
- 4.29 In addition, certain laws that farmers need to comply with will be equally relevant to other audiences such as individuals working or operating in different sectors. For example, as we consider in Chapter 6, farmers in Wales may need to comply with the Environmental Permitting (England and Wales) Regulations 2016 (“the EPR 2016”) which impose an environmental permitting regime to regulate activities that could

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<sup>27</sup> Welsh Government, *Writing Laws for Wales: A guide to legislative drafting* (November 2019) p 5.

<sup>28</sup> Haddon-Cave LJ, “English Law and Descent into Complexity” (June 2021) *Gray’s Inn Reading*, para 34.

<sup>29</sup> The Legislative Process: Preparing Legislation for Parliament, Report of the Select Committee on the Constitution (2017-19) HL 27, p 36.

harm the environment or human health.<sup>30</sup> The activities that are subject to the EPR 2016 include those undertaken on farms such as intensive poultry farming. However, the environmental permitting requirements apply to other activities unconnected to the agricultural sector, for example, mining waste operations. In such instances, it can be difficult to justify including those laws within the prospective code of agricultural law for Wales when they may be more closely concerned with other subject matters, such as the environment, and have a broad practical application extending beyond the agricultural sector.

4.30 Welsh Government officials, and their Ministers, may expect the boundaries of the prospective code of agricultural law for Wales to be drawn precisely and with regard to the form and content of other existing or prospective codes of Welsh law. The expectation of this audience arises because the prospective code of agricultural law for Wales is one of many codes of Welsh law that may be established in the future. The Welsh Ministers and the Counsel General have an ongoing duty to publish a legislative programme for each term of the Senedd that includes planned activities to consolidate and codify the law applicable in Wales.<sup>31</sup>

4.31 The requirements of the different audiences of legislation were examined in the report *When Laws Become Too Complex*:

Government and Parliament, as well as their constitutional roles, are also users of legislation; and their specific requirements have a dramatic impact on laws throughout their 'life-cycle'. It is not surprising that what is found to be user-friendly for Government and in Parliament may not be the same for the judiciary, who use legislation in an entirely different context. Citizens or businesses will in turn have a different set of expectations and requirements.<sup>32</sup>

4.32 The prospective Code will inevitably have diverse audiences with differing needs and expectations. There may also be instances where those needs and expectations do not align. Accordingly, we conclude that in drawing up the prospective Code, it will be important to balance the distinct, and at times competing, needs and expectations of the different prospective audiences of the prospective Code. In the following section, we examine further how the act of balancing those distinct needs can influence decisions as to the scope of legislation included in the prospective Code.

## PRIMARY ENABLING POWERS

4.33 A code of Welsh law is intended to be a comprehensive statement of the primary legislation and secondary legislation on a particular subject. Primary legislation is law enacted by the legislatures, such as the Senedd and the UK Parliament, in the form of Acts: either Acts or Measures of the Senedd or Acts of the UK Parliament. Secondary legislation is law - mostly in the form of orders, rules and regulations – made by the Welsh Ministers or the UK Ministers in exercise of powers provided for in primary

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<sup>30</sup> SI 2016/1154. Ch 6 examines those laws applicable to the agricultural sector which are aimed at protecting the environment, wildlife and natural resources.

<sup>31</sup> Legislation (Wales) Act 2019 (anaw 4), s 2.

<sup>32</sup> Cabinet Office and Office of the Parliamentary Counsel, *When Laws Become Too Complex: A review into the causes of complex legislation* (March 2013).

legislation. Legislative provisions contained in primary legislation which provide government ministers with powers to enact secondary legislation are commonly referred to as primary enabling powers.

- 4.34 In Chapter 11, we set out the primary legislation and secondary legislation we consider suitable for inclusion in the prospective Code.<sup>33</sup> Generally, where we identify that a particular secondary law is suitable for inclusion in the prospective code of agricultural law then we conclude that the prospective Code should also encompass the corresponding primary enabling powers under which the secondary law is made.<sup>34</sup>
- 4.35 There are, however, a select number of secondary laws that we suggest should be included in the prospective code of agricultural law for Wales even though we think that the corresponding primary enabling powers are unsuitable for inclusion. For example, in Chapter 6 we conclude that the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (“the CoAP Regulations 2021”) are suitable for inclusion in the prospective Code.<sup>35</sup> However, in the same chapter, we conclude that the primary enabling powers under which the CoAP Regulations 2021 are enacted are unsuitable for inclusion: section 92 of the Water Resources Act 1991 (“the 1991 Act”).
- 4.36 The CoAP Regulations 2021 are aimed at reducing the risk of agricultural activity resulting in the pollution of controlled waters. The regulations deliver this aim by setting rules relating to the use, application and storage of silage, slurry, organic manure and nitrogen fertilisers.<sup>36</sup> Chapter 6 outlines our rationale for proposing that the CoAP Regulations 2021 be included in the prospective Code. In short, we consider that the CoAP Regulations 2021 are concerned with the subject of agriculture insofar as they seek to limit agricultural pollution, and as they apply in practice to those undertaking agricultural activity.
- 4.37 Although we conclude that the CoAP Regulations 2021 are suitable for inclusion in the prospective Code, we think that the corresponding primary enabling powers, section 92 of the 1991 Act, ought to be excluded. Section 92 of the 1991 Act provides the Welsh Ministers with powers to issue regulations that, for the purposes of protecting against the pollution of controlled waters:
- (1) prohibit a person from having custody or control of any poisonous, noxious or polluting matter; and
  - (2) prescribe the precautions or works a person must undertake in order to be lawfully in control or custody of such substances.<sup>37</sup>

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<sup>33</sup> Ch 11 brings together the analysis contained in Chs 5 to 10 to set out those laws we consider belong in the prospective code of agricultural law for Wales.

<sup>34</sup> For example, we have concluded that the Agricultural Wages (Wales) Order 2025, SI 2025/293 (W 59) and primary enabling powers under which the Order is made are suitable for inclusion in the prospective Code (see Ch 5 at paras 5.39 to 5.42).

<sup>35</sup> SI 2021/77 (W 20).

<sup>36</sup> See Ch 6 for definitions of the terms silage, slurry, organic manure and nitrogen fertilisers.

<sup>37</sup> Controlled waters are defined under the Water Resources Act 1991, s 105.

- 4.38 Chapter 6 presents our rationale for proposing that section 92 of the 1991 Act be excluded from the prospective Code. In summary, we consider that the overarching aim of section 92 of the 1991 Act is to protect against water pollution generally, not only water pollution that may occur in an agricultural context. Indeed, the powers provided for under section 92 of the 1991 Act have been exercised to enact the Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016 (“the Oil Storage Regulations 2016”).<sup>38</sup> As we discuss in Chapter 6, the Oil Storage Regulations 2016 have a practical application that extends far beyond the agricultural sector.<sup>39</sup>
- 4.39 From a codification perspective, we acknowledge that it may be considered undesirable to include secondary legislation in a code of Welsh law when the corresponding primary enabling powers are excluded. A code of Welsh law is intended to be a comprehensive statement of law on a particular subject. The purpose of a code of Welsh law is to improve the accessibility of the law by bringing a fragmented body of law together and publishing it, for example, on a webpage. Including a regulation in the prospective Code, while excluding the primary enabling power it is enacted under, inherently involves a degree of fragmentation. However, fragmentation, or a lack of clarity, could also occur if the primary enabling power is added to the prospective Code and, as a consequence, separated from a wider area of law to which it has a closer nexus in subject matter.<sup>40</sup>
- 4.40 It will be for the Welsh Government to decide whether to make the inclusion of secondary legislation in the prospective code of agricultural law for Wales contingent upon the inclusion of any corresponding primary enabling powers. We anticipate that this is a broader issue which will be encountered in the context of developing codes of Welsh law for other subjects. We think however that there are three main options for approaching this issue in the context of developing the prospective code of agricultural law for Wales. We consider each in turn below.

### Option one

- 4.41 Firstly, the inclusion of secondary law in the prospective Code could be made contingent upon whether the corresponding primary enabling powers are considered suitable for inclusion in the prospective Code. Currently, legislation.gov.uk does not provide lists of the secondary legislation made under particular primary enabling powers. Therefore, option one would, in principle, make it easier for users of the prospective Code to find the secondary legislation made under a particular primary enabling power.
- 4.42 The above outcome may potentially benefit individuals wishing to identify a primary enabling power in order to examine whether any secondary legislation made under

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<sup>38</sup> SI 2016/359 (W 112).

<sup>39</sup> For example, the Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016 can apply in practice to industrial businesses, commercial businesses, schools, hospitals, public sector buildings, nursing homes and domestic properties. See Welsh Government, *Keeping your oil storage safe: Guidance on the Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulation 2016* (March 2016).

<sup>40</sup> For example, including s 92 of the Water Resources Act 1991 in the prospective Code, would fragment that primary enabling power from the wider legislative framework for water regulation as set out in 1991 Act (see Ch 6 for further discussion).



the power properly falls within its scope (also known as its “vires”). This is a task typically undertaken by a lawyer, but which in principle could also be undertaken by non-legally qualified individuals. Presently, it is not possible on legislation.gov.uk to search under a provision contained in an Act to find all the secondary legislation made under any primary enabling powers contained in that provision.<sup>41</sup> The prospective code of agricultural law for Wales which encompasses the primary enabling powers for any secondary legislation within its scope would therefore make that task easier.

- 4.43 Welsh Government officials may also benefit from being easily able to identify the suite of secondary legislation made under a particular primary enabling power. For instance, officials working in the policy area of water pollution may need to maintain oversight of the full suite of water pollution regulations issued under section 92 of the 1991 Act. We think, however, that the approach outlined under option one could result in two undesirable outcomes.
- 4.44 On the one hand, it may mean that the scope of the prospective Code needs to be expanded to ensure it encompasses all primary enabling powers for any secondary laws which are within scope. This approach would mean that primary enabling powers would be included in the prospective Code regardless of whether the powers are also concerned with subjects other than agriculture. This option could result in the prospective Code containing primary legislative provisions that may be better suited to falling within possible future codes of Welsh law for different subjects. For example, it may be considered that the primary enabling powers provided for under section 92 of the 1991 Act are better suited to falling within a possible future code of Welsh law encompassing water law or environmental law.
- 4.45 The above approach may also result in the prospective Code including primary enabling powers which, for example, are loosely concerned with agriculture. This can be unattractive considering that the purpose of establishing a code of Welsh law is to bring together the law on a specific subject, rather than to consolidate legislative provisions concerning loosely connected matters. Furthermore, primary legislation which is considered disparate in content can attract criticism. As highlighted by the House of Lords Select Committee, it is harder for “Parliament properly to scrutinise wide-ranging legislation that covers a number of diverse and disparate issues...”<sup>42</sup>
- 4.46 On the other hand, if the inclusion of secondary legislation in the prospective code of agricultural law for Wales is made contingent upon the inclusion of the corresponding primary enabling powers, then this might result in a narrowly drawn prospective Code. If primary enabling powers are deemed unsuitable for inclusion in a code, then any secondary legislation made under those powers could be automatically excluded from scope. We consider this approach to be problematic for the prospective code of agricultural law for Wales.

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<sup>41</sup> Most commercial databases do, however, offer the function to search for secondary legislation made under particular primary enabling powers. Officials within government may be more likely to have access to such services in comparison to members of the general public.

<sup>42</sup> The Legislative Process: Preparing Legislation for Parliament, Report of the Select Committee on the Constitution (2017-2019) HL 27, para 171.

- 4.47 Many of the legal requirements farmers need to comply with on a day-to-day basis are contained in secondary laws rather than primary legislation. Furthermore, many of those secondary laws are made in exercise of primary enabling powers contained in Acts that have a remit and focus extending beyond agriculture, as illustrated above by section 92 of the 1991 Act. Consequently, a narrowly drawn prospective code of agricultural law for Wales – in the terms described at paragraph 4.41 above – would be of limited practical use to those working in the agricultural sector in Wales.

### Option two

- 4.48 Under option two primary enabling powers could be restated in the prospective Code but only to the extent that they allow the Welsh Ministers to regulate in the agricultural context. For example, section 92 of the 1991 Act could be restated in an Act of the Senedd forming part of the prospective Code, but only to the extent that the provision allows the Welsh Ministers to issue regulations restricting or controlling the use of poisonous, noxious or polluting substances in an agricultural context. This approach would, however arguably duplicate rather than streamline the Welsh Ministers' powers to enact secondary legislation to prevent water pollution.
- 4.49 For instance, the above approach could result in the Welsh Ministers being afforded two sets of regulation-making powers:
- (1) a general power under section 92 of the 1991 Act to issue regulations aimed at preventing water pollution; and
  - (2) a separate specific power contained in an Act of the Senedd (forming part of the prospective Code) to issue regulations aimed at preventing water pollution resulting from agricultural activity or agricultural land use.
- 4.50 We think this approach would be undesirable as it would result in the fragmentation, and potential duplication, of the Welsh Ministers' primary enabling powers: as illustrated by the example presented at paragraph 4.49 above. Providing for primary enabling powers which can only be exercised to regulate specific sectors, such as the agricultural sector, may also create uncertainty as to the scope of the powers in question.

### Option three

- 4.51 Lastly, we think that secondary legislation could be included in the prospective code of agricultural law for Wales even if the corresponding primary enabling powers are excluded. This approach would allow the prospective Code to include secondary laws such as the CoAP Regulations 2021 even if the corresponding primary enabling powers are considered unsuitable for inclusion. It would ensure that the prospective Code could include key secondary laws relevant to farmers without needing to expand the scope of the prospective Code to encompass potentially distinct areas of law, such as the law concerning water pollution.
- 4.52 The above approach may mean it is not necessarily straightforward to find all the secondary legislation made under a particular primary enabling power because the secondary laws in question could be contained in different codes of Welsh law. However, we think that most audiences of the prospective Code, particularly farmers, will likely be more interested in accessing a comprehensive statement of key

agricultural laws. Further engagement with the potential audiences of the prospective code of agricultural law for Wales may, however, provide added insight into the needs and expectations of different audiences in this respect.

### **Preferred option**

- 4.53 On balance, we consider that the flexible approach proposed under option three should be adopted, which allows for the possibility of secondary legislation being included in the prospective code of agricultural law for Wales even if the corresponding primary enabling powers are excluded. We note there are benefits to including within the same code of Welsh law both the primary enabling powers and secondary legislation made under those powers. However, we consider that adopting a flexible approach to this issue helps strike a balance between the distinct needs of the different audiences of the prospective Code.
- 4.54 The flexible approach will need to be applied on a case-by-case basis. There is a need to balance the relative fragmentation that will occur if secondary legislation is included in the prospective Code without its accompanying primary enabling power, versus if the primary enabling power is also included in the prospective Code. This may depend, for example, on the breadth of the primary enabling power, the extent to which the scope of the primary enabling power is predominantly concerned with agriculture, and whether the primary enabling power has mostly been used to enact regulations concerning agriculture.
- 4.55 In addition, it would require an analysis of the relative importance of the needs of distinct audiences. Enabling secondary legislation to be included in the prospective Code without the accompanying primary enabling power is of greater benefit to those persons regulated by the prospective Code such as farmers. Including both the primary enabling power and corresponding secondary legislation regulations in the prospective Code is of greater benefit to those wishing to identify the statutory power under which a regulation was enacted.
- 4.56 For example, in the case of the CoAP Regulations 2021, we conclude in Chapter 6 that farmers have a pressing need to access and understand the regulations. This is because the CoAP Regulations 2021 impose prescriptive controls on the way in which certain agricultural activities are undertaken. Examples include controls relating to when and how substances such as organic manure and slurry are spread on agricultural land. This provides a strong reason for including these regulations in the prospective Code, even though there is no clear argument for including the primary enabling power in the prospective Code.

### **ASSIMILATED LAW**

- 4.57 Assimilated law is law originating from the EU which, following the UK's withdrawal from the EU, has been incorporated into our domestic law as a result of the European Union Withdrawal Act 2018 ("EUWA 2018") and the Retained EU Law (Revocation and Reform) Act 2023 ("REULA 2023"). The term assimilated law also includes domestic law which implemented EU law while the UK remained an EU member state.
- 4.58 Assimilated law – including those applicable to the agricultural sector in Wales – can be challenging to understand even for experienced legal professionals. Many

assimilated laws have been subject to substantial amendments to ensure that the legislation is able to operate effectively following the UK's withdrawal from the EU. For example, provisions in assimilated law may have been amended so that references to EU institutions are replaced with references to equivalent domestic institutions. Furthermore, laws enacted by the EU institution which now form part of our domestic statute book as assimilated law are not available in Welsh.

- 4.59 In addition, while the UK was an EU member state, some EU laws needed to be implemented into domestic law to ensure that the legislation could take effect in the UK. For example, EU Directives set high-level objectives that member states must achieve but then allow member states discretion as to how the objectives are to be implemented. EU Directives are not directly applicable, meaning they do not apply automatically in the law of the member states.<sup>43</sup> Instead, while the UK remained a member state of the EU, the UK was required to incorporate EU Directives into domestic legislation by a set deadline specified in the relevant Directive.
- 4.60 Other types of EU law, such as EU Regulations, are directly applicable. This means that while the UK was an EU member state, an EU Regulation will have taken effect domestically without the need for the Regulation to be specifically incorporated into domestic law.<sup>44</sup> However, the UK may still have needed to enact domestic legislation to provide for matters not dealt with in an EU Regulation, for example, to make provision for remedies.
- 4.61 In many instances, domestic legislation that implemented EU law will refer to provisions contained in the EU law which it either makes provision for or implements. It is commonplace for a piece of domestic law that implemented EU law to provide that certain terms are to have the same meaning as provided for in the EU law in question.
- 4.62 Therefore, the manner in which EU law was implemented domestically, when the UK was a member of the EU, means it is now often necessary to read different pieces of legislation alongside one another to understand the effect of the law. By way of example, the Welfare of Animals at the Time of Killing (Wales) Regulations 2014<sup>45</sup> – which provide for the enforcement of the EU-derived Protection of Animals at the Time of Killing Regulation<sup>46</sup> – cross-refer to provisions in the EU-derived Regulation at least 30 times.
- 4.63 Furthermore, in many areas the law which originated from the EU is fragmented. For instance, we have identified at least six separate laws originating from the EU governing the identification of cattle.<sup>47</sup> Codification presents one opportunity to

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<sup>43</sup> However, in certain circumstances, an EU Directive can have vertical direct effect in domestic law if the deadline for implementation had expired without the member state incorporating the Directive into domestic law. In order to have direct effect in such circumstances, a Directive must be sufficiently clear and precise.

<sup>44</sup> By virtue of the European Communities Act 1972, s 2.

<sup>45</sup> SI 2014/951 (W 92).

<sup>46</sup> UK Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing.

<sup>47</sup> UK Commission Regulation (EC) No 494/98; UK Regulation (EC) No 1760/2000 of the European Parliament and of the Council; UK Commission Regulation (EC) No 911/2004; UK Commission Regulation (EC) No 644/2005; UK Commission Regulation (EC) No 1082/2003; and UK Commission Regulation (EC) No 2017/949.

consider whether pieces of assimilated law could be brought together so that farmers have fewer enactments to contend with, and less need to cross-refer between different legislation. For instance, Defra has consulted on bringing domestic regulations on cattle identification and various assimilated laws on the same subject together in one single statutory instrument.<sup>48</sup> This would reduce the need to cross-refer between the domestic secondary legislation on cattle identification and the EU-derived legislation it implemented while the UK was a member of the EU. In Chapter 7, we discuss that the equivalent cattle regulations in Wales refer to four EU-derived Regulations which concern the identification of cattle and now form part of our domestic statute-book as assimilated law.<sup>49</sup>

- 4.64 REULA 2023 provides for ministerial powers to restate, revoke, or revoke and replace any secondary assimilated law.<sup>50</sup> Secondary assimilated law is any assimilated law that is not primary legislation, other than provisions or wording added to primary legislation by secondary legislation.<sup>51</sup> For example, secondary assimilated law will include domestic secondary legislation which implemented EU law into domestic law and now forms part of our domestic statute book as assimilated law.
- 4.65 For those secondary assimilated laws that have a subject matter falling within Welsh devolved competence, the powers to restate, revoke, or revoke and replace can be exercised by either:
- (1) the Welsh Ministers;
  - (2) the UK Ministers; or
  - (3) the Welsh Ministers and the UK Ministers acting jointly.
- 4.66 The ministerial powers to restate, revoke, or revoke and replace secondary assimilated law under REULA 2023 are subject to sunset clauses meaning that the powers will expire on 23 June 2026. If secondary assimilated law is restated under REULA 2023, then the restated law will no longer be classified as assimilated law but instead as ordinary domestic law. When revoking or replacing secondary assimilated law the Welsh Ministers or UK Ministers must not increase regulatory burdens. A regulatory burden can include, for example, the cost or administrative inconvenience associated with a change in law.<sup>52</sup>
- 4.67 Outside of REULA 2023, the Welsh Ministers may have existing primary enabling powers in other Acts of the Senedd or the UK Parliament to regulate for the matters currently governed by secondary assimilated law. By way of example, the Animal Health Act 1981 provides the Welsh Ministers with powers to issue regulations on the

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<sup>48</sup> Department for Environment, Food and Rural Affairs, *Changes to bovine identification, registration and movement in England: consultation document* (September 2023).

<sup>49</sup> See Ch 7, para 7.164.

<sup>50</sup> Retained European Union Law (Revocation and Reform) Act 2023, ss 12 to 12.

<sup>51</sup> Retained European Union Law (Revocation and Reform) Act 2023, s 12.

<sup>52</sup> Retained European Union Law (Revocation and Reform) Act 2023, s 14.

identification of livestock: a matter formerly legislated at an EU level.<sup>53</sup> If such primary enabling powers do not exist then, subject to the limits of devolved competence, provision for such powers could be made in an Act of the Senedd (including an Act which forms part of a code of Welsh law). For instance, the Agriculture (Wales) Act 2023 provides the Welsh Ministers with powers to issue regulations on subject matters formerly legislated for at an EU level. Examples include the Welsh Ministers' powers to regulate for marketing standards applicable to certain agricultural produce when marketed in Wales and their powers to set standards relating to the classification of livestock carcasses in slaughterhouses.

- 4.68 In addition, provision currently made in an assimilated law, such as a Regulation deriving from the EU, could alternatively be restated, or reformed, in a primary law such as an Act of the Senedd, subject to the limits of devolved competence.<sup>54</sup> For example, the Animal Welfare (Imports of Dog, Cats and Ferrets) Act 2025 makes provision for matters formerly regulated by way of assimilated law.<sup>55</sup> A decision on whether provision made in an assimilated law could be restated, or reformed, by way of primary legislation will involve policy decisions and drafting choices to be taken by the Welsh Government. Relevant considerations may include whether the provision is one which provides for fundamental principles or rights (indicating it may be suitable for inclusion in primary legislation) or, alternatively, whether the provision is concerned with procedural matters or those which may require frequent amendment (indicating it may be better suited to secondary legislation).
- 4.69 There are a number of potential benefits associated with restating or reforming assimilated law in secondary or primary domestic law made respectively either by the Welsh Ministers or the Senedd. For example, a decision to restate or reform such law by way of domestic legislation will mean that the law in question is available in Welsh and English (if that is not already the case).<sup>56</sup> It will also present the opportunity to re-draft the relevant provisions in a manner aligned with modern Welsh legislative drafting practice. Restating or reforming assimilated law in domestic legislation could also reduce the need to cross-refer between different pieces of legislation. However, before any of these benefits can be realised, there will need to be policy assessments as to whether the provision made for in EU-derived laws remains necessary or desirable and also aligned with domestic agricultural policy.

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<sup>53</sup> Animal Health Act 1981, s 8. Existing regulations relating to the identification of sheep are made under s 8 of the Animal Health Act 1981, whereas regulations relating to the identification of cattle were enacted under s 2(2) of the European Communities Act 1972.

<sup>54</sup> See examples of those Bills and Acts referred to in the Department for Business and Trade, *Assimilated Law Parliamentary Report for December 2024 to June 2025* (July 2025). If assimilated law is intended to be consolidated in an Act of the Senedd or replaced by an Act delivering wholesale reform, then any such provision would need to fall within the legislative competence of the Senedd. In Ch 11 we discuss further how the comprehensiveness of the Code may be restricted by the limits placed on the Senedd's legislative competence.

<sup>55</sup> Explanatory Notes to the Animal Welfare (Imports of Dogs, Cats and Ferrets) Bill, paras 9 to 15.

<sup>56</sup> Secondary assimilated laws made by the Welsh Ministers may already be available bilingually.

- 4.70 The UK Government maintains a list of assimilated law, known as the Retained EU Law Dashboard (“the dashboard”).<sup>57</sup> The dashboard records assimilated laws that apply throughout the UK, except it does not record those laws that apply to Wales only. It is possible to filter the laws recorded on the dashboard by subject area. There are 466 assimilated laws recorded as falling within policy areas connected with agriculture.<sup>58</sup> This number includes laws that apply throughout the UK or Great Britain, those that apply to England and Wales and those that apply to England only. Applying a filter to those laws concerning the policy areas of animal health and welfare provides a result of 175 assimilated laws.<sup>59</sup>
- 4.71 While the above search results do not include the laws applicable in Wales, they provide a useful indication as to the volume of assimilated law concerning agriculture and also animal health and welfare applicable in Wales. Therefore, we consider any work to review, and potentially reform or revoke, the assimilated law governing agriculture in Wales will be highly resource intensive and likely suitable to be undertaken as part of a long-term programme of work. Such an approach would appear to align with the Welsh Government’s general policy and management of assimilated law as recorded in its third bi-annual report on the matter.<sup>60</sup>

## DIFFERENT STATUTORY DEFINITIONS OF KEY TERMS: AGRICULTURE AND LIVESTOCK

- 4.72 We have heard from stakeholders that the many differing statutory definitions of the term “agriculture” can create confusion and uncertainty as to the precise circumstances in which agricultural legislation, or areas of that law, apply. We have identified a non-exhaustive list of 13 distinct statutory definitions of the term “agriculture” as contained in primary legislation which applies to Wales (as listed in Appendix 3 to this report).<sup>61</sup> Similarly, there are a range of different statutory definitions of the term “livestock”.<sup>62</sup>

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<sup>57</sup> UK Government, “Retained EU law and assimilated law dashboard” (2022) <https://www.gov.uk/government/publications/retained-eu-law-dashboard>.

<sup>58</sup> The policy areas selected on the dashboard to produce this total number of 473 laws were: agricultural farming sectors support, agriculture and rural development, agri-food (and all subsets falling under agri-food) and the agri-food chain. We filtered our search to remove any laws which were recorded as repealed, expired or replaced. The search was undertaken on 6 October 2025.

<sup>59</sup> The policy areas selected on the dashboard to produce this total number of 181 laws were animal and plant health (and all subsets falling under that title apart from forestry), animal health (and all subsets falling under that title), animal health and biosecurity, animal health and welfare, and animal welfare (and all subsets falling under that title). We filtered our search to remove any laws which were recorded as repealed, expired or replaced. The search was undertaken on 3 October 2025.

<sup>60</sup> Welsh Government, *Third bi-annual Welsh Government retained EU law (REUL) Act update: June 2024 to December 2024* (May 2025) <https://www.gov.wales/third-bi-annual-welsh-government-retained-eu-law-reul-act-update-june-2024-december-2024-html>.

<sup>61</sup> This may not be an exhaustive list but instead represents a list of statutory definitions of “agriculture” which we have identified in primary legislation during the preparation of this report.

<sup>62</sup> For example, the following Acts each provide for distinct definitions of the term “livestock”: Agriculture Act 1947, s 109(3); Agricultural Statistics Act 1979, s 6(1); Agriculture (Wales) Act 2023 (asc 4), s 51(2); Animal Welfare (Livestock Exports) Act 2024, s 1(4).

- 4.73 Developing the prospective code of agricultural law for Wales would involve bringing existing legislative provisions together in a consolidation Act of the Senedd that may introduce necessary or desirable technical amendments to the law. Alternatively, or in addition, an Act of the Senedd introducing wholesale reform can be stated to form part of a code of Welsh law. The establishment of the prospective Code therefore presents an opportunity to examine whether the existing statutory definitions of “agriculture” could be modernised or streamlined.
- 4.74 Our report has not followed a formal consultation stage that would enable us to comprehensively identify how any amendment to a particular statutory definition may affect individuals’ rights or obligations in the agricultural context. However, our terms of reference do require us to identify issues that may merit further analysis or consideration, such as opportunities to modernise or streamline existing statutory definitions. Accordingly, in Chapter 5, we consider in further detail the varying statutory definitions of “agriculture” as provided for under the agricultural legislation examined in that chapter.

## **ACCESSIBILITY, COMPREHENSIVENESS AND SIZE OF THE PROSPECTIVE CODE OF AGRICULTURAL LAW FOR WALES**

- 4.75 In Chapter 1, we set out that a code of Welsh law is intended to be a comprehensive statement of the primary legislation, secondary legislation and, where relevant, government guidance on a particular subject. One of the core aims of establishing a code of Welsh law on a subject is to improve the accessibility of the law so that, for example, the legislation in question is easier to find, understand and apply. We acknowledge, however, that a tension can arise between the aim of improving accessibility of the law and the aim of achieving a comprehensive statement of the law on a subject. For instance, the larger the volume of legislation brought within a single code of Welsh law, the greater the risk that a code becomes difficult to navigate - thereby detracting from the accessibility of the legislation.
- 4.76 In Chapter 11, we present a list of legislation we consider suitable for inclusion in the prospective Code. As we state in Chapter 1, the first step in establishing a code of Welsh law will typically involve bringing together the primary legislation for a subject and restating that law in an Act of the Senedd which forms part of the code of law.<sup>63</sup> The volume of legislation we have identified for inclusion in the prospective Code could therefore have a bearing on the size of any Act of the Senedd stated to form part of the prospective Code.
- 4.77 However, it does not necessarily follow that a voluminous Act of the Senedd will be difficult to navigate or understand by virtue of its size. As recognised in the report *When Laws Become Too Complex*:

It is important to note that the increased length of Acts is not automatically and in itself a feature of complex legislation. Shorter Acts can be even more complicated than long ones as they may not include all the detail and explanation required for the

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<sup>63</sup> Alternatively, the primary legislation in question could be replaced by way of an Act of the Senedd delivering wholesale reform of the law.



law to achieve the policy objectives effectively. A short Act that requires the user to go to a complicated set of Regulations is not, overall, a simplifying measure.<sup>64</sup>

- 4.78 Furthermore, the careful structuring of a longer Act can help ensure that the legislation does not become unduly complex. In particular, divisions and headings can serve as useful navigational tools. A large Act can also be divided into Parts and Chapters that deal with specific subtopics so that readers can easily identify and locate provisions of particular interest. Headings that provide a brief, descriptive summary of a group of provisions can further signpost a reader to provisions of interest.
- 4.79 Explanatory notes and overview sections can also assist readers with navigating an Act. An overview section is “a provision at the beginning of an Act or instrument (or at the beginning of a Part, Chapter or Schedule) summarising and explaining what is to follow”.<sup>65</sup> Similarly explanatory notes – that do not form part of the Act itself but can be used as an aid to explaining legislation – will generally provide a summary of the Act’s provisions. Most Acts of the Senedd, and formerly National Assembly for Wales Acts, include overview sections and all are accompanied by explanatory notes.<sup>66</sup> The clarity with which individual legislative provisions in an Act are drafted can further ensure a larger Act is easily navigable. Indeed, the Welsh Government’s drafting guidelines, *Writing Laws for Wales*, outline the drafting techniques that can improve the accessibility of the law.<sup>67</sup>
- 4.80 We also consider that the manner in which the prospective code of agricultural law for Wales is published online can improve the accessibility of the law. As outlined at paragraph 4.11 above, we understand that the intention is for the legislation forming part of a code of Welsh law to be presented together and made available via a webpage.
- 4.81 Individuals wishing to find out about the law governing a particular devolved subject would therefore be able to refer to a single, online resource in order to find the relevant legislation on this subject matter. Similarly, other organisations are increasingly using innovative models to communicate complex areas of law. The National Archives and Defra have together developed a website, DefraLex, which allows users to search for legislation falling within the department’s policy portfolio, by subject matter and other advanced search filters.<sup>68</sup> The Planning Portal for England hosts an interactive infographic which allows users to identify the relevant legislative requirements applicable to different types of residential development.<sup>69</sup>
- 4.82 In addition, in light of the volume of primary legislative provisions which we propose for inclusion in the prospective code of agricultural law, we consider there is merit in

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<sup>64</sup> Cabinet Office and the Office of the Parliamentary Counsel, *When Laws Become Too Complex: A review into the causes of complex legislation* (March 2013).

<sup>65</sup> Welsh Government, *Writing Laws for Wales: A guide to legislative drafting* (November 2019) p 8.

<sup>66</sup> Welsh Government, *Writing Laws for Wales: A guide to legislative drafting* (November 2019) p 8.

<sup>67</sup> Welsh Government, *Writing Laws for Wales: A guide to legislative drafting* (November 2019).

<sup>68</sup> Department for Environment, Food and Rural Affairs and the National Archives, “DefraLex” <https://www.legislation.gov.uk/defralex>.

<sup>69</sup> Planning Portal, “Interactive House” <https://interactive.planningportal.co.uk/explore-house>.

enacting multiple Acts of the Senedd that together form part of the prospective code of agricultural law for Wales. In our view, sequencing the codification of agricultural law in this manner would help ensure that the task at hand is manageable and that the resulting legislation is accessible. Chapter 11 discusses the potential sequencing of the work involved in establishing a code of agricultural law.

- 4.83 Enacting the prospective Code across a sequence of Acts of the Senedd may also be desirable where there are areas of agricultural law that require or would benefit from substantive reform. It would allow the Welsh Government to embark upon the process of codification while considering legislative reform of discrete areas of agricultural law. Substantive reform of agricultural law is considered further in the following section.

## **CONSOLIDATION AND CODIFICATION WHILE THERE ARE CALLS FOR SUBSTANTIVE REFORM**

- 4.84 In recent years, agricultural policy and legislation applicable in Wales has undergone a significant period of change. As discussed above, following the UK's departure from the EU, the Senedd enacted the Agriculture (Wales) Act 2023 which provides the framework for agricultural policy, decision-making and support in Wales. A new system of direct payments for farmers in Wales will be introduced on 1 January 2026: the Sustainable Farming Scheme. This will replace the EU-derived system of direct funding for farmers, the Basic Payment Scheme. The (then) First Minister, Mark Drakeford, described the Agriculture (Wales) Act 2023 as "a historic Act. The first time ever Wales has been able to design its own policy for farming".<sup>70</sup> This sentiment was echoed by stakeholders in the sector; NFU Cymru characterised the initial Bill as a "once in a generation piece of legislation".<sup>71</sup>
- 4.85 In addition, agricultural law as applicable in Wales has been subject to substantial reform in other areas. The CoAP Regulations 2021 introduced regulatory measures to tackle agricultural pollution. It introduced requirements applicable across Wales about when, how and where farmers can spread fertiliser on their land. These changes reflect a rather significant departure from the equivalent regime in England. The statutory review into the effectiveness of the CoAP Regulations 2021 concluded in March 2025 and recommended that the Regulations continue in effect with some changes.
- 4.86 Changes have also been made to the testing regime for tuberculosis ("TB") in Wales. In early 2024, the Welsh Government introduced measures to tackle bovine TB in Wales that primarily focused on testing in the low TB areas in Wales. In the same year, the Agricultural Tenancies (Requests for Landlord's Consent or Variation of Terms) (Wales) Regulations 2024 introduced a new right to dispute resolution for disagreements involving a tenant's request to undertake a new activity or to vary the terms of the tenancy agreement.<sup>72</sup> Lastly, the Welsh Ministers made the Mandatory

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<sup>70</sup> Welsh Government, "Historic Wales Agriculture Act comes into force" (August 2023) <https://www.gov.wales/historic-wales-agriculture-act-comes-force>.

<sup>71</sup> NFU Cymru, *Consultation response to the Senedd's Economy, Trade and Rural Affairs Committee* (2022) <https://www.nfu-cymru.org.uk/media/lcqj5oku/submission-to-etra-committee-agriculture-bill-finalised.pdf>.

<sup>72</sup> SI 2024/797 (W 126).

Use of Closed Circuit Television in Slaughterhouses (Wales) Regulations 2024 that require CCTV cameras to be installed in all slaughterhouses.<sup>73</sup>

- 4.87 There is established precedent for undertaking exercises to consolidate the law following a period of substantial reform. A relevant example is the Agricultural Holdings Act 1986 which consolidated the law on agricultural tenancies in England and Wales following the legislative reforms introduced by the Agricultural Holdings Act 1984 (“the 1984 Act”). The 1984 Act sought to “make more tenancies available by taking action to arrest the decline of the tenanted sector of agriculture”.<sup>74</sup> It did so through ending succession rights for (most) newly established tenancies; enhancing security of tenure rights; making further provision for compensation rights; and introducing statutory rent reviews. This wholesale reform delivered in the 1984 Act was then consolidated with other areas of the law regulating agricultural tenancies, by the Agricultural Holdings Act 1986.
- 4.88 There are, however, valid counter arguments to establishing the prospective code of agricultural law for Wales in the imminent future. Throughout this report we have highlighted instances where there are widespread calls for reform of specific areas of agricultural law. For example, we have heard from stakeholders that the law governing agricultural tenancies may benefit from substantive reform, as we discuss in Chapter 9.
- 4.89 We also note that there are calls for more holistic reform, notwithstanding the relatively significant period of change that we have recently seen in Wales. In *Brexit and Agriculture*, Professor Petetin and Dr Dobbs contend that “a clear overarching, ambitious objective is required for agricultural policies” and that “resilience has the capacity to act as that objective”.<sup>75</sup> Expanding upon the concept of resilience, Petetin and Dobbs explain:
- Resilience entails that agriculture and resulting policies are able to absorb and respond to shocks – adapting if necessary, but largely maintaining their functions and overall aims. It involves developing the adaptive capacity of agriculture, but also of each aspect relevant to it, e.g. the farms, farmers, land, water, community, market, supply chains etc and the policies, laws and structures supporting and guiding agriculture.<sup>76</sup>
- 4.90 It is not our role to evaluate the merits of calls for substantive law reform in this report. However, the numerous calls for reform – as discussed throughout this report – reflect that the law is rarely static; it continually evolves, for example, to reflect technological advancements and changes in societal attitudes. We consider, therefore, that there is never a perfect time to consolidate and codify the law. However, taking together the recent reform of agricultural policy in Wales alongside the UK’s departure from the

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<sup>73</sup> SI 2024/682 (W 94).

<sup>74</sup> *Hansard* (HC), 7 March 1984, vol 55, col 857.

<sup>75</sup> L Petetin and M Dobbs, *Brexit and Agriculture* (1st ed 2022) p 185.

<sup>76</sup> L Petetin and M Dobbs, “Senedd Research Guest Briefing: Designing agricultural policies: contextual consideration” (August 2022) 12.

EU, we consider that this is a timely opportunity to simplify and improve the accessibility of agricultural law applicable in Wales.

# Chapter 5: The Agriculture Acts

## INTRODUCTION

5.1 The Agriculture (Wales) Act 2023 (“the 2023 Act”) was the first Agriculture Act enacted by Senedd Cymru (“the Senedd”). One of its key features is the principle of sustainable land management, which is centred around four objectives:

- (1) to produce food and other goods in a sustainable manner;
- (2) to mitigate and adapt to climate change;
- (3) to maintain and enhance the resilience of ecosystems and the benefits they provide; and
- (4) to conserve and enhance the countryside and cultural resources and promote public access to and engagement with them, and to sustain the Welsh language and promote and facilitate its use.

5.2 The furtherance of each objective must be undertaken in a way that contributes to the well-being goals of Wales,<sup>1</sup> and “meets the needs of the present without compromising the ability of future generations to meet their own needs”.<sup>2</sup> Under section 2 of the 2023 Act, the Welsh Ministers are placed under a duty to exercise specified functions concerned with agriculture in a way that they consider best contributes to achieving the sustainable land management objectives.<sup>3</sup> This duty is known as the sustainable land management duty.

5.3 The sustainable land management duty applies to any functions of the Welsh Ministers as provided for under the 2023 Act. It also applies to any other statutory functions, contained in other legislation, that require or allow the Welsh Ministers to provide for support or to regulate agriculture, other activities carried out on land used for agriculture, or specified activities that are defined as ancillary activities.<sup>4</sup>

5.4 The principle of sustainable land management, as provided for under the 2023 Act, acts as the framework for agricultural policy and decision-making in Wales.<sup>5</sup> The 2023 Act is therefore of central importance to agriculture in Wales, making it an obvious contender for inclusion in the prospective code of agricultural law for Wales (“the

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<sup>1</sup> The well-being goals of Wales are provided for in the Well-being of Future Generations (Wales) Act 2015 (anaw 2), s 4.

<sup>2</sup> Agriculture (Wales) Act 2023 (asc 4), s 2.

<sup>3</sup> So far as is consistent with the proper exercise of that function.

<sup>4</sup> Ancillary activities are defined in the Agriculture (Wales) Act 2023 (asc 4), s 52.

<sup>5</sup> Welsh Government, “The Agriculture (Wales) Act 2023: Introducing the Sustainable Land Management Framework” (November 2023) <https://www.gov.wales/sites/default/files/publications/2023-11/agriculture-wales-act-2023-introducing-sustainable-land-management-framework.pdf#:~:text=This%20document%20is%20an%20introduction%20to%20the%20Sustainable,law%20C%20and%20how%20it%20is%20to%20be%20implemented.>

prospective Code”). However, the 2023 Act forms part of a wider, complex legal framework governing agriculture in Wales which originates from different legislative sources (as considered in Chapter 2).

- 5.5 In this chapter we consider whether a medley of legislative provisions spread across 20 different pieces of primary legislation are suitable for inclusion in the prospective Code by applying our criteria for inclusion as set out in Chapter 3 (see paragraphs 3.34 to 3.53). The laws in question comprise those Acts of the Senedd or Acts of the UK Parliament that primarily make provision for supporting or regulating the agricultural sector. These Acts tend to be titled as “Agriculture Acts” or “Agriculture (Miscellaneous Provisions) Acts”. The Acts considered in this chapter also include Acts which can be identified by their title as having a more specific remit. Examples include the Hill Farming Act 1946, the Agricultural Statistics Act 1979 and the Red Meat Industry (Wales) Measure 2010.
- 5.6 In this chapter we also evaluate whether the consolidation and codification of the legislation examined may engage issues which require further analysis or consideration. For example, we examine whether the establishment of the prospective code of agricultural law for Wales presents an opportunity to streamline or modernise the many different statutory definitions of agriculture.
- 5.7 Finally, we examine whether there are technical issues with the legislation considered in this chapter which may require or benefit from amendments aimed at simplifying, modernising or streamlining the law in question.

## **THE PROSPECTIVE CONSOLIDATION AND CODIFICATION OF THE AGRICULTURE ACTS AND RELATED ACTS**

- 5.8 Including the Agriculture (Wales) Act 2023, we have identified 12 Agriculture Acts containing provisions that remain in force and apply to Wales. There are an additional eight pieces of primary legislation that can be identified from their title and content as being primarily or solely concerned with agriculture. Each of those eight pieces of primary legislation contain provisions that remain in force and apply to Wales.
- 5.9 The 12 Agriculture Acts and the eight additional pieces of primary legislation that are otherwise primarily concerned with agriculture are listed below.

### **The Agriculture Acts and Agriculture Miscellaneous Provisions Acts**

- (1) Agriculture Act 1947
- (2) Agriculture (Miscellaneous Provisions) Act 1949
- (3) Agriculture (Miscellaneous Provisions) Act 1954
- (4) Agriculture Act 1957
- (5) Agriculture Act 1958
- (6) Agriculture (Miscellaneous Provisions) Act 1963
- (7) Agriculture Act 1967

- (8) Agriculture Act 1970
- (9) Agriculture (Miscellaneous Provisions) Act 1976
- (10) Agriculture Act 1986
- (11) Agriculture Act 1993
- (12) Agriculture (Wales) Act 2023

#### **Additional pieces of primary legislation concerned with agriculture**

- (13) Board of Agriculture Act 1889
- (14) Agricultural Credits Act 1928
- (15) Hill Farming Act 1946
- (16) Agricultural Wages Act 1948
- (17) Agricultural Statistics Act 1979
- (18) Farm Land and Rural Development Act 1988
- (19) Red Meat Industry (Wales) Measure 2010
- (20) Agricultural Sector (Wales) Act 2014

5.10 Broadly speaking, the legislation listed at paragraph 5.9 provides for:

- (1) functions of the Welsh Ministers to support or regulate agriculture;<sup>6</sup>
- (2) the establishment of statutory bodies whose roles involve supporting or regulating agriculture;
- (3) functions to support or regulate agriculture that are exercisable by public bodies or office holders other than the Welsh Ministers; and
- (4) miscellaneous matters relevant to agriculture.

5.11 These laws date back, in some cases, as far as 1889. Unsurprisingly, many of the Acts listed are only partially in force, having been subject to extensive (although only partial) repeal. Many have also been amended numerous times over the years. The territorial application of provisions within a single Act of the UK Parliament can also vary. This means some of the Acts listed at paragraph 5.9 above contain provisions which apply to Wales only, to Wales and other parts of the UK, or to parts of the UK other than Wales.

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<sup>6</sup> The definition of “agriculture” does, however, vary across the primary legislation listed, meaning that the scope of any statutory powers to support or regulate agriculture varies across the legislation listed at para 5.9.

- 5.12 In addition, most of the Acts of the UK Parliament listed at paragraph 5.9 confer functions on the UK Ministers that have subsequently been transferred to the Welsh Ministers. In many cases, however, the text of the statutory provisions conferring the functions in question has not been directly amended to reflect that functions are now exercisable by the Welsh Ministers in relation to Wales. Instead, it is necessary to read the statutory provisions in question alongside separate statutory instruments - which take the form of transfer of functions orders - to identify that the statutory functions are exercisable by the Welsh Ministers.
- 5.13 Taken together, the above factors mean it is difficult to identify the range of statutory functions available to the Welsh Ministers to support or regulate agriculture in Wales. The consolidation and codification of agricultural law applicable in Wales would bring together the Welsh Ministers' core statutory functions to support or regulate agriculture in an Act of the Senedd that forms part of the prospective Code.

## **LAWS SUITABLE FOR INCLUSION IN THE PROSPECTIVE CODE**

- 5.14 In our assessment the following laws contain provisions that are suitable for inclusion in an Act of the Senedd that forms part of the prospective code of agricultural law for Wales:
- (1) Hill Farming Act 1946 (sections 12, 20 and 21);
  - (2) Agriculture Act 1970 (Part 3);
  - (3) Agricultural Statistics Act 1979 (whole Act);
  - (4) Agricultural Sector (Wales) Act 2014 (whole Act); and
  - (5) Agriculture (Wales) Act 2023 (Part 1, Chapters 1 to 3 of Part 2 and Chapters 1 and 3 of Part 3).
- 5.15 For each of the five Acts listed above, we summarise in paragraphs 5.16 to 5.55 below the key provisions that we consider suitable for inclusion in the prospective code of agricultural law for Wales. Where relevant, we also identify any secondary legislation, as made under provisions contained in the above Acts or Measures, that we also consider suitable for inclusion. In addition, we present issues that may require further consideration before certain legislative provisions are brought within the prospective Code.

### **Hill Farming Act 1946**

- 5.16 The Hill Farming Act 1946 ("the 1946 Act") provides the Welsh Ministers with powers to:
- (1) undertake improvements to livestock rearing land;
  - (2) issue regulations for controlling the keeping of rams and uncastrated ram lambs for the purpose of improving the quality of sheep; and



- (3) issue regulations restricting the controlled burning of heather, grass bracken, gorse and vaccinium.<sup>7</sup>

#### Powers to undertake improvements to livestock rearing land subject to rights of common

- 5.17 Section 12 of the 1946 Act empowers the Welsh Ministers to carry out work required for making improvements to livestock rearing land that is subject to common rights of pasture.<sup>8</sup> Before undertaking such improvements, the Welsh Ministers must give notice of their intention to do so.<sup>9</sup>
- 5.18 Further provision is also made in section 12 for matters including the right to raise objections to proposed works, and for the possible apportionment of costs associated with any work undertaken.
- 5.19 The Welsh Ministers may only undertake improvements to livestock rearing land where they are of the opinion that it is expedient to do so for the purposes of rehabilitating that land.<sup>10</sup> Livestock rearing land means land situated in an area predominantly of mountains, hills, or heath, that is suitable for the breeding, rearing and maintenance of sheep or cattle (or land which could be so suitable if improvements were made to it).<sup>11</sup> The definition excludes land suitable for certain uses such as the use of land, to any material extent, for dairy farming.<sup>12</sup> We therefore consider that the powers provided for in section 12 concern agriculture and that the exercise of the powers will apply solely in practice to agriculture.
- 5.20 For the reasons outlined above, we consider that the subject matter of section 12 of the 1946 Act is suitable for inclusion in the prospective code of agricultural law for Wales. However, the Welsh Government may first wish to determine whether these provisions are still exercised or likely to be exercised in the future.

#### Controlled burning provisions (sections 20 and 21)

- 5.21 Under section 20 of the 1946 Act, the Welsh Ministers may issue regulations prohibiting or controlling the burning of heather, grass, bracken, gorse and vaccinium on land in Wales.<sup>13</sup> The relevant regulations for Wales are the Heather and Grass etc Burning (Wales) Regulations 2008 (“the 2008 Regulations”).<sup>14</sup> It is an offence to

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<sup>7</sup> The ministerial functions conferred under the Hill Farming Act 1946 have been transferred, so far as exercisable in relation to Wales, to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>8</sup> The term “common rights of pasture” is not defined in the Hill Farming Act 1946. However, common land is land owned by one or more parties over which another party has certain rights, such as the right to graze cattle. The law governing common land is considered in Ch 9.

<sup>9</sup> Hill Farming Act 1946, s 12(2). Notice must also be given to “any person entitled as lord of the manor or otherwise to the soil of the land”.

<sup>10</sup> Hill Farming Act 1946, s 12(1).

<sup>11</sup> Hill Farming Act 1946, s 1(3).

<sup>12</sup> See the definition of livestock rearing land under s 1 of the Hill Farming Act 1946 for the full list of excluded uses.

<sup>13</sup> Heather, gorse and vaccinium are types of shrubs. Bracken is a type of fern plant.

<sup>14</sup> SI 2008/1081 (W 115).

contravene the requirements prescribed in the 2008 Regulations.<sup>15</sup> The 2008 Regulations are supported by guidance, including the Heather and Grass Burning Code for Wales 2008.<sup>16</sup>

- 5.22 In the agricultural context, controlled burning can be used as a means of pest and disease control and to encourage the growth of new vegetation relied on for livestock grazing.<sup>17</sup> We therefore consider that sections 20 and 21 of the 1946 Act, and the 2008 Regulations made under the Act, concern agriculture.
- 5.23 Controlled burning may also be undertaken for nature conservation purposes and for the management of game.<sup>18</sup> This means that the law governing controlled burning has a practical application that extends beyond agriculture.
- 5.24 Nonetheless, we consider it desirable for the prospective code of agricultural law for Wales to encompass sections 20 and 21 of the 1946 Act, and the 2008 Regulations. In Chapter 6 we propose that the Crop Residues (Burning) Regulations 1993 are suitable for inclusion in the prospective Code.<sup>19</sup> Similarly to the 2008 Regulations, the Crop Residues (Burning) Regulations 1993 impose restrictions on the burning of vegetation in the agricultural context.<sup>20</sup> In the interests of consistency, and to avoid the fragmentation of law on this niche topic, we propose that sections 20 and 21 of the 1946 Act and the 2008 Regulations are also suitable for inclusion in the prospective code of agricultural law for Wales.<sup>21</sup>

#### Issues that may merit further analysis: the control of rams

- 5.25 Under section 18 of the Hill Farming Act 1946, the Welsh Ministers may make regulations for controlling the keeping of rams and uncastrated ram lambs.<sup>22</sup> Any regulations made under section 18 must be aimed at improving the quality of sheep. Section 19 of the 1946 Act provides for the enforcement of regulations made under section 18.<sup>23</sup>

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<sup>15</sup> Hill Farming Act 1946, s 12(2).

<sup>16</sup> The other guidance documents are the *Burning Management Plan for Wales* and the *Burning Management Plan for Wales: Supporting Technical Guidance*.

<sup>17</sup> Game and Wildlife Conservation Trust, *The Moorland Balance* (2nd ed 2019).

<sup>18</sup> Game and Wildlife Conservation Trust, *The Moorland Balance* (2nd ed 2019).

<sup>19</sup> Crop Residues (Burning) Regulations 1993, SI 1993/1336.

<sup>20</sup> In Ch 6, we consider those laws that apply in the agricultural context, and which are aimed at protecting the environment, wildlife and natural resources.

<sup>21</sup> In concluding that the 2008 Regulations are suitable for inclusion in the prospective code of agricultural law, we note that the Senedd's Petition Committee recently considered a petition calling for a ban on controlled burning. In response to the petition, the Welsh Government expressed its views that "the current regulation and supporting code are fit for purpose" (see Senedd Research, "Stop "Controlled Burning" in Wales" (November 2022) 5).

<sup>22</sup> The scope of the regulation making powers provided for under s 18 of the Hill Farming Act 1946 have been extended by the Livestock Rearing Act 1951, s 7.

<sup>23</sup> Under s 19, it is an offence to permit a ram or lamb to be on any land in contravention of any requirements imposed under regulations made under s 18 of the Hill Farming Act 1946.

- 5.26 The regulation-making powers provided for under the 1946 Act have not been exercised in relation to Wales or England since the 1950s.<sup>24</sup> The last set of substantive regulations to be issued under section 18 were the Control of Rams Regulations 1952, which were subsequently revoked in 1981.<sup>25</sup>
- 5.27 There are several guidance documents offering practical advice on the effective control and management of rams in Wales. For example, Hybu Cig Cymru has issued guidance on the effective management of rams in order to protect the health and quality of farmed sheep.<sup>26</sup> The Welsh Government's code of practice for the welfare of sheep also offers guidance on the same subject.<sup>27</sup> It may be that guidance is considered a suitable and proportionate means of achieving desired protections and policy objectives in this context.
- 5.28 Furthermore, where statutory powers have not been exercised for a long period then this may indicate that the powers are no longer of practical use, effect or value. There is, however, a need to be cautious when determining that a provision has become redundant because it has not been exercised in a long time. Some statutory powers "will have been expressly designed to be used infrequently".<sup>28</sup> Other provisions may be gradually falling out of use but will retain some residual practical use.
- 5.29 Our work for this report has not involved a consultation stage that would allow us to comprehensively test views on whether the regulation-making powers provided for under section 18 continue to be of use or value. We consider, nevertheless, that sections 18 and 19 of the 1946 Act may be suitable for repeal, given that these provisions have not been used for over 50 years and may therefore reflect powers that are no longer suited to the current policies underpinning agriculture in Wales. Consultation may provide a means of confirming whether these provisions are ripe for repeal.

## Agriculture Act 1970

- 5.30 The Agriculture Act 1970 ("the 1970 Act") makes the provisions summarised below.
- (1) Sections 29 and 30 provide the Welsh Ministers with powers to pay farm capital grants under a scheme.

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<sup>24</sup> That is other than in 1981 to issue regulations to revoke an earlier set of regulations made under s 18 (see para 5.26 of this chapter for further detail).

<sup>25</sup> By the Control of Rams Regulations (Revocation) Regulations 1981, SI 1981/892.

<sup>26</sup> Hybu Cig Cymru, "Sheep health: Maximising your flock's potential through improved health" [https://meatpromotion.wales/wp-content/uploads/2024/05/210129\\_RMDP\\_Sheep\\_Health\\_ENG\\_Booklet-compressed.pdf](https://meatpromotion.wales/wp-content/uploads/2024/05/210129_RMDP_Sheep_Health_ENG_Booklet-compressed.pdf).

<sup>27</sup> Welsh Government, *Code of Practice for the Welfare of Livestock: Sheep* (March 2010) [https://www.gov.wales/sites/default/files/publications/2018-01/sheep-welfare-code-of-practice\\_0.pdf](https://www.gov.wales/sites/default/files/publications/2018-01/sheep-welfare-code-of-practice_0.pdf).

<sup>28</sup> [Planning Law in Wales](#) (2016) Law Com No 228, para 5.48.

- (2) Section 32 makes amendments to provisions of the Agriculture Act 1967 concerning grants for amalgamations and boundary adjustments of agricultural land.<sup>29</sup>
- (3) Part 3 provides for a statutory smallholdings regime in respect of agricultural land.
- (4) Part 4 makes provision about product and marketing standards applicable to fertilisers and feed for livestock.<sup>30</sup>

#### Statutory smallholdings regime: Part 3 of the 1970 Act

5.31 Part 3 of the 1970 Act provides for a statutory smallholdings regime. Statutory smallholdings are parcels of agricultural land owned by local authorities in Wales that are leased, for agricultural use, to farmers or individuals who wish to become farmers. The statutory smallholdings regime is considered in Chapter 9. In that chapter, we propose that Part 3 of the 1970 Act is suitable for inclusion in the prospective code of agricultural law for Wales.

#### Product and marketing standards applicable to fertilisers and feed for livestock: Part 4 of the 1970 Act

5.32 Part 4 of the 1970 Act makes provision for fertilisers and feed for livestock. Specifically, provisions contained in Part 4 of the 1970 Act empower the Welsh Ministers to control the composition, content or function of both fertilisers and feed where doing so would be in the public interest.<sup>31</sup> Part 4 of the 1970 Act is examined in Chapter 10 of this report which considers the laws that apply throughout the agricultural supply chain.

#### Farm capital grant schemes: section 29

- 5.33 Section 29 of the 1970 Act provides the Welsh Ministers with powers to provide for schemes that offer grant funding towards the costs of establishing or carrying on an agricultural business.<sup>32</sup> We will refer to such schemes as farm capital grant schemes.
- 5.34 The aim of section 29 of the 1970 Act is to support the agricultural sector by way of grant funding. We consider that section 29 concerns agriculture, and further that its practical application is limited to agriculture. Any decision on whether to include section 29 of the 1970 Act in the prospective code of agricultural law for Wales will depend on whether the provision continues to be of practical use, effect or value.

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<sup>29</sup> If the provisions of the Agriculture Act 1967 as amended by the Agriculture Act 1970 are to be included in an consolidation Act of the Senedd forming part of the prospective Code, then it is unnecessary to include the amending provisions of the 1970 Act in the consolidation Act. The provisions as amended can simply be restated in the Consolidation Act. See para 5.99 of this chapter for consideration of the Agriculture Act 1967.

<sup>30</sup> Agriculture Act 1970, ss 65 to 72A, 74 and 75 to 87. The ministerial functions conferred under the Agriculture Act 1970 have been transferred, so far as exercisable in relation to Wales, to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>31</sup> Agriculture Act 1970, s 74A.

<sup>32</sup> S 30 of the Agriculture Act 1970 makes provision that is supplementary to the grant making powers provided for under s 29.



## Agricultural Sector (Wales) Act 2014

5.39 The Agricultural Sector (Wales) Act 2014 Act (“the 2014 Act”) requires the Welsh Ministers to establish an Agricultural Advisory Panel for Wales.<sup>38</sup> Among other matters, the Agricultural Advisory Panel for Wales is responsible for preparing agricultural wages orders in draft. Before being enacted, the draft orders must be subject to consultation and then approved by the Welsh Ministers.<sup>39</sup> Once enacted, the orders provide for the agricultural minimum wage and certain terms and conditions of employment that must be offered to agricultural workers in Wales. The current order issued under the 2014 Act is the Agricultural Wages (Wales) Order 2025.<sup>40</sup>

## Suitability for inclusion in the prospective code of agricultural law for Wales

5.40 In the *Agricultural Sector (Wales) Bill* case, the Supreme Court held that the primary purpose and effect of the 2014 Act:

are to establish a statutory regime for the regulation of agricultural wages and other terms and conditions of employment within the agricultural industry in Wales. The purpose and effect of such a regime are to operate on the economic activity of agriculture by promoting and protecting the agricultural industry in Wales.<sup>41</sup>

5.41 We therefore consider that the 2014 Act concerns agriculture and has a practical application that is limited to, or primarily concerned with, agriculture. For those reasons, we consider that the Agricultural Sector (Wales) Act 2014, and any annual order made under the Act setting the agricultural minimum wage, are suitable for inclusion in the prospective Code.

5.42 In forming the above conclusion, we acknowledge that there are calls for reform within the agricultural sector relating to the future of the Agricultural Advisory Panel and the agricultural minimum wage.<sup>42</sup> Any decision on whether an agricultural minimum wage should continue to be made available is, however, a matter of policy falling outside of our remit.

## Agriculture (Wales) Act 2023

5.43 The Agriculture (Wales) Act 2023 (“the 2023 Act”) includes the provisions summarised below.

- (1) Part 1 provides for the sustainable land management objectives and the sustainable land management duty (as discussed at paragraphs 5.1 to 5.4 above). Provision is also made for monitoring, and reporting on, progress towards delivery of the sustainable land management objectives.

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<sup>38</sup> Agricultural Sector (Wales) Act 2014 (anaw 6), s 2.

<sup>39</sup> Agricultural Sector (Wales) Act 2014 (anaw 6), s 4.

<sup>40</sup> SI 2025/293 (W 59).

<sup>41</sup> *Attorney General for England and Wales v Counsel General for Wales* [2014] UKSC 43, [2014] 1 WLR 2622, para 54.

<sup>42</sup> National Farmers' Union Cymru, “Welsh farming: Growing forward” (June 2025) <https://www.nfuonline.com/media/44xkjwpy/nfu-cymru-senedd-report-2025-no-trim.pdf>.



- (2) Chapter 1 of Part 2 empowers the Welsh Ministers to provide support (including financial support) for, or in connection with, agriculture and ancillary activities in Wales. The Sustainable Farming Scheme is intended to be implemented under the powers provided for under Part 2.
- (3) Chapter 2 of Part 2 provides the Welsh Ministers with powers to modify other specified laws that provide for agricultural funding schemes or support (such as the legislation providing for the Basic Payment Scheme).
- (4) Chapter 3 of Part 2 enables the Welsh Ministers to make a declaration of exceptional market conditions in agricultural markets and to take specified action following such a declaration (for example, providing financial assistance to agricultural producers in Wales).
- (5) Chapter 1 of Part 3 provides the Welsh Ministers with powers, subject to limitations, to obtain specified information relating to the “agri-food supply chain”.<sup>43</sup> Under section 25(1), the Welsh Ministers may require a person in, or closely connected with, an agri-food supply chain to provide information about matters connected with any of the person’s activities connected with the supply chain so far as the activities take place in Wales.
- (6) Section 34 (Chapter 2 of Part 3) empowers the Welsh Ministers to issue regulations providing for the marketing standards which apply to a specified list of agricultural products when marketed in Wales.
- (7) Section 35 (Chapter 3 of Part 3) provides the Welsh Ministers with powers to issue regulations to make provision about the classification, identification and presentation of certain livestock carcasses by slaughterhouses in Wales.

5.44 In addition to the matters listed above, Parts 4 and 5 of the 2023 Act provide for amendments to other Acts which are examined in later chapters of this report.<sup>44</sup>

#### Part 1, Chapters 1 to 3 of Part 2 and Chapter 1 of Part 3

5.45 In broad terms the provisions of the 2023 Act listed at points 1 to 5 of paragraph 5.43 above provide the Welsh Ministers with powers or duties to support or regulate agriculture in Wales. We therefore consider that the provisions in question concern agriculture and further that they have a practical application that is primarily concerned with agriculture. For the above reasons, we propose that those provisions are suitable for inclusion in the prospective code of agricultural law for Wales.

#### Section 34 (Chapter 2 of Part 3): marketing standards

5.46 Under section 34 of the 2023 Act the Welsh Ministers can make regulations specifying the marketing standards applicable to certain types of agricultural products when

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<sup>43</sup> The term agri-food supply chain is defined the Agriculture (Wales) Act 2023 (asc 4), s 26(2).

<sup>44</sup> The Agriculture (Wales) Act 2023 (asc 4) contains provisions which amend the Wildlife and Countryside Act 1981, as considered in Ch 6, and the Forestry Act 1967 as considered in Ch 8. The 2023 Act further introduces amendments to the Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1995 both of which are considered in Ch 9.

marketed in Wales.<sup>45</sup> The Welsh Ministers have yet to exercise their powers to enact regulations under section 34.

- 5.47 In Chapter 10, we consider whether certain laws that apply to certain stages of the agricultural supply chain are suitable for inclusion in the prospective Code. In that chapter, we set out that our review of agricultural legislation has focused upon laws that apply to activities or land uses that take place on farms such as the breeding and keeping of livestock, crop growing, and dairy farming. This approach has helped us to impose sensible parameters on the scope of our work.
- 5.48 Consequently, in Chapter 10, we do not examine in detail whether the individual laws that apply to post-farm stages of the agricultural supply chain, including laws governing the marketing, labelling and composition of agricultural produce, belong in the prospective code of agricultural law for Wales. We provide, however, a summary of the key marketing laws applicable to agricultural produce in Wales. We note that those marketing laws comprise laws that appear to be primarily concerned with food safety and public health, those that are primarily concerned with maintaining consumer confidence, and those that are concerned with a mixture of those subjects. For the same reasons as outlined in Chapter 10, we do not offer a view on whether section 34 of the 2023 Act belongs in the prospective code of agricultural law for Wales.

#### Section 35 (Chapter 3 of Part 3): carcass identification

- 5.49 Section 35 provides the Welsh Ministers with powers to regulate the classification, identification and presentation of bovine species (such as cattle), pig and sheep carcasses in slaughterhouses in Wales. The existing law on carcass classification derives from the EU.<sup>46</sup>
- 5.50 The regulation of livestock carcass classification serves to improve market efficiency and uphold consumer confidence. As set out in the explanatory memorandum to the (then) Agriculture (Wales) Bill:

Creating a framework in legislation for carcass classification has meant transparency in prices paid to producers for bovine and pig carcasses depending on their quality, enabled by price reporting provisions being contained in the regulations.

The legislation has led to buyers of bovine and pig carcasses having more confidence the product they are buying meets the standards they require. Without a

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<sup>45</sup> The agricultural products in question are those listed in the Agriculture (Wales) Act 2023 (asc 4), Sch 1.

<sup>46</sup> The existing laws governing livestock carcass classification include UK Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, UK Commission Delegated Regulation (EU) 2017/1182 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses, and UK Commission Implementing Regulation (EU) 2017/1184 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses.



legislative framework which created a standardised grading system, this consumer confidence on the part of the buyer would likely not have existed.<sup>47</sup>

Furthermore, existing rules on carcass classification “are mainly used to calculate the payment due from slaughterhouses to producers”.<sup>48</sup>

- 5.51 The Welsh Ministers have recently exercised the powers provided for under section 35 of the 2023 Act to enact regulations governing the classification of sheep carcasses at slaughterhouses: the Sheep Carcass (Classification and Price Reporting) (Wales) Regulations 2025 (“the 2025 Regulations”).<sup>49</sup> The aim of the 2025 Regulations has been described as to “ensure greater transparency so that producers will understand whether they are receiving a fair price for their slaughtered animals”.<sup>50</sup>
- 5.52 We consider that the powers provided for under section 35 aim to uphold consumer confidence in the quality of agricultural produce, and further to ensure that livestock farmers are paid a fair price for such produce. Accordingly, we consider that section 35 of the 2023 Act concerns agriculture.
- 5.53 In addition, section 35 will apply in practice to agriculture as rules regulating carcass classification will determine the amount livestock farmers are paid for their agricultural produce. However, section 35 will also apply in practice to slaughterhouses: setting rules relating to the methods which slaughterhouses must adopt when classifying livestock carcasses.
- 5.54 For the purposes of this report, we have adopted the meaning of agriculture as provided for under section 51 of the 2023 Act. On our reading, slaughterhouses do not fall within the meaning of agriculture as provided for under the 2023 Act. Section 35 of the 2023 Act therefore only partially satisfies our criteria for inclusion.
- 5.55 Nonetheless, it is difficult to conceive of section 35 of the 2023 Act falling within a code of Welsh law on a different subject. That is especially given that the law regulating carcass classification exists to ensure that livestock farmers are paid a fair price for their produce. For that reason, we consider that section 35 of the 2023 Act, and the 2025 Regulations, are suitable for inclusion in the prospective code of agricultural law for Wales.

## **LAWS PROVISIONALLY SUITABLE FOR INCLUSION IN THE PROSPECTIVE CODE**

- 5.56 In this section we consider those Acts containing provisions which we consider are provisionally suitable for inclusion in the prospective Code, subject to issues which may require further consideration or analysis.

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<sup>47</sup> Explanatory Memorandum to the Agriculture (Wales) Bill (August 2023) pp 64 to 65.

<sup>48</sup> Explanatory Notes to the Agriculture Act 2020, p 44.

<sup>49</sup> SI 2025/1121 (W 186) which came into force on 28 January 2026.

<sup>50</sup> Explanatory Memorandum to the Sheep Carcass (Classification and Price Reporting) (Wales) Regulations 2025, SI 2025/1121 (W 186).

## Agriculture Act 1947

### Summary of Act: key provisions

5.57 The Agriculture Act 1947 (“the 1947 Act”) provides for the matters outlined below.

- (1) The rules of good estate management and good husbandry which apply respectively in relation to agricultural land and agricultural units.<sup>51</sup>
- (2) The establishment and functions of the Agricultural Land Tribunal for Wales.
- (3) Powers of the Welsh Ministers to acquire and manage agricultural land in specified circumstances.
- (4) Powers of the Welsh Ministers to issue notices requiring a person to take such steps as is necessary for the killing, taking or destruction on specified land of certain wild birds and certain animals.<sup>52</sup>
- (5) Powers of the Welsh Ministers to issue notices to require a person to take steps to prevent the escape of captive animals.<sup>53</sup>

### Good husbandry and good estate management

5.58 Sections 10 and 11 of the 1947 Act respectively provide for the rules of good estate management and the rules of good husbandry. The rules are relevant to the law relating to agricultural holdings and agricultural tenancies. We therefore consider these provisions in Chapter 9.

### Agricultural Land Tribunal for Wales

5.59 The Agricultural Land Tribunal for Wales (“ALT for Wales”) hears cases primarily relating to tenanted agricultural land. Following the Law Commission’s report on devolved tribunals in Wales,<sup>54</sup> and the work of the Independent Commission on Justice in Wales,<sup>55</sup> the Welsh Government issued a white paper on a new tribunal system for Wales. The white paper proposed that the work of the ALT for Wales be brought within the remit of a First-tier Tribunal for Wales.<sup>56</sup> A relevant Bill is reported to be under development.<sup>57</sup> For that reason, we consider that the provisions in the

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<sup>51</sup> For the purposes of the Agriculture Act 1947, the terms “agricultural land” and “agricultural unit” are defined in s 109(1) of that Act.

<sup>52</sup> The power is subject to limitations provided in the Agriculture Act 1947, s 98.

<sup>53</sup> The ministerial functions conferred under the Agriculture Act 1947 have been transferred, so far as exercisable in relation to Wales, to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006. In addition, functions conferred under s 73(3) of the 1947 Act were transferred to the Welsh Ministers by virtue of the Welsh Ministers (Transfer of Functions) Order 2018, SI 2018/644.

<sup>54</sup> [Devolved Tribunals in Wales](#) (2021) Law Com No 403.

<sup>55</sup> Commission on Justice in Wales, *Justice in Wales for the People in Wales* (October 2019).

<sup>56</sup> Welsh Government, *A New Tribunal System for Wales: white paper* (June 2023), para 69.

<sup>57</sup> *Senedd Record of Proceedings*, 5 November 2024, 145.

1947 Act concerning the establishment and functioning of the ALT for Wales would be unsuitable for inclusion in the prospective code of agricultural law for Wales.

### Powers to acquire agricultural land by agreement

- 5.60 Section 82 of the 1947 Act provides the Welsh Ministers with powers to acquire agricultural land by agreement.<sup>58</sup> Under section 90 of the 1947 Act, the Welsh Ministers have powers to manage, farm, sell, let or otherwise deal with or dispose of any land acquired by agreement under the 1947 Act.<sup>59</sup>
- 5.61 On the second reading of the Bill that became the 1947 Act, the (then) Minister for Agriculture, Thomas Williams MP, outlined before the House of Commons that one of the intended aims of the Bill was to ensure agricultural land was managed efficiently and “not needlessly whittled away”.<sup>60</sup> The agricultural policy which underpinned the 1947 Act, and the statutory powers to acquire agricultural land by agreement, will however, differ from the policy underpinning agricultural legislation in the modern day.<sup>61</sup>
- 5.62 It will be for the Welsh Government to consider whether the powers provided for under section 82 of the 1947 Act are likely to be relied upon in furtherance of modern agricultural policy objectives. We therefore consider that sections 82 and 90 of the 1947 Act are, in principle, suitable for inclusion in the prospective code of agricultural law for Wales, but only if the powers remain of practical use.<sup>62</sup>

### Powers to issue notices to prevent damage by wild and captive animals

- 5.63 Under section 98(1) of the 1947 Act, the Welsh Ministers may issue a notice requiring an individual to take steps to kill, take or destroy specified animals on land. The animals to which the power applies are rabbits, hares, rodents, deer, foxes, moles, wild birds and their eggs,<sup>63</sup> and any other animals prescribed in regulations. No such regulations have been made by the Welsh Ministers prescribing additional animals.

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<sup>58</sup> The ministerial functions conferred under ss 82 and 90 of the Agriculture Act 1947 have been transferred, so far as exercisable in relation to Wales, to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to Government of Wales Act 2006.

<sup>59</sup> See the Agriculture Act 1947, s 90.

<sup>60</sup> *Hansard* (HC), 27 January 1947, vol 432, col 632.

<sup>61</sup> See Ch 2 for further analysis as to how the policy aims underpinning agricultural law have developed since the passage of the Agriculture Act 1947.

<sup>62</sup> We understand that the purpose of the power provided for under s 82 of the Agriculture Act 1947 was to prevent agricultural land being taken out of production. The Explanatory Notes to the Wales Act 2017 (which amended the Government of Wales Act 2006) states that the exception to the general restriction on the Senedd’s legislative competence to modify the private law would apply in the in the case of a legislative power to acquire land in Wales for a non-reserved purpose (see para 3(3) of Sch 7B to the Government of Wales Act 2006).

<sup>63</sup> The power under the Agriculture Act 1947, s 98 originally did not extend to any wild birds listed in the Protection of Birds Act 1954 but that Act has since been repealed in its entirety by the Wildlife and Countryside Act 1981.

- 5.64 Before issuing a notice requiring a person to take steps to kill, destroy or take any specified animal, the Welsh Ministers must be satisfied that the requirement is expedient to prevent damage to the following:
- (1) crops;
  - (2) pasture;
  - (3) animal or human foodstuffs;
  - (4) livestock;
  - (5) trees;
  - (6) hedges;
  - (7) banks; or
  - (8) any works on land.
- 5.65 Separately, section 98(7) of the 1947 Act provides the Welsh Ministers with powers to require an occupier of land to take steps to destroy rabbit breeding places, exclude rabbits from land or prevent rabbits spreading to other land. Before requiring a person to take such steps the Welsh Ministers must be satisfied that any requirement is expedient to prevent damage to crops, pasture, trees, hedges, banks or any works on land: a narrower category of resources than presented at paragraph 5.64.
- 5.66 Under section 99 of the 1947 Act, the Welsh Ministers also have a power to issue a notice to require an occupier of land to take steps as may be necessary to prevent any animals being kept in captivity on the land from escaping. Before issuing any such requirement, the Welsh Ministers must be satisfied that it would be expedient to prevent damage to any of the resources listed at paragraph 5.64.
- 5.67 Section 100 of the 1947 Act makes it an offence to fail to comply with a requirement imposed in a notice issued under sections 98(1), 98(7) or 99.
- 5.68 In 2015 we published a report making recommendations for the consolidation and technical reform of wildlife law.<sup>64</sup> In that report, we recommended that the powers provided for under sections 98 and 99 of the 1947 Act be brought together - along with other laws relating to the control of pests and weeds - in an Act to consolidate wildlife legislation.<sup>65</sup> Other laws recommended for consolidation included the Pests Act 1954 and the Weeds Act 1959. The Pests Act 1954 provides for ministerial powers relating to the control of wild rabbits. The Weeds Act 1959 provides for

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<sup>64</sup> [Wildlife Law Volume 1: Report](#) (2015) Law Com No 362.

<sup>65</sup> [Wildlife Law Volume 1: Report](#) (2015) Law Com No 362, p 348, recommendation 217.

ministerial powers to require an occupier of land to take action to prevent the spread of weeds.<sup>66</sup>

- 5.69 In line with the recommendations made in our wildlife law report, we acknowledge that the powers provided for under section 98(1) and 98(7) of the 1947 Act concern the control of wildlife. However, unlike section 98, the powers provided for under section 99 do not concern wildlife. Rather, section 99 concerns the control of animals held in captivity, and specifically with preventing their escape. In any event, as set out in our wildlife report, there is a persuasive case for bringing the powers contained in sections 98 and 99 of the 1947 together with other powers to provide for the control of weeds, wildlife or other animals which may cause damage to resources or property.
- 5.70 However, the respective powers provided for under sections 98(1), 98(7) and 99 of the 1947 Act can only be exercised where the Welsh Ministers are satisfied that any required steps or actions are expedient for the purposes of preventing damage to certain resources. The relevant resources for sections 98(1) and 99 are those listed at paragraph 5.64. A number of the relevant resources are those which are typically used, kept or produced in an agricultural context: crops, pasture, livestock and animal foodstuffs. Crops and pasture are also relevant resources for the purposes of section 98(7). Accordingly, there is a good argument that sections 98 and 99 concern agriculture. Indeed, our wildlife law report describes these provisions as providing powers to control “particular kinds of agricultural pests”.<sup>67</sup>
- 5.71 In light of the analysis above, we consider that the powers provided for under sections 98 and 99 concern both agriculture and additional subject matters: respectively the control of wildlife and the control of captive animals. In this respect, we recognise that legislation will commonly concern multiple subject matters, and we do not consider this necessarily to be a barrier to the inclusion of a law in the prospective code of agricultural law for Wales.
- 5.72 In terms of the practical application of the powers provided for under sections 98(7) and 99, we note that under each section the Welsh Ministers are empowered to issue notices on occupiers of land. Under section 99, the Welsh Ministers can only issue a notice on a person who has the right to take the steps required in a notice on the land to which the notice applies. Land is not defined for the purposes of sections 98 and 99. “Agricultural land” is, however, a defined term under the 1947 Act and means any land used for agriculture for the purposes of a trade or any land designated as agricultural land.<sup>68</sup> By inference we understand the term “land” in sections 98 and 99 to include any land, not just agricultural land. Therefore, we conclude that the practical application of the powers provided for under sections 98 and 99 are not solely limited to agriculture.

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<sup>66</sup> The ministerial functions provided for under the Pests Act 1954 and the Weeds Act 1959 have been transferred, so far as exercisable in relation to Wales, to the Welsh Ministers by virtue of SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>67</sup> [Wildlife Law Volume 1: Report](#) (2015) Law Com No 362, para 9.96.

<sup>68</sup> Land can be designated as agricultural land by the Welsh Ministers under s 109 of the Agriculture Act 1947 where the Welsh Ministers are of the opinion the land ought to be brought into use for agriculture.

- 5.73 It is more challenging to assess whether the powers under sections 98 and 99 have a practical application that is primarily concerned with agriculture. The powers in question are aimed at preventing damage to certain resources. As highlighted at paragraph 5.70 above, some of those resources are ones which are typically used, kept or produced in agricultural context (crops, livestock and pasture). Others are resources which may be used, developed or produced in wider contexts, including but not limited to agriculture. Examples include trees, hedges and “any works on land”. This means it is not possible to conclude on a reading of the legislation alone that the powers provided for under sections 98 and 99 will be issued primarily to prevent damage in an agricultural context.
- 5.74 For the reasons outlined above, we consider that sections 98 and 99 of the 1947 Act only partially satisfy our criteria for inclusion. We draw the same conclusion in respect of section 100 which provides for the enforcement of sections 98 and 99. We therefore consider that the arguments for including these provisions in the prospective code of agricultural law for Wales are finely balanced. There are persuasive arguments - as set out comprehensively in our wildlife law report - for including sections 98 to 100 of the 1947 Act, along with other pest control laws, in any potential exercise to consolidate wildlife law. If such consolidation work is taken forward, then including sections 98 to 100 of the 1947 Act in the prospective code of agricultural law for Wales could risk fragmenting those provisions from wider laws concerning pest and weed control.
- 5.75 The recommendations made in our wildlife report were published over a decade ago and prior to the Welsh Government embarking upon its first programme of work to consolidate and codify the law on devolved subjects. Nonetheless, we consider that the arguments for including sections 98 to 100 in any potential future exercise to consolidate wildlife legislation remain valid. Any decision on whether sections 98 to 100 of the 1947 Act are brought within the prospective code of agricultural law for Wales may depend on whether there is an intention to consolidate or codify wildlife law applicable in Wales.

### **Agriculture Act 1986**

- 5.76 In broad terms, the Agriculture Act 1986 (“the 1986 Act”) makes the provision outlined below.
- (1) Section 1 empowers the Welsh Ministers to make provision for the supply of goods and services connected with agriculture and the countryside.
  - (2) Section 17 imposes a duty on the Welsh Ministers, when exercising any functions connected with agriculture to have regard to, and endeavour to achieve a balance between certain considerations including, among other matters, the “promotion and maintenance of a stable and efficient agricultural industry”.

- (3) Section 18 provides the Welsh Ministers with powers to designate areas in Wales as being “environmentally sensitive areas”.<sup>69</sup>

#### Powers to provide supply of goods and services (section 1)

5.77 Under section 1 of the 1986 Act, the Welsh Ministers may make provision for the supply to any person of any services or goods relating to:

- (1) the production and marketing of agricultural produce and other food;
- (2) the conservation and enhancement of the natural beauty and amenity of the countryside; or
- (3) any other agricultural activity or other enterprise of benefit to the rural economy.<sup>70</sup>

5.78 It is unclear whether the Welsh Ministers continue to exercise the powers under section 1 of the 1986 Act. If the powers remain in use, then we consider the provision suitable for inclusion in the prospective code of agricultural law for Wales. In the alternative, if the powers are no longer considered to be of practical use or value, then consultation may provide a means of confirming whether these provisions are suitable for repeal.

#### Duty to balance interests in exercise of agricultural functions (section 17)

5.79 Section 17 of the 1986 Act requires the Welsh Ministers, when exercising any functions connected with agriculture, to have regard to and endeavour to achieve a reasonable balance between certain specified considerations (so far as is consistent with the exercise of the function in question). The specified considerations are:

- (1) the promotion and maintenance of a stable and efficient agricultural industry;
- (2) the economic and social interests of rural areas;
- (3) the conservation and enhancement of the natural beauty and amenity of the countryside (including its flora and fauna and geological and physiographical features) and of any features of archaeological interest there; and
- (4) the promotion of the enjoyment of the countryside by the public.

5.80 The 1986 Act does not define what is meant by “functions connected with agriculture”. However, section 17(2) confirms that the term “agriculture” has the same meaning as provided for under section 109(3) of the Agriculture Act 1974:

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where

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<sup>69</sup> The ministerial functions under the Agriculture Act 1986 have been transferred, so far as exercisable in relation to Wales, to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>70</sup> S 1(2) lists the type of provision which may be made under s 1 of the Agriculture Act 1986 (for example providing advice, instruction and training).



that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly.

- 5.81 Under section 2 of the Agriculture (Wales) Act 2023, the Welsh Ministers must comply with the sustainable land management duty. As outlined at paragraphs 5.3 to 5.4 above, the sustainable land management duty requires the Welsh Ministers to act in a way they consider best contributes to achieving the sustainable land management objectives so far as consistent with the proper exercise of the function. The sustainable land management duty applies to the exercise of the Welsh Ministers’ functions contained in the 2023 Act. It also applies to any functions contained in any other enactment that require or allow the Welsh Ministers to regulate or support agriculture;<sup>71</sup> other activities carried out on land used for agriculture; or specified activities that are defined as ancillary activities.<sup>72</sup>
- 5.82 Both the sustainable land management duty under section 2 of the 2023 Act and the duty under section 17 of the 1986 Act will therefore apply to functions that can be said to be connected with agriculture. This means there is an overlap between the statutory functions to which each duty applies.<sup>73</sup>
- 5.83 If section 17 of the 1986 Act is brought within a consolidation Act forming part of the prospective Code, then further consideration may need to be given to how the duty imposed under section 17 of the 1986 Act interacts with the sustainable land management duty imposed under section 2 of the 2023 Act. In that respect, we note that section 17 of the 1986 Act has been repealed, insofar as it applies to Scotland, by the Agriculture and Rural Communities (Scotland) Act 2024. The explanatory notes to the 2024 Act outline that section 17 of the 1986 Act has been replaced by new duties of the Scottish Ministers as imposed under that Act.<sup>74</sup>

#### Power to designate environmentally sensitive areas

- 5.84 Section 18 of the 1986 Act provides the Welsh Ministers with powers to designate, by order, areas in Wales as environmentally sensitive areas (“ESAs”).<sup>75</sup> The Welsh Ministers may only issue an ESA designation where it appears particularly desirable:
- (1) to conserve and enhance the natural beauty of an area;
  - (2) to conserve the flora or fauna or geological or physiographical features of an area; or

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<sup>71</sup> Agriculture is defined for the purposes of the Agriculture (Wales) Act 2023 (asc 4) in exhaustive terms under s 51.

<sup>72</sup> Agriculture (Wales) Act 2023 (asc 4), s 2(2).

<sup>73</sup> In forming this preliminary conclusion, we however note that the Agriculture (Wales) Act 2023 (asc 4) provides for its own definition of agriculture which is distinct to the definition provided for under s 109(2) of the Agriculture Act 1947 and the two definitions influence the scope of the duties considered in this section of the chapter.

<sup>74</sup> Agriculture and Rural Communities (Scotland) Act 2024 (asp 11), s 34(1). See also the Explanatory Notes to the Agriculture and Rural Communities (Scotland) Act 2024 (asp 11), p 25.

<sup>75</sup> The Welsh Ministers must, however, consult Natural Resources Wales before making a designation order.



- (3) to protect buildings or other objects of archaeological, architectural or historic interest in an area.

In addition, a designation may only be issued under section 18 where it appears to the Welsh Ministers that the maintenance or adoption of particular agricultural methods is likely to facilitate such conservation, enhancement or protection.<sup>76</sup> The Welsh Ministers must consult Natural Resources Wales before issuing an ESA designation.

5.85 Where an area has been designated as an ESA, then the Welsh Ministers may enter into environmental land management agreements with any person who has an interest in agricultural land falling within the designated ESA.

5.86 We have identified ten orders which have been issued under section 18 designating areas in Wales as ESAs.<sup>77</sup> We have not identified any revocation of those ten orders. However, the Environmentally Sensitive Areas (Wales) Designation Orders (Amendment) Order 1999 (“the 1999 Order”) provides that the Secretary of State must:

not enter into an agreement with any person [in relation to a designated ESA specified in the 1999 order] unless an application to enter the agreement is received by the Secretary of State before 11th May 1999.<sup>78</sup>

The 1999 Order, and restriction cited above, applies to six of the orders made under section 18 which designate areas in Wales as ESAs.<sup>79</sup>

5.87 The only way an ESA designation can take practical effect is through an environmental land management agreement, as described at paragraph 5.85 above. The Agriculture Act 1986 does not impose any express limits on the period for which an environmental land management agreement may be entered into. However, in *Agricultural Law* Professor Christopher Rodgers reports that environmental land management agreements were entered into for ten-year periods and consequently “most environmental land management agreements entered into under the ESA programme will now be spent”.<sup>80</sup>

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<sup>76</sup> Agriculture Act 1986, s 18(1).

<sup>77</sup> Environmentally Sensitive Areas (Cambrian Mountains) Designation Order 1986, SI 1986/2257; Environmentally Sensitive Areas (Cambrian Mountains - Extension) Designation Order 1987, SI 1987/2026; Environmentally Sensitive Areas (Llyn Peninsula) Designation Order 1987, SI 1987/2027; Environmentally Sensitive Areas Designation (Wales) (Welsh Language Provisions) Order 1990, SI 1990/1693; Environmentally Sensitive Areas (Radnor) Designation Order 1993, SI 1993/1211; Environmentally Sensitive Areas (Ynys Mon) Designation Order 1993, SI 1993/1210; Environmentally Sensitive Areas (Clwydian Range) Designation Order 1994, SI 1994/238; Environmentally Sensitive Areas (Preseli) Designation Order 1994, SI 1994/239; Environmentally Sensitive Areas Designation (Radnor) (Welsh Language Provisions) Order 1994, SI 1994/1989; Environmentally Sensitive Areas Designation (Ynys Mon) (Welsh Language Provisions) Order 1994, SI 1994/1990.

<sup>78</sup> SI 1999/1175, art 2.

<sup>79</sup> The list of six orders to which the Environmentally Sensitive Areas (Wales) Designation Orders (Amendment) Order 1999, SI 1999/1175 applies does not however marry up exactly with the list of six orders which are recorded on the relevant legal databases as being force.

<sup>80</sup> C Rodgers, *Agricultural Law* (4th ed 2016) paras 13.77 and 13.106.

- 5.88 During our research and engagement with stakeholders, we did not identify any existing ESA designations which remain in practical operation in Wales. We also anticipate that the ESA regime may have been superseded by new policy schemes that pay farmers in Wales to deliver environmental services and goods.<sup>81</sup> Examples include the Glastir scheme, and the interim Habitat Wales Scheme, both of which will be superseded by the Sustainable Farming Scheme in 2026.<sup>82</sup>
- 5.89 The ESA designation scheme under section 18 of the 1986 Act implemented Council Regulation (EEC) No 797/85 which authorised member states to “introduce special national schemes in environmentally sensitive areas”.<sup>83</sup> Article 19 of Council Regulation (EEC) No 797/85 permitted member states to provide aid to farmers who undertook “to farm environmentally important areas so as to preserve or improve their environment”.<sup>84</sup> Council Regulation (EEC) No 797/85 has since been repealed.<sup>85</sup>
- 5.90 Accordingly, section 18 of the 1986 Act may be ripe for repeal.<sup>86</sup> However, for completeness, we consider that it would be prudent to engage more widely with stakeholders to ensure that there are no extant agreements in Wales which could be affected.

### Red Meat Industry (Wales) Measure 2010

- 5.91 The Red Meat Industry (Wales) Measure 2010 (“the 2010 Measure”) provides for a statutory red meat levy, the funds from which are used to support and promote the red meat sector in Wales. The red meat levy is payable by producers (farmers) and processors (such as slaughterhouses and processing factories) of red meat in Wales. The body responsible for administering the funds raised by the levy is Hybu Cig Cymru.
- 5.92 The red meat levy can be used to further the objectives of the 2010 Measure, to carry out functions relevant to the red meat industry or to provide services to the industry. The objectives of the 2010 Measure are:
- (1) increasing efficiency or productivity in the red meat industry;

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<sup>81</sup> A report published by the Cambrian Mountains Society in 2008 states that the environmentally sensitive area scheme for the Cambrian Mountains range was, at that point in time, being “phased out”. Cambrian Mountains Society, *Cambrian Mountains - The Heart of Wales Developing a Strategy for a Sustainable Future* (2008), <https://cambrian-mountains.co.uk/wp-content/uploads/2014/01/cambrian-mountains-sustainable-future.pdf>.

<sup>82</sup> A similar conclusion is drawn in C Rodgers on *Agricultural Law* (4th ed 2016) which reports that in England the ESA regime was replaced by the Environmental Stewardship Scheme. The Welsh equivalent for the Environmental Stewardship Scheme was Tir Gofal which was replaced in 2011 by Glastir.

<sup>83</sup> L Petetin and M Dobbs, *Brexit and Agriculture* (1st ed 2022) p 9.

<sup>84</sup> UK Council Regulation (EEC) No 797/85 on improving the efficiency of agricultural structures, art19(3).

<sup>85</sup> UK Council Regulation (EEC) No 2328/91 on improving the efficiency of agricultural structures repealed Council Regulation (EEC) No 797/85 on improving the efficiency of agricultural structures.

<sup>86</sup> In that respect, we note that s 18 of the Agriculture Act 1986 has repealed insofar as it applies to Scotland on the grounds that the provision is spent. See the Agriculture and Rural Communities (Scotland) Act 2024 (asp 11), s 34 and the Explanatory Notes to that Act.

- (2) improving marketing in the industry;
- (3) improving or developing services that the industry provides or could provide to the community; and
- (4) improving the ways in which the industry contributes to sustainable development.<sup>87</sup>

5.93 The red meat industry for the purposes of the 2010 Measure includes the breeding, keeping, processing, marketing and distribution of cattle, sheep and pigs. It also includes producing, processing, marketing, manufacturing and distributing products substantially derived from those livestock animals. The funds from the red meat levy can be used for activities including promoting the export of red meat products, promoting or marketing such products, undertaking research relevant to the red meat industry and promoting measures for securing improved working conditions.

5.94 As set out in Chapter 3, we have taken the definition of “agriculture” in section 51 of the Agriculture (Wales) Act 2023 as our guide to the meaning of agriculture in Wales. The definition of “agriculture” under that section does not, on our reading, include the stages of the agricultural supply chain that take place post-farm such as slaughter of livestock or the processing of red meat. In Chapter 10, we set out that, in order to place realistic parameters on the scope of our work for this report, we do not attempt to determine whether the laws that apply post-farm to the wider agricultural supply chain belong in the prospective code of agricultural law for Wales.

5.95 The purpose of the 2010 Measure has been described as “to make statutory provision, through a legislative framework for the development and promotion of the Welsh red meat industry”.<sup>88</sup> As confirmed by section 1 of the 2010 Measure, the red meat industry includes those farms producing red meat produce. In that sense, we consider that the 2010 Measure concerns agriculture. The application of the 2010 Measure also extends to the later stages of the red meat supply chain including those industries involved in slaughter, processing, distribution, marketing and retail. For example, slaughterhouses and processors of red meat are liable to pay, and stand to benefit, from the red meat levy. This means it is difficult to conclude that the 2010 Measure has a practical application that is limited to, or primarily concerned with, agriculture.

5.96 We therefore consider that the 2010 Measure only partially satisfies our criteria for inclusion in the prospective Code. Notwithstanding our conclusion, it is difficult to conceive of a code of Welsh law on a different devolved subject that would be better suited to encompass the 2010 Measure.

5.97 For the purposes of this report, we have focused on engaging with representatives of the agricultural sector in Wales. Consequently, we have not comprehensively sought views from organisations representing the wider agricultural supply chain on whether the 2010 Measure is suitable for inclusion in the prospective Code. In light of that fact, and because the 2010 Measure only partially satisfies our criteria for inclusion, we

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<sup>87</sup> Red Meat Industry (Wales) Measure 2010 (nawm 3), s 2.

<sup>88</sup> Explanatory Memorandum to the Proposed Red Meat Industry (Wales) Measure 2010 (nawm 3), p 3.

tentatively suggest it may be suitable for inclusion in the prospective code of agricultural law for Wales. Additional engagement across the red meat supply chain may helpfully inform any final decision on that point.

- 5.98 If the 2010 Measure is brought within the scope of the prospective Code, then we suggest it would be important to consider carefully the application of the sustainable land management objectives to the 2010 Measure. On our reading, the sustainable land management objectives under the 2023 Act and the objectives provided for under the 2010 Measure complement rather than conflict with one another. Nevertheless, we think that that the interaction between those two sets of objectives would benefit from further consideration if the 2010 Measure were included in the prospective Code.

### **Additional Acts conferring functions to support or regulate agriculture**

- 5.99 We have identified an additional four Acts containing provisions that may be suitable for inclusion in the prospective code of agricultural law for Wales. All of the provisions in question provide the Welsh Ministers with powers to regulate or support agriculture in Wales. We therefore consider that the provisions presented in the table below, in principle, satisfy our criteria for inclusion. We are unclear, however, whether the powers are relied upon in practice in the present day, or whether the powers are likely to be exercised in the future. If the provisions are no longer considered to be of practical value or use, then they may be suitable for repeal.

PROVISION	SUMMARY OF EFFECT
<b>Board of Agriculture Act 1889</b>	Section 2(3) provides the Welsh Ministers with the power to make, or aid the making of, any such inquiries, experiments and research that are undertaken for the purpose of promoting agriculture. The provision also provides the Welsh Ministers with powers to collect, or aid the collection, of such information as they think fit for the purpose of promoting agriculture. <sup>89</sup>
<b>Agriculture Act 1967</b>	Sections 26 to 28 provide the Welsh Ministers with powers to provide for grants or loans for the purposes of boundary adjustments in relation to, or amalgamations of, agricultural land. <sup>90</sup>
<b>Agriculture (Miscellaneous Provisions) Act 1976</b>	Section 4 provides the Welsh Ministers with powers to pay grants to any bodies who design, formulate, promote,

<sup>89</sup> Board of Agriculture Act 1889, s 2(3). The ministerial functions conferred under s 2(3) of the Board of Agriculture Act 1889 were transferred to the Welsh Ministers by virtue of the Transfer of Functions (Wales) (No 1) Order 1978 SI 1978/272, the National Assembly for Wales (Transfer of Functions) Order 2000 SI 2000/253 and para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>90</sup> The ministerial functions conferred under ss 82 and 90 of the Agriculture Act 1947 have been transferred, so far as exercisable in relation to Wales, to the Welsh Ministers by virtue of the Transfer of Functions (Wales) Order 1969, SI 1969/388, the National Assembly for Wales (Transfer of Functions) Order 1999 SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

	coordinate or deliver proficiency tests in crafts related agriculture. <sup>91</sup>
<b>Farm Land and Rural Development Act 1988</b>	The Farm Land and Rural Development Act 1988 is a short Act providing the Welsh Ministers with powers to provide for grant schemes towards expenditure which has been or is to be incurred in connection with the establishment, expansion or promotion and marketing of a farm business. It also provides the Welsh Ministers with powers to provide for schemes for grants towards expenditure incurred for the purposes of, or in connection with, the conversion of land from agricultural use to use for woodlands. <sup>92</sup> We note the Act has been repealed in part insofar as it applies to Scotland. <sup>93</sup>

## **LAWS UNSUITABLE FOR INCLUSION IN THE PROSPECTIVE CODE**

5.100 We consider that the laws listed below are unsuitable for inclusion in the prospective code of agricultural law for Wales.

- (1) Agricultural Credits Act 1928
- (2) Agricultural Wages Act 1948
- (3) Agriculture (Miscellaneous Provisions) Act 1949
- (4) Agriculture (Miscellaneous Provisions) Act 1954
- (5) Agriculture Act 1957
- (6) Agriculture Act 1958
- (7) Agriculture (Miscellaneous Provisions) Act 1963
- (8) Agriculture Act 1993

We present our rationale for concluding that six of the above Acts are unsuitable for inclusion in the prospective code of agricultural law for Wales in Appendix 4 to this report. However, our rationale for concluding that the Agricultural Wages Act 1948 and

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<sup>91</sup> The ministerial functions conferred under s 4 of the Agriculture (Miscellaneous Provisions) Act 1976 have been transferred, so far as exercisable in relation to Wales, to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>92</sup> The ministerial functions conferred under the Farm and Rural Development Act 1988 have been transferred, so far as exercisable in relation to Wales, to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>93</sup> The Agriculture and Rural Communities (Scotland) Act 2024, s 34 and Sch 2.

the Agriculture (Miscellaneous Provisions) Act 1954 are unsuitable for inclusion in the prospective Code merits more detailed explanation, as set out below.

### **Agricultural Wages Act 1948**

- 5.101 The Agricultural Wages Act 1948 (“the 1948 Act”) has been subject to substantial repeal. On enactment, the 1948 Act provided for the establishment of an Agricultural Wages Board: an independent statutory body with a duty to set the agricultural minimum wage in Wales and England. The Board also had discretionary powers to prescribe other terms and conditions of employment for agricultural workers.
- 5.102 The Agricultural Wages Board was abolished in 2013 by the Enterprise and Regulatory Reform Act 2013.<sup>94</sup> Shortly after, the Senedd enacted the Agricultural Sector (Wales) Act 2014 which established the Agricultural Advisory Panel: a body responsible for setting the agricultural minimum wage in Wales (see paragraph 5.39 above). The provisions of the Agricultural Wages Act 1948 that apply to Wales and remain in force are discussed further below.
- 5.103 Section 2 of the 1948 Act requires the Welsh Ministers to establish an agricultural wages committee for each county in Wales or a single committee for the whole of Wales.<sup>95</sup> The Agricultural Wages Committee (Wales) Order 2007, as enacted under section 2, amends the Agricultural Wages Committees (Areas) Order 1974 to provide for the establishment of the Agricultural Wages Committee for Wales.<sup>96</sup>
- 5.104 Sections 6 to 8 of the 1948 provide for the functions of agricultural wages committees established by order under that Act. For instance, the Agricultural Wages Committee for Wales has powers to issue certificates allowing agricultural employers to pay learners in receipt of tuition a reduced agricultural minimum wage.
- 5.105 The chairperson of the Agricultural Wages Committee for Wales also has powers to appoint the members of an agricultural dwelling house committee for an area in Wales.<sup>97</sup> An agricultural dwelling house committee is a committee established under the Rent (Agriculture) Act 1976. Under that Act, certain agricultural workers who were provided with accommodation as a condition of their employment may be entitled to remain in that accommodation upon retirement. Accommodation provided as a condition of employment to an agricultural worker is commonly referred to as tied accommodation.
- 5.106 The right to remain in tied accommodation, as provided for under the Rent (Agriculture) Act 1976, only applies in specific circumstances. For example, the right will only be engaged where an agricultural worker has been granted, before 1 January 1989, exclusive occupation of the tied accommodation. If the right to remain in tied accommodation is engaged, a farmer may nonetheless apply to the local housing

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<sup>94</sup> Enterprise and Regulatory Reform Act 2013, s 72 and Sch 20.

<sup>95</sup> The ministerial functions conferred under s 2 of the Agricultural Wages Act 1948 have been transferred, so far as exercisable in relation to Wales, to the Welsh Ministers by virtue of SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>96</sup> Agricultural Wages Committee (Wales) Order 2007, SI 2007/395 (W 41); Agricultural Wages Committees (Areas) Order 1974, SI 1974/515.

<sup>97</sup> Rent (Agriculture) Act 1976, s 29(3).

authority for an agricultural worker to be re-housed if the accommodation is required for another agricultural worker.<sup>98</sup> The function of an agricultural dwelling house committee is to provide advice to the local housing authority on any such request to re-house a protected agricultural worker.

5.107 We are unclear whether an agricultural dwelling house committee has been appointed in Wales in recent years to provide advice to a local housing authority. Agricultural dwelling house committees are no longer operational in England.<sup>99</sup>

5.108 In 2013, the Department for Environment, Food and Rural Affairs and the Welsh Government issued a statutory report confirming, as at that point in time, that no appointments had been made to the membership of Agricultural Wages Committee for Wales since its establishment in 2007.<sup>100</sup> We have not identified any publicly available information confirming whether any such appointments have been made since 2013.

5.109 We therefore consider that the development of the prospective code of agricultural law for Wales would present an opportunity to examine the future of the Agriculture Wages Committee for Wales and whether the provisions in the 1948 Act relating to that committee are suitable for repeal. In that respect, we note that the Welsh Ministers have existing powers to abolish the Agricultural Wales Committee and any agricultural dwelling house committees as established in Wales or a specific area in Wales. The Welsh Ministers must, however, consult specified persons before exercising their powers to abolish such committees by order.<sup>101</sup>

### **Agriculture (Miscellaneous Provisions) Act 1954**

5.110 The Agriculture (Miscellaneous Provisions) Act 1954 (“the 1954 Act”) makes provision for functions of the Agricultural Land Tribunal for Wales. As outlined above, the Welsh Government proposes to introduce legislation to establish a First-Tier Tribunal for Wales. The relevant white paper proposes that the work of the ALT for Wales would be brought within the remit of the First-tier Tribunal for Wales. Consequently, we provisionally consider it unnecessary to include the provisions relating to the powers of the ALT for Wales in the prospective Code.

5.111 In addition, section 9 of the 1954 Act provides local authorities in Wales and England with powers to collect kitchen or other waste for use as animal feed for farmed animals. Many local authorities in Wales publish information about how collected food waste is processed and used. For example, food waste collected by Carmarthenshire Council is used to generate electricity and further to produce fertiliser.<sup>102</sup> We have not

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<sup>98</sup> Rent (Agriculture) Act 1976, s 27.

<sup>99</sup> Agricultural Dwelling House Advisory Committees, “About us”  
<https://www.gov.uk/government/organisations/agricultural-dwelling-house-advisory-committees-x16/about>.

<sup>100</sup> Department for Environment, Food and Rural Affairs and the Welsh Government, *Report on Wages in Agriculture* (October 2013)  
<https://assets.publishing.service.gov.uk/media/5a7db6f1ed915d2acb6edb4b/44656-report-wages-agriculture-2013.pdf>.

<sup>101</sup> Public Bodies Act 2011, s 18.

<sup>102</sup> Carmarthenshire Council, “FAQs – Recycling and waste” (updated 2024)  
<https://www.carmarthenshire.gov.wales/home/council-services/recycling-bins-and-litter/faqs-recycling-and-waste/?type=45270>.



identified any examples of local authorities in Wales repurposing waste as animal feed. In any event, since the enactment of the 1954 Act, an extensive body of legislation has developed which imposes controls on the composition of animal feed in order to protect public health (as discussed further in Chapter 10).

5.112 For the above reasons, we consider that the 1954 Act is unsuitable for inclusion in the prospective code of agricultural law for Wales. Section 9 of the 1954 Act may also be suitable for repeal if the power is no longer exercised in practice by local authorities in Wales.

## **ISSUES FOR FURTHER CONSIDERATION OR ANALYSIS**

5.113 Our terms of reference ask us to highlight any issues engaged by the establishment of the prospective code of agricultural law for Wales which may require further consideration or analysis. In this section we set out examples of such issues which may be engaged by bringing the laws examined in this chapter within the prospective Code.

### **Definitions of agriculture**

5.114 As highlighted in Chapter 4, there is a proliferation of statutory definitions of the term “agriculture” as provided for in agricultural laws applicable in Wales. In this section, we consider whether the establishment of the prospective code of agricultural law for Wales presents an opportunity to modernise or streamline those statutory definitions.<sup>103</sup>

5.115 Within the Acts we identify in this chapter as being suitable, or potentially suitable, for inclusion in the prospective Code there are six distinct statutory definitions of “agriculture”.

- (1) The definition provided under section 12 of the Board of Agriculture Act 1889.
- (2) The definition provided under section 109(3) of the Agriculture Act 1947. The Agriculture Act 1967 and Agriculture Act 1986 (as considered in this chapter) also both apply the definition of “agriculture” as provided for under the 1947 Act.<sup>104</sup> Agricultural tenancy legislation as considered in Chapter 9 also applies the 1947 Act definition,<sup>105</sup> as do a host of other statutory provisions contained in different Acts.<sup>106</sup>

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<sup>103</sup> In Ch 4, we also consider the different meanings and definitions of the term “agriculture” in the context of setting out the parameters of our review of agricultural legislation for the purposes of this report.

<sup>104</sup> The definition of “agriculture” as provided for under s 109(3) of the Agriculture Act 1947 is also applied for the purposes of s 152(5) of the Environmental Protection Act 1990. In Ch 6, we identify s 152 of the Environmental Protection Act 1990 as being suitable for inclusion in the prospective code of agricultural law for Wales.

<sup>105</sup> Agricultural Holdings Act 1986; Agricultural Tenancies Act 1985.

<sup>106</sup> See the table of definitions as presented at Appendix 3 of this report.



- (3) The definition provided under section 4 of the Agriculture (Miscellaneous Provisions) Act 1976.<sup>107</sup>
- (4) The definition provided under section 6 of the Agricultural Statistics Act 1979. The 1979 Act definition of “agriculture” applies the definition provided for under the 1947 Act, save that the 1979 defines “livestock” in different terms to that used in the 1947 Act.
- (5) The definition provided under section 18 of the Agricultural Sector (Wales) Act 2014.
- (6) The definition provided under section 51 of the Agriculture (Wales) Act 2023.

Each of the above statutory definitions are listed in a table contained in Appendix 3 of this report.

5.116 The above statutory definitions each affect the scope of distinct legal rights, powers or obligations applicable in the agricultural context.<sup>108</sup> For example, the definition of “agriculture” under the Agriculture (Wales) Act 2023 determines, among other matters, the scope of the Welsh Ministers’ powers to provide support for or in connection with agriculture in Wales.<sup>109</sup>

5.117 The statutory definitions of “agriculture” as listed at paragraph 5.115 are contained in laws which collectively have been enacted over a period of more than 100 years. It is unsurprising therefore that “agriculture” is defined in different terms and that, in some cases, the statutory definitions use outdated language. By comparison, the definition of “agriculture” under the 2023 Act is stated to encompass both modern and traditional farming activities undertaken in Wales.<sup>110</sup>

5.118 The various differing definitions of “agriculture” present a series of related questions to be considered in the context of establishing the prospective Code.

- (1) Could the accessibility of agricultural law be improved by streamlining and replacing different statutory definitions of “agriculture” with a modernised definition, such as that provided for under section 51 of the 2023 Act?
- (2) Would replacing and streamlining existing statutory definitions of “agriculture” with a modernised definition change the effect of the law, for example, by altering the scope of legal rights, powers and obligations?

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<sup>107</sup> The definition of “agriculture” under s 4(5) of the Agriculture (Miscellaneous Provisions Act) 1976 applies to s 4 of that Act only.

<sup>108</sup> The table presented at Appendix 4 to this report provides a non-exhaustive list of rights and obligations which are informed by the different statutory definitions of agriculture.

<sup>109</sup> Agriculture (Wales) Act 2023 (asc 4), s 8.

<sup>110</sup> Explanatory Memorandum to the Agriculture (Wales) Bill, <https://www.gov.wales/sites/default/files/publications/2023-08/agriculture-wales-act-2023-explanatory-memorandum.pdf>, p 11.

- (3) To the extent that changing the definition of “agriculture” would alter the effect of the law, is it desirable from a policy perspective to retain different statutory definitions?
- (4) If there are sound policy reasons for retaining different statutory definitions of “agriculture”, could the language used across those differing definitions be modernised or harmonised to improve the accessibility of agricultural law?

### Exception for the definition of agriculture under the 1947 Act

5.119 We consider the questions outlined at paragraph 5.118 above, in the context of the legislation considered in this chapter only, subject to one important exception. We do not consider whether the statutory definition of “agriculture” as provided for under the Agriculture Act 1947 could, or ought to, be replaced by a modernised definition for all purposes. This is because the 1947 Act definition of “agriculture” is relevant to agricultural tenancy legislation, and there have been long-standing calls for a substantive review of the legal regime for agricultural tenancies.<sup>111</sup>

5.120 In September 2025, we announced our intention to commence a project to review the law governing agricultural tenancies. Our report on our 14th programme of work provides further context:

This project will consider whether the existing law properly balances giving tenant farmers sufficient security to encourage investment and maintain viable farm businesses, opportunities for new entrants to access farming opportunities, and the interests and confidence of landlords to let land. This project will also consider whether the law impedes tenant farmers from diversifying their businesses, including to farm in more sustainable ways; whether the law supports a collaborative approach between landlords and tenants; and whether there are technical issues which cause problems in practice. Detailed consideration of reform of the law in this important area is long overdue.<sup>112</sup>

5.121 Since agriculture is not a reserved matter, the project could include consideration of the law applicable in Wales. This is a matter which will need to be discussed in due course with the Welsh Government.<sup>113</sup> In Chapter 9, we conclude that agricultural tenancy legislation is, in principle, suitable for inclusion in the prospective Code. However, we also suggest, in Chapter 9, that consideration should be given to including it in any such code after any potential, forthcoming substantive reform to the area of law. For that reason, we do not consider in this report any amendments to provisions of the 1947 Act in so far as they form part of the law governing agricultural tenancies. We have adopted this position to avoid (potentially) pre-empting the outcome of our confirmed detailed review of agricultural tenancy law.

5.122 There are, however, examples where agricultural laws which do not directly concern the leasing of agricultural land apply the definition of “agriculture” as provided for under section 109(3) of the Agriculture Act 1947. The Agricultural Statistics Act 1979

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<sup>111</sup> See examples cited in Ch 9 of this report at paras 9.83 to 9.88.

<sup>112</sup> [Fourteenth Programme of Law Reform](#) (2025) Law Com No 421, p 13.

<sup>113</sup> For further discussion about our project on agricultural tenancies see Ch 9, para 9.87.

states that “agriculture” has the meaning provided for under section 109(3) of the 1947 Act.<sup>114</sup> The 1979 Act is not concerned with the regulation of agricultural tenancies. Rather, it concerns the collection of information for the purposes of compiling agricultural statistics.

- 5.123 If, for example, the Agricultural Statistics Act 1979 is included within the prospective code of agricultural law for Wales, then a new or amended definition of “agriculture” could (in theory) be applied to the restated provisions from the 1979 Act without amending the definition as provided for in the 1947 Act (in so far as that definition applies to legislation concerning agricultural tenancies). Rather than cross-referring to the 1947 Act definition, an Act of the Senedd forming part of the prospective Code could provide for its own definition of “agriculture” which applies to any restated provisions from the Agricultural Statistics Act 1979. Accordingly, we consider below those statutory definitions which apply the definition of “agriculture” as provided for under the 1947 Act, but which are contained in laws that do not directly concern or regulate the leasing of agricultural land.

**Could the accessibility of agricultural law be improved by streamlining, replacing older statutory definition with a modernised definition of agriculture?**

- 5.124 It is possible for an Act to include different definitions of the same term which each apply to distinct provisions. By way of example, the Highways Act 1980 provides for two different definitions of “agriculture” which each apply to different sets of provisions within the Act. An Act of the Senedd forming part of the prospective code of agricultural law for Wales could - in principle - restate the various different exhaustive and inclusive statutory definitions of “agriculture” as contained in existing agricultural legislation.
- 5.125 However, we have heard from stakeholders that the varying definitions of “agriculture” can create confusion as to the scope of certain agricultural laws.<sup>115</sup> The Senedd debate on the definition of “agriculture” in the (then) Agriculture (Wales) Bill further illustrates that the use of different expressions across different statutory definitions of “agriculture” can create uncertainty as to the scope of the law. For example, during the relevant debate the (then) Welsh Minister for Rural Affairs, Lesley Griffiths MS, was asked to confirm whether expressions such as “osier land” and “market gardens” - as used in older statutory definitions of “agriculture” - were encompassed by the new definition proposed in the Bill.<sup>116</sup>
- 5.126 We consider therefore that work to streamline, or otherwise modernise, the various different definitions of “agriculture” could – in principle – improve the accessibility of agricultural law. But, as we consider below, changes to statutory definitions of “agriculture” can affect the scope of important legal rights, powers and obligations provided for under agricultural legislation.

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<sup>114</sup> That is save to the extent that the Agricultural Statistics Act 1979 provides for a different definition of livestock to the one provided for under the Agriculture Act 1947.

<sup>115</sup> Agricultural Advisory Panel, “Minutes of meeting: 18 November 2024” (August 2025) <https://www.gov.wales/agricultural-advisory-panel-meeting-18-november-2024.html>.

<sup>116</sup> *Senedd Record of Proceedings*, 16 May 2023, 423 to 429.

Would replacing and streamlining existing statutory definitions of “agriculture” with a modernised definition change the effect of the law?

5.127 One fundamental difference between the definition of “agriculture” provided for under the 2023 Act and the other statutory definitions listed at paragraph 5.115 above is that the 2023 Act definition is exhaustive. This means that for the purposes of the 2023 Act “agriculture” encompasses only those activities and land uses listed in section 51(1).

5.128 The other statutory definitions of “agriculture” listed at paragraph 5.115 above are expressed in inclusive terms. Inclusive definitions of “agriculture” will include the activities and land uses listed in the relevant statutory definition but can, in principle, extend to other activities and land uses which are not expressly listed.

5.129 Notwithstanding the above, the courts have, in many instances, adopted what can be regarded as a restrictive approach to interpreting inclusive definitions of “agriculture” in other statutory contexts. As explained by Professor Christopher Rodgers in the context of agricultural tenancy legislation:

The courts have construed ‘inclusive’ definitions of agriculture in other statutory contexts, and have shown a distinct reluctance to extend its meaning and scope. So for example, in *Hemens v Whitsbury Farm and Stud Ltd.* the House of Lords ruled that inclusive definitions of agriculture must be construed in the agricultural context in which they occur, and by reference to those matters expressly admitted as to qualify as ‘agriculture’ by reference to the statutory definition.<sup>117</sup>

5.130 Similarly, in *Belmont Farming*, the court held, in the context of planning legislation, that the inclusive definition of “agriculture”, which expressly included the keeping and breeding of livestock, did not also extend to the keeping and breeding of horses (except for their use in farming of the land). In doing so, the court rejected an interpretation of the term “livestock” by reference to its wider dictionary definition.<sup>118</sup>

5.131 However, there are examples where the courts have found inclusive definitions of “agriculture” to include activities which may not be so obviously considered to fall within the general understanding of the term. In *Millington v Secretary for State*, the Court of Appeal held that the activity of wine-making on a farm fell within the definition of agriculture, for the purposes of planning legislation, in circumstances where the grapes used to produce the wine were grown on the farm.<sup>119</sup>

5.132 In any event, the definition in section 51 of the 2023 Act, while exhaustive, is broadly framed: defining “agriculture” by reference to a comprehensive list of agricultural activities and land uses. In addition, as outlined at paragraph 5.117 above, “agriculture” for the purposes of the 2023 Act is intended to encompass both modern and traditional farming practices in Wales. The scope for inclusive statutory definitions of “agriculture” to include activities or land uses falling outside of the exhaustive definition of “agriculture” under the 2023 Act may therefore be minimal in practice.

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<sup>117</sup> C Rodgers, *Agricultural Law* (4th ed 2016) para 3.21.

<sup>118</sup> *Belmont Farm v Minister of Housing and Local Government* (1962) 13 P & CR 417. In that case, the court held that the keeping and breeding of horses for showjumping was not considered “agricultural”.

<sup>119</sup> *Millington v Secretary of State for Environment, Transport and the Regions* [1999] 3 PLR 118.

- 5.133 However, there are examples where some of the inclusive statutory definitions of “agriculture” (as presented at paragraph 5.115 above) appear broader - at least in certain respects - than the exhaustive definition under the 2023 Act. For example, the statutory definition of “agriculture” under the Agricultural Statistics Act 1979 expressly includes “the use of meadow land”. During the passage of the Agriculture (Wales) Bill, the (then) Welsh Minister for Rural Affairs explained that the “use of land as meadow land” fell within the definition of “ancillary activities” as set out under section 52 of the 2023 Act,<sup>120</sup> rather than within the definition of “agriculture” under that Act.<sup>121</sup>
- 5.134 On the other hand, “agriculture” for the purposes of section 51 of the 2023 Act may be considered broader - in certain respects - than the inclusive statutory definitions presented at paragraph 5.115. For example, the inclusive definitions of “agriculture” in question do not expressly refer to the activity of “controlled environment agriculture” (as included in section 51(1)(g) of the 2023 Act).<sup>122</sup>
- 5.135 While inclusive definitions of agriculture could – in theory – include “controlled environment agriculture”, it is yet to be tested whether the courts would interpret those definitions in that manner. We also note that some of the inclusive definitions of “agriculture” listed in paragraph 5.115 do not expressly refer to the “farming of arable crops” - an activity listed in section 51(1) of the 2023 Act. However, as others have suggested (at least in the context of other statutory definitions), it may be considered obvious that an inclusive definition of “agriculture” would be interpreted to encompass the production of arable crops.<sup>123</sup>
- 5.136 In light of the above, we cannot rule out that replacing existing older definitions with a newer definition – such as that provided for under the 2023 Act – would not change the scope of an existing definition of “agriculture” and consequently affect important, existing legal rights, powers and obligations applicable in the agricultural context. Without consultation, it can be difficult to pre-empt what changes might flow from a change to a particular statutory definition of “agriculture”.
- 5.137 Relatedly, we also note that a definition of “agriculture” as provided for in one Act may then subsequently be applied and relied upon in the context of subsequent Acts.<sup>124</sup> Therefore, changing the statutory definition of “agriculture” in one Act could have consequential effects for other pieces of legislation that rely upon and apply that definition. This means that the legal rights and obligations which could be affected by a change to a statutory definition of “agriculture” could be wide-ranging.

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<sup>120</sup> Agriculture (Wales) Act 2023 (asc 4), 52.

<sup>121</sup> C Rodgers, *Agricultural Law* (4th ed 2016).

<sup>122</sup> Agriculture (Wales) Act 2023 (asc 4), s 51(2) defines controlled environment agriculture as “growing plants in a closed ecosystem permitting the management of environmental variables (including temperature, humidity, light and nutrients)”.

<sup>123</sup> In C Rodgers’ *Agricultural Law* (4th ed 2016) para 5.08, he suggests this activity would clearly fall within the scope of “agriculture” for the purposes of agricultural tenancy legislation.

<sup>124</sup> This will be the case where there are references in one piece of legislation to a definition of “agriculture” in another and that are ambulatory, and so track any changes that are subsequently made to that definition.

### Are there policy reasons for retaining different definitions of agriculture?

5.138 As above, we conclude that replacing older definitions with the 2023 Act definition has the potential to change the scope of important legal rights and obligations applicable in the agricultural context.

5.139 It will be necessary to consider whether it is desirable to retain older inclusive definitions which may differ in substance (at least some respects) to a modernised definition of “agriculture”, such as that provided for under section 51 of the 2023 Act.

5.140 Our work for this report does not involve making proposals for law reform which would involve changes agricultural policy. Nonetheless, we recognise that there may be sound policy reasons for retaining different statutory definitions of key terms in the agricultural context. For instance, the term “livestock” is commonly defined across agricultural legislation in terms that would include poultry.<sup>125</sup> In the context of the Animal Welfare (Livestock Exports) Act 2024, which imposes a ban on the export of livestock for slaughter, a policy decision was taken to exclude poultry from the definition of “livestock”. As explained by the (then) Minister for Farming, Fisheries and Food, Victoria Prentis MP, poultry are excluded from the scope of the ban on the grounds that:

there are no exports of poultry for slaughter or fattening from Great Britain to the EU. Poultry exports are either for breeding or other purposes not covered by the ban, such as exhibition. There have been no such exports of poultry for several years.<sup>126</sup>

If there are policy reasons for retaining different statutory definitions of “agriculture”, is there scope to improve the accessibility of agricultural law by harmonising or modernising the language used in those definitions?

5.141 Despite the varying statutory definitions of “agriculture”, there are certain activities and land uses which are expressly referred to in the majority of statutory definitions listed at paragraph 5.115 above. For example, the definitions of “agriculture” provided for under the Agricultural Statistics Act 1979, the Agricultural Sector (Wales) Act 2014 and the Agriculture (Wales) Act 2023 are all stated to include:

- (1) the keeping and breeding of livestock;<sup>127</sup>
- (2) use of land as grazing land;
- (3) dairy farming; and
- (4) horticulture.

5.142 There also certain activities or land uses which feature in the definition of “agriculture” of the 2023 Act, but which are expressed differently in older statutory definitions. For instance, the definition of “agriculture” under the Agricultural Statistics Act 1979 expressly includes “the use of land as osier land”. “Osier land” is not defined in 1979

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<sup>125</sup> Agriculture Act 1947, s 109(3); Agricultural Statistics Act 1979, s 6(1); Agriculture (Wales) Act 2023 (asc 4), s 51(2).

<sup>126</sup> *Hansard* (HC), 16 November 2021, vol 703, col 136.

<sup>127</sup> The term “livestock” is, however, defined differently across those Acts (see examples presented in Ch 4).

Act,<sup>128</sup> but osier willow are typically grown for their use in basket-making and other crafts. During a Senedd debate on the (then) Agriculture (Wales) Bill, the (then) Welsh Minister for Rural Affairs submitted that the term “use of osier land” was covered by other activities listed in the section 51 definition including:

- (1) using land as farm woodland or for agroforestry; and
- (2) otherwise growing plants for sale, or for the sale of part of a plant”.<sup>129</sup>

5.143 Similarly, the (then) Welsh Minister for Rural Affairs explained that the 2023 Act definition of “agriculture” is intended to include the use of land for “market gardens”. We have not identified a statutory definition of the term “market garden” which remains in force.<sup>130</sup> However, one dictionary definition describes a market garden as “a small farm where fruit and vegetables are grown for selling to the public”.<sup>131</sup> Consequently, it appears likely that “market gardens” would be covered by the activities of “horticulture” and “growing plants for sale, or for the sale of part of a plant”: see respectively section 51(1)(a) and (h) of the 2023 Act.

5.144 In addition, there may be instances where the scope of a statutory definition of “agriculture” could be made clearer, for example, to reflect established practice. The definition of “agriculture” provided for under the Agricultural Sector (Wales) Act 2014 determines which workers are classified as agricultural workers entitled to the agricultural minimum wage. The Welsh Government’s webpage on the agricultural minimum wage explains that:

all employed agricultural, horticultural and forestry workers in Wales, including workers employed by gang master and employment agencies, are entitled to at least the Agricultural Minimum Wage.<sup>132</sup>

5.145 We understand that horticultural workers have long been treated as entitled to the agricultural minimum wage (including in its previous form). For example, horticultural workers were entitled to the agricultural minimum wage when formerly provided for under the Agricultural Wages Act 1948.<sup>133</sup> However, “horticulture” is not expressly referred to in the inclusive definition of “agriculture” under the Agricultural Sector (Wales) Act 2014. It is - to an extent - covered by other activities listed in the 2014 Act definition, such as “the production of any consumable produce for the purposes of a

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<sup>128</sup> Nor is it defined within the Agriculture Act 1947 which is the origin of the definition of “agriculture” as provided for under the 1979 Act.

<sup>129</sup> Agriculture (Wales) Act 2023 (asc 4), s 51(1)(f) and (h).

<sup>130</sup> The now repealed Agricultural Holdings Act 1923, s 57 defined market garden as meaning “a holding cultivated, wholly or mainly, for the purpose of the trade or business of market gardening”. However, we consider this definition sheds no further light on the meaning of the term.

<sup>131</sup> The Cambridge Dictionary defines a “market garden” as “a small farm where fruit and vegetables are grown for selling to the public”.

<sup>132</sup> Welsh Government, “Agricultural wages: minimum rates of pay” (2025) <https://www.gov.wales/agricultural-wages-minimum-rates-pay>.

<sup>133</sup> Department for Environment, Food and Rural Affairs, *Consultation on the Future of the Agricultural Wages Board for England and Wales, and Agricultural Wages Committees and Agricultural Dwelling House Advisory Committees in England* (October 2012).



trade or business or any other undertaking”.<sup>134</sup> Nonetheless, we consider that the existing inclusive definition of “agriculture” under the 2014 Act could be made clearer. By way of example, we note that “horticulture” is listed in the definition of “agriculture” under the Agriculture (Wales) Act 2023.<sup>135</sup>

5.146 As outlined at paragraph 5.138 above, we recognise there may be valid policy reasons for retaining different statutory definitions of the term “agriculture” – including definitions expressed in inclusive terms and those in exhaustive terms. Even if differing inclusive and exhaustive statutory definitions of “agriculture” are retained in a prospective code of agricultural law for Wales, the examples outlined at paragraphs 5.127 to 5.137, indicate that there is scope to harmonise, clarify and modernise (at least some of) the language used across those definitions. To guide any further considerations on this issue, we present in table 2 of Appendix 3 a summary of our analysis on the extent to which the differing statutory definitions listed at paragraph 5.115 appear to either overlap or differ.

### **Sections 98 and 99 of the Agriculture Act 1947**

5.147 At paragraphs 5.63 to 5.75 above, we conclude that the arguments for and against including sections 98 and 99 of the 1947 Act in a prospective code of agricultural law for Wales are finely balanced. In that respect, we note that our report on wildlife law, as published in 2015, proposed that sections 98 and 99 were suitable for inclusion in an exercise to consolidate wildlife legislation.<sup>136</sup>

5.148 Regardless of whether sections 98 and 99 are included in the prospective Code, or alternatively in any possible future exercise to consolidate wildlife law, we suggest that consideration is given to relevant recommendations made in our wildlife law report. Specifically, in that report we make detailed recommendations for amendments to sections 98 and 99 of the 1947 Act which are aimed at modernising, clarifying, and improving the accessibility of the powers provided for under those provisions.<sup>137</sup> A number of recommendations also concern matters of procedural fairness.<sup>138</sup>

5.149 We highlight the relevant recommendations as issues requiring further consideration if a decision is taken to include sections 98 and 99 of the 1947 Act in a prospective code of agricultural law for Wales.

### **TECHNICAL ISSUES**

5.150 The consolidation of legislation into an Act of the Senedd forming part of the prospective Code presents an opportunity to introduce technical changes to the law

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<sup>134</sup> Agricultural Sector (Wales) Act 2014 (anaw 6), s 18.

<sup>135</sup> We acknowledge however that any amendment to this definition would require careful consideration, for example, as to whether any such change could alter the scope of the entitlement to the agricultural minimum wage. If so, consideration would need to be given to whether consultation would be appropriate. The potential for the amendment to affect other laws would also require analysis.

<sup>136</sup> [Wildlife Law Volume 1](#): Report (2015) Law Com No 362.

<sup>137</sup> [Wildlife Law Volume 1](#): Report (2015) Law Com No 362, recommendations 219 to 236.

<sup>138</sup> For example, we recommend that the substantive powers provided for under ss 98 and 99 of the Agriculture Act 1947 be accompanied by express proportionality and reasons requirements (recommendation 221).



aimed at clarification, simplification or modernisation of the law. We set out examples of the types of technical issues which may be engaged in such an exercise.

### **Agricultural Statistics Act 1979: simplifying and modernising requirements for service**

- 5.151 The 1979 Act empowers the Welsh Ministers to require owners or occupiers of agricultural land in Wales to provide them with specified information for the purposes of obtaining statistical information relating to agriculture. Under the 1979 Act, the Welsh Ministers must first notify owners or occupiers of agricultural land of any requirement to provide specified information under the Act and section 5 sets out what amounts to valid service of such a notice. For ease of reference, we refer to these notices as “agricultural statistics notices”. The requirements imposed under section 5 relating to the service of agricultural statistics notices are prescriptive and potentially outdated.
- 5.152 Section 5(1) of the 1979 Act provides that an agricultural statistics notice will be considered duly served if delivered to the relevant owner or occupier, left at their proper address or sent to them by post in a registered letter. As outlined at paragraph 5.37 above, the powers provided for under the 1979 Act are relied upon in practice by the Welsh Ministers to undertake the annual agricultural and horticultural survey. We understand that, in practice, a notice requiring completion of the annual agricultural and horticultural survey in Wales may be either delivered by post or communicated by electronic means.<sup>139</sup>
- 5.153 In order to reflect current practice, we consider that the service requirements imposed under section 5 of the 1979 Act could be modernised to provide expressly for electronic service. In that respect we consider that provision made under section 398 of the Planning (Wales) Bill presents a useful model. Section 398 allows for the electronic service of certain notices under the Bill and provides for procedural safeguards relating to such service.
- 5.154 Section 5 of the 1979 Act also makes provision for the service of agricultural statistics notices on owners and occupiers of the land where the name or address of the occupier or owner cannot be ascertained. In such circumstances, the 1979 Act provides that notices can instead be served by addressing the notice to either the owner or occupier of the land and delivering the notice to some responsible person on the land, or by affixing the notice, or a copy of, it to some “conspicuous object on the land”.
- 5.155 However, we anticipate there may be some circumstances where a person delivering the notice is unable to enter land, or alternatively to find a conspicuous object on that land to which a notice could be affixed. In such circumstances, we think provision could be made to allow for the display of an agricultural statistics notice on a prominent place located as near as reasonably practicable to the land to which the notice relates. Any such addition would mirror the new provisions for the service of

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<sup>139</sup> In Wales, we understand that a notice to complete the annual agricultural and horticultural survey could, for example, be communicated via the Welsh Government’s online platform Rural Payments Wales. In England, notice to complete the equivalent survey may be delivered by post or communicated by email: Department for Environment, Food and Rural Affairs, “June survey of agriculture and horticulture” <https://www.gov.uk/agricultural-survey>.

temporary stop notices or stop notices by planning authorities as proposed respectively under sections 120(4) and 147(7) of the Planning (Wales) Bill. We note that the changes proposed to the service of temporary stop notice and notices intended to clarify the effect of existing practice and are introduced “on the basis that legislation is not interpreted as requiring the impossible or absurd”.<sup>140</sup> Similarly, it may therefore be desirable to consider the existing practice for serving agricultural statistics notices in circumstances where the name or address of the owner is unknown.

- 5.156 Finally, section 5 of the 1979 Act makes prescriptive provision for the service of agricultural statistics notices in circumstances where agricultural land is vested in the Church of England.<sup>141</sup> It may be that this level of technical detail could be appropriately dealt with in secondary legislation or by way of guidance.<sup>142</sup>

## CONCLUSION

- 5.157 In this chapter, we examine a complex maze of statutory provisions that are sprawled across 20 pieces of primary legislation dating back in some cases to the nineteenth century. The laws in question comprise Acts of the Senedd, Measures of the National Assembly for Wales and Acts of the UK Parliament, many of which have been subject to substantial amendment and repeal. Trawling through this legislation to identify the full range of statutory functions available to the Welsh Ministers in relation to agriculture is a challenging task for experienced legal professionals to undertake. For lay members of the public, it is near impenetrable.

- 5.158 Through our review of the laws in question, we have identified legislative provisions contained in at least five Acts that we consider suitable for inclusion in the prospective code of agricultural law for Wales. We have further identified legislative provisions spread across an additional seven pieces of primary legislation that we provisionally consider suitable for inclusion in the prospective Code. In addition, we have identified a host of statutory provisions that appear potentially suitable for repeal. We raise the potential repeal of such provisions as a technical issue for further consideration, on the grounds that repeal of redundant or obsolete provisions can serve to declutter the legislative framework governing agriculture in Wales.

- 5.159 The statutory provisions we have identified as being suitable, or provisionally suitable, for inclusion in the prospective code of agricultural law for Wales are those which primarily provide the Welsh Ministers, or other statutory bodies, with powers to support or regulate agriculture in Wales. Taken together, we consider that these provisions form part of the core statutory framework for agricultural policy

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<sup>140</sup> Office of the Legislative Counsel, “Drafters’ Notes for the Planning (Wales) Bill” (September 2025) <https://laiddocuments.senedd.wales/pri-ld17396-em-d1-en.pdf>, 63.

<sup>141</sup> The Church of England owns land in England and Wales. Their estate portfolio includes land used agriculture, forestry, delivering housing and commercial spaces, and renewable energy production: The Church of England, “Real assets” <https://www.churchofengland.org/about/governance/national-church-institutions/church-commissioners-england/how-we-invest/real-assets>.

<sup>142</sup> For example, in [Wildlife Law Volume 1: Report](#) (2015) Law Com No 362, we concluded that the service requirements for notices under ss 98 and 99 of the Agriculture Act 1947 were unnecessarily prescriptive. The section in the draft Bill accompanying our report did not restate provision made in these sections for service requirements for notices relating to Church of England land.

development and devolved decision-making in Wales. Consolidating these statutory provisions in an Act of the Senedd that forms part of the prospective code of agricultural law for Wales therefore has the potential to support lawful, agile policy development and decision-making affecting agriculture in Wales.

- 5.160 Importantly, consolidation and codification of these statutory provisions can further help members of the public to understand the scope of the Welsh Government's powers and responsibilities in relation to agriculture. In this respect, the development of the prospective code of agricultural law for Wales will ensure that individuals can more easily access the law affecting agriculture in Wales. It will also support individuals to more easily identify the statutory basis for decisions or actions taken by the Welsh Government that affect agriculture in Wales.

# Chapter 6: Laws concerning the environment, natural resources and the conservation of wildlife and nature

## INTRODUCTION

- 6.1 The agricultural sector has a deep, enduring connection to the environment of Wales. With approximately 90% of land in Wales being used for agriculture, farmers are often described as custodians of the Welsh countryside.<sup>1</sup> Additionally, natural resources such as land, soil and water are integral to agricultural production. Furthermore, agricultural land use can have both positive and negative consequences for the environment and wildlife. As a result, there exists a “considerable body of environmental legislation affecting modern agriculture”.<sup>2</sup>
- 6.2 This chapter concerns the laws, as applicable, in Wales which regulate, or otherwise significantly affect, agricultural activity, or agricultural land use, for the purposes of:
- (1) nature and wildlife conservation;
  - (2) the protection and management of natural resources; and
  - (3) the protection of the environment.
- 6.3 In this chapter we examine whether legislation falling within the above categories belongs within the prospective code of agricultural law for Wales by applying our criteria for inclusion as set out in Chapter 3 (see paragraphs 3.34 to 3.53). We also evaluate whether the legislation in question engages issues which may require further analysis or consideration in the context of establishing the prospective Code. For example, we highlight where there are calls for substantive reform of the legislation falling within the scope of this chapter. Lastly, we evaluate whether there are any technical issues with the legislation examined in this chapter which may benefit from or require amendments aimed at simplifying, modernising or streamlining the law.

### Laws outside of the scope of this chapter

- 6.4 There are certain laws falling within the description provided at paragraph 6.2, that are separately considered in other chapters of this report.
- (1) Chapter 2 considers the relationship between the sustainable land management objectives imposed under the Agriculture (Wales) Act 2023 and provisions of the Environment (Wales) Act 2016.

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<sup>1</sup> Welsh Government, “Survey of agriculture and horticulture” (June 2025) <https://www.gov.wales/survey-agriculture-and-horticulture-june-2025-html>.

<sup>2</sup> C Rodgers, *Agricultural Law* (4th ed 2016) para 1.02.

- (2) Chapter 8 considers forestry law and the law on the protection of hedgerows.
- (3) Chapter 9 considers aspects of town and country planning legislation.
- (4) Chapter 10 considers the laws on pesticides and fertilisers.

## CONSIDERATION OF LEGISLATION

6.5 In this section, we apply our criteria for inclusion to the legislation falling within the description at paragraph 6.2 above.

### Water Resources Act 1991

- 6.6 The Water Resources Act 1991 (“the 1991 Act”) regulates matters including water quality, water pollution and the management of water as a natural resource. It also makes provision for flood defence.
- 6.7 Paragraphs 6.8 to 6.38 consider the key provisions within the 1991 Act, and relevant secondary legislation made under the Act, which regulate or otherwise significantly affect agriculture in Wales.

#### Section 92 of the 1991 Act

- 6.8 Under section 92 of the 1991 Act, the Welsh Ministers have powers, exercisable in relation to Wales, to issue regulations aimed at preventing the pollution of controlled waters.<sup>3</sup> Regulations made under section 92 of the 1991 Act may prohibit a person from having custody or control or making use of poisonous, noxious or polluting matters unless prescribed precautions, work or other steps have been undertaken.
- 6.9 In broad terms, controlled waters include relevant territorial waters, coastal waters, inland freshwaters (such as lakes, ponds and rivers)<sup>4</sup> and ground waters (any waters contained in underground strata).<sup>5</sup>
- 6.10 Two sets of regulations enacted under section 92 of the 1991 Act apply in Wales.
  - (1) The Water Resources Control of Pollution (Oil Storage) (Wales) Regulations 2016 (“the Oil Storage Regulations 2016”).
  - (2) The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (“the CoAP Regulations 2021”).

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<sup>3</sup> The powers under s 92 of the 1991 Act have been transferred to the Welsh Ministers, so far as exercisable in relation to Wales, by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006. The functions under s 92 are exercisable by the Welsh Ministers in relation to those parts of Wales which fall outside the catchment areas of the rivers Dee, Wye and Severn. To the extent that those catchment areas fall within Wales, the functions under s 92 are exercisable by the Welsh Ministers concurrently with the Secretary of State.

<sup>4</sup> See definition in the Water Resources Act 1991, s 104(2)(c).

<sup>5</sup> The terms referenced in para 6.9 of this chapter are defined in the Water Resources Act 1991, s 104.

## Water Resources Control of Pollution (Oil Storage) (Wales) Regulations 2016

- 6.11 The Oil Storage Regulations 2016 impose requirements relating to the storage of oil for the purposes of preventing or reducing the risk of pollution. “Oil” is broadly defined for the purposes of the regulations and includes “petrol, diesel, kerosene, lubricating oil (both mineral and synthetic), waste oil, vegetable and plant oil”.<sup>6</sup>
- 6.12 The storage requirements imposed under the Oil Storage Regulations 2016 do not apply to oil storage containers situated wholly underground, unless the container is situated in a building. Furthermore, the storage requirements in question only apply where oil is stored in a container with a capacity exceeding 200 litres.<sup>7</sup>

## Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021

- 6.13 The CoAP Regulations 2021 aim to prevent or reduce the risk of pollution by setting rules for certain farming practices. Specifically, the regulations impose controls on the use, application and storage of silage,<sup>8</sup> slurry,<sup>9</sup> organic manure<sup>10</sup> and nitrogen fertilisers.<sup>11</sup> Natural Resources Wales (“NRW”) is the enforcement body for the regulations.<sup>12</sup>
- 6.14 It is the occupiers of holdings who are responsible for complying with the CoAP Regulations 2021.<sup>13</sup> There are also restrictions imposed under the regulations which apply to any person who applies, spreads or makes use of slurry, silage, organic manure and certain fertilisers.
- 6.15 The CoAP Regulations 2021 make provision for the matters outlined below.
- (1) Storage standards applicable to the storage of organic manure, slurry and silage.
  - (2) Restrictions on when, where and how fertilisers, organic manure and slurry are spread.

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<sup>6</sup> Welsh Government, *Keeping your oil storage safe: Guidance on the Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016* (March 2016) p 3.

<sup>7</sup> Water Resources Control of Pollution (Oil Storage) (Wales) Regulations 2016, SI 2016/359 (W 112), reg 3.

<sup>8</sup> Silage comprises fermented grass, or other green fodder, which is used as animal feed.

<sup>9</sup> Slurry is a liquid or semi-liquid substance of a specified consistency which is made up of livestock excrement, in some cases mixed with materials from livestock bedding and water, which is used in the agricultural sector as a natural fertiliser.

<sup>10</sup> Organic manure includes any nitrogen fertiliser or phosphate fertiliser derived from animal, plant or human sources.

<sup>11</sup> Nitrogen fertilisers are any substances containing one or more nitrogen compounds which are used to enhance the growth of vegetation.

<sup>12</sup> Welsh Government, *The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021: Guidance for Farmers and Land Managers* (updated October 2023).

<sup>13</sup> A holding is any land and its associated buildings that are at the disposal of the occupier, and which are used for the growing of crops in soil or rearing of livestock for agricultural purposes. See the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021, SI 2021/77 (W 20), reg 3.

- (3) Limits on the annual amount of nitrogen, from fertilisers and organic manure, which can be applied to land.
- (4) Requirements to produce risk maps aimed at reducing the risk of water pollution.
- (5) Requirements to undertake field inspections aimed at reducing the risk of water pollution.
- (6) Record keeping requirements.

6.16 The CoAP Regulations 2021 revoke both the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010 and the Nitrate Pollution Prevention (Wales) Regulations 2013.<sup>14</sup>

#### Section 92 of the 1991 Act, the Oil Storage Regulations 2016 and the CoAP Regulations: criteria for inclusion

- 6.17 Section 92 of the 1991 Act provides the Welsh Ministers with powers to make regulations aimed at preventing or reducing the risk of water pollution from poisonous, noxious or other polluting matters. We consider that section 92 of the 1991 Act is concerned with the subject matter of the environment and water pollution. Furthermore, section 92 of the 1991 Act empowers the Welsh Ministers to issue regulations aimed at reducing the risk of water pollution in any context. Therefore, we consider that the practical application of the powers provided for under section 92 of the 1991 Act is not limited to, or primarily concerned with, agriculture.
- 6.18 As outlined above, the Oil Storage Regulations 2016 are made under section 92 of the 1991 Act. Welsh Government guidance on safe oil storage states that the regulations “aim to reduce the numbers of oil-related water pollution incidents and to meet the objectives of the Welsh Government’s Water Strategy for Wales”.<sup>15</sup>
- 6.19 The Oil Storage Regulations 2016 apply to any person in custody or control of oil stored in a container or facility meeting the specifications prescribed in regulation 3. Farmers who store oil in containers or facilities which meet those specifications will therefore need to comply with the regulations.
- 6.20 However, the practical application of the Oil Storage Regulations 2016 is significantly wider than agriculture. The range of sectors, businesses and premises which may need to comply with the regulations includes industrial businesses, commercial businesses, schools, hospitals, public sector buildings, nursing homes and domestic properties.<sup>16</sup> For the above reasons, we consider that the Oil Storage Regulations 2016 are unsuitable for inclusion in the prospective code of agricultural law for Wales.

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<sup>14</sup> SI 2010/1493 (W 136); SI 2013/2506 (W 245).

<sup>15</sup> Welsh Government, *Keeping your oil storage safe: Guidance on the Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016* (March 2016) p 2.

<sup>16</sup> Welsh Government, *Keeping your oil storage safe: Guidance on the Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016* (March 2016) p 3.

6.21 The CoAP Regulations 2021 regulate the use and storage of certain fertilisers, slurry and silage in the agricultural context. Fertilisers, slurry and organic manure are all substances used to enhance the growth of crops and other vegetation. Silage is used as feed for livestock. The Welsh Government’s guidance on the CoAP Regulations 2021 state that the regulations “have been introduced to reduce losses of pollutants from agriculture to the environment by setting rules for certain farming practices”.<sup>17</sup> We consider therefore that the CoAP Regulations 2021 concern both the subjects of agriculture and the environment.

6.22 Although the CoAP Regulations 2021 concern but extend beyond the subject matter of agriculture, we do not consider this to act as a barrier to their inclusion in the prospective code of agricultural law for Wales. Indeed, it is commonplace for legislation to concern multiple subjects, particularly in the agricultural context.

6.23 The Welsh Government has described regulation of the agricultural sector as being necessary “to protect the environment”.<sup>18</sup> Similarly, the Department for Environment, Food and Rural Affairs (“Defra”) describes one of the aims of agricultural regulation as being to “safeguard our environment”.<sup>19</sup> A relatively recent independent review of agricultural regulation in England, chaired by Dame Glenys Stacey, also concluded that:

government has traditionally regulated farms to prevent harm (and deal with harms when they happen); to maintain and promote the environment, plant and animal health and animal welfare, and to facilitate trade.<sup>20</sup>

The same review further described one of the functions of agricultural regulation as being to “[s]ecure, maintain and enhance good management of farmed land and the natural environment”.<sup>21</sup>

6.24 Where a specific law concerns multiple subject matters, including agriculture, then the second stage of our criteria for inclusion can guide our determination as to whether the legislation is nonetheless suitable for inclusion in the prospective Code. The CoAP Regulations 2021 apply to occupiers of land that is used to grow crops or rear livestock for agricultural purposes. The CoAP Regulations 2021 also apply to persons who have control custody, or make use of, silage, slurry, organic manure and fertilisers: all of which are substances used in the agricultural context. Applying the second stage of our criteria for inclusion, we therefore conclude that the practical application of the CoAP Regulations 2021 is limited to, or primarily concerned, with agriculture.

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<sup>17</sup> Welsh Government, *The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021: Guidance for Farmers and Land Managers* (2021) p 6.

<sup>18</sup> Welsh Government, “Written Statement: Farming in Wales” (February 2024) <https://www.gov.wales/written-statement-farming-wales>.

<sup>19</sup> Department for Environment, Food and Rural Affairs, “Understanding and improving farming regulation” (March 2022) <https://defrafarming.blog.gov.uk/2022/03/02/understanding-and-improving-farming-regulation/>.

<sup>20</sup> Farm Inspection and Regulation Review, *Interim report* (July 2018) p 11.

<sup>21</sup> Farm Inspection and Regulation Review, *Final report* (December 2018) p 19.



- 6.25 For these reasons we consider that the CoAP Regulations 2021 are suitable for inclusion in the prospective Code. We have, however, concluded that section 92 of the 1991 Act and the Oil Storage Regulations 2016 do not satisfy our criteria for inclusion.
- 6.26 As considered above, section 92 of the 1991 Act provides the Welsh Ministers with the powers relied upon to make the CoAP Regulations 2021. Primary legislative provisions which provide Welsh Ministers with powers to make secondary legislation are commonly referred to as primary enabling powers. We consider further at paragraphs 6.130 to 6.132 below the issue of including secondary legislation in the prospective Code in circumstances where the corresponding primary enabling powers are excluded.

#### Section 97 of the 1991 Act: code of good agricultural practice

- 6.27 Under section 97 of the 1991 Act, the Welsh Ministers may approve codes of practice issued for the purposes of:
- (1) giving practical guidance to persons engaged in agriculture with respect to activities that might affect controlled waters; and
  - (2) promoting desirable practices by such persons for avoiding or minimising the pollution of controlled waters.<sup>22</sup>
- 6.28 The current code of practice for Wales as approved under section 97 of the 1991 Act is the Code of Good Agricultural Practice for Wales.<sup>23</sup> Part 2 of this code concerns water pollution and is the part of the code issued and approved under section 97 of the 1991 Act.<sup>24</sup>

#### Section 97 of the 1991 Act: criteria for inclusion

- 6.29 Section 97 of the 1991 Act empowers the Welsh Ministers to provide practical guidance - in the form of a statutory code of practice - on measures and practices for reducing the risk of water pollution in the agricultural context. We therefore consider that section 97 of the 1991 Act is concerned with both agriculture and the environment. Applying the same analysis as outlined at paragraphs 6.23 to 6.25 above, we conclude that section 97 of the 1991 Act satisfies our first criterion notwithstanding the fact the provision concerns both the subjects of agriculture and the environment.
- 6.30 With regards to our second criterion, the scope of the Welsh Ministers' powers under section 97 is limited to providing or approving practical guidance on reducing water pollution in the agricultural context only. Therefore, section 97 of the 1991 Act satisfies our criteria for inclusion. Our report has not involved examination of the code of good agricultural practice that is issued in exercise of powers provided for under section 97. However, as we discuss in Chapter 1, a code of Welsh law can include relevant

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<sup>22</sup> The powers under s 97 of the Water Resources Act 1991 were transferred to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>23</sup> Welsh Government, *Code of good agricultural practice* (April 2011) <https://www.gov.wales/code-good-agricultural-practice>.

<sup>24</sup> Water Resources Act 1991, s 93(1A).

guidance. Therefore, we consider that the prospective code of agricultural law for Wales could, in principle, include the code of good agricultural practice.

## Chapter 2 of Part 2 of the 1991 Act: the water abstraction regime

- 6.31 Chapter 2 of Part 2 of the 1991 Act, as amended by the Water Act 2003, makes provision for a water abstraction licensing regime. Abstraction is the process of extracting water from underground or surface level water sources, such as rivers, streams and canals.
- 6.32 It is an offence to abstract water, or to cause or permit any other person to abstract water, from an underground or surface level water sources without a licence, unless exceptions or exemptions apply.<sup>25</sup> NRW is the enforcement body for the abstraction licensing regime in Wales.<sup>26</sup>
- 6.33 It is common for farmers to abstract water from boreholes as a cost-effective alternative to the mains supply.<sup>27</sup> Boreholes are narrow shafts bored or drilled into the ground in order to extract underground water. Prior to 2018, there were a number of exemptions to the abstraction licensing regime, some of which will have been relied upon by farmers in Wales. From 1 January 2018, most exemptions have, however, been removed.<sup>28</sup>

## Chapter 2 of Part 2 of the 1991 Act (water abstraction regime): criteria for inclusion

- 6.34 The authors of *Environmental Law* describe the abstraction licensing regime in the following terms:

Abstraction licences issued by the [Environment Agency] and NRW limit the amount of water that water companies, as well as industrial and agricultural users, can take out of the environment. Abstraction licenses thus ensure that there is sufficient water left in the natural environment which can contribute to diluting pollutants in water courses, and thus maintain water quality.<sup>29</sup>

- 6.35 The following extract from a consultation issued jointly by the Welsh Government and Defra on water abstraction provides further insight into the aim of the regime:

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<sup>25</sup> Water Resources Act 1991, s 24.

<sup>26</sup> The Agriculture and Horticulture Development Board, “Water regulations for farmers” <https://ahdb.org.uk/knowledge-library/water-regulations-for-farmers>.

<sup>27</sup> The Agriculture and Horticulture Development Board, “Water regulations for farmers” <https://ahdb.org.uk/knowledge-library/water-regulations-for-farmers>.

<sup>28</sup> Natural Resources Wales, “Water available in our catchments” (last updated 2024) <https://naturalresources.wales/about-us/what-we-do/our-roles-and-responsibilities/water/water-available-in-our-catchments/?lang=en#:~:text=From%201%20January%202018%2C%20most%20abstraction%20exemptions%20%28if,legally%20abstracting%20water.%20Catchment%20Abstraction%20Management%20Strategies%20%28CAMS%29>.

<sup>29</sup> E Fisher, B Lane and E Scotford, *Environmental Law: Text, Cases and Materials* (2nd ed 2019) para 15.3.2.1.

Abstraction can significantly affect both water flow and level, with impacts on the water body and the environment it supports. This is why most abstractions are licensed.<sup>30</sup>

- 6.36 In consideration of the sources above, we conclude that the abstraction licensing regime is not concerned with the subject of agriculture. The requirement to obtain a licence to abstract water applies to anyone, unless specified exceptions or exemptions apply. Therefore, the practical application of the abstraction license regime is not limited to, or primarily concerned with, agriculture.
- 6.37 For the above reasons, we consider that the legislation providing for the abstraction licensing regime, as contained in Part 2 of the 1991 Act, is unsuitable for inclusion in the prospective Code.

### Sludge (Use in Agriculture) Regulations 1989

- 6.38 Sludge can improve soil quality and provide certain chemical elements that most crops need to grow. However, sludge contains potentially toxic elements that pose risks to the health of plants, animals and people.<sup>31</sup> The Sludge (Use in Agriculture) Regulations 1989 (“the 1989 Regulations”), which apply to England and Wales, restrict the use of sludge on agricultural land unless certain safety requirements are met.<sup>32</sup>
- 6.39 The 1989 Regulations impose requirements on both sludge producers and farmers. By way of example, sludge may only be used on agricultural land provided that:
- (1) the pH level of the sludge has been tested and falls below set limits; and
  - (2) no fruit or vegetable crops (other than fruit trees) are growing or being harvested on the land at the time of use.

### Sludge (Use in Agriculture) Regulations 1989: criteria for inclusion

- 6.40 In recent years there have been both policy proposals and calls to bring the regulation of sludge within the scope of the environmental permitting regime as provided for under the Environmental Permitting (England and Wales) Regulations 2016 (discussed further at paragraph 6.43). In its strategy for safe and sustainable sludge use, the Environment Agency proposes that the regulation of sludge use is brought within the scope of the Environmental Permitting (England and Wales) Regulations

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<sup>30</sup> The Welsh Government and the Department for Environment, Food and Rural Affairs, *Changes to water abstraction licensing exemptions: Government response to the 2009 consultation* (January 2016) [https://consult.defra.gov.uk/water/water-abstraction-licensing-exemptions/supporting\\_documents/Consultation%20Document%20%20New%20Authorisations.pdf](https://consult.defra.gov.uk/water/water-abstraction-licensing-exemptions/supporting_documents/Consultation%20Document%20%20New%20Authorisations.pdf).

<sup>31</sup> Department for Environment, Food and Rural Affairs, *Sewage sludge in agriculture: code of practice for England, Wales and Northern Ireland* (May 2018) <https://www.gov.uk/government/publications/sewage-sludge-in-agriculture-code-of-practice/sewage-sludge-in-agriculture-code-of-practice-for-england-wales-and-northern-ireland>, para 1.2.

<sup>32</sup> SI 1989/1263. The Regulations were enacted by the Secretary of State for the Environment in respect of England, the Secretary of State for Wales in respect of Wales and the Secretary of State for Scotland in respect of Scotland, in exercise of powers conferred on them by the European Communities Act 1972, s 2(2).

2016.<sup>33</sup> Similarly, the report of the Independent Water Commission, published in 2025, recommends that sludge use should be made subject to the environmental permitting regime.<sup>34</sup> The timescale for implementation of proposals made by the Environment Agency on this matter were the subject of a judicial review challenge in 2024.<sup>35</sup>

- 6.41 At paragraphs 6.42 to 6.55 below, we consider the environmental permitting regime and conclude that the relevant regulations are unsuitable for inclusion in the prospective Code. Consequently, we consider that the suitability of the 1989 Regulations for inclusion in the prospective Code is dependent on a decision as to whether the subject matter of those Regulations is to be brought within the environmental permitting regime.<sup>36</sup>

### **Environmental Permitting (England and Wales) Regulations 2016**

- 6.42 The Environmental Permitting (England and Wales) Regulations 2016 (“the EPR 2016”) regulate certain facilities which could harm the environment or human health.<sup>37</sup>

- 6.43 A person must not operate a regulated facility except under, and to the extent authorised by, an environmental permit.<sup>38</sup>

- 6.44 NRW is the primary relevant enforcement body in Wales for the environmental permitting regime. However, local authorities in Wales are responsible for licensing and enforcing permits for a limited number of regulated facilities.

- 6.45 There are 12 classes of regulated facilities under the EPR 2016.<sup>39</sup> This chapter considers only those classes which we consider to be most relevant to agriculture:

- (1) installations where the activity of intensive pig and poultry farming is undertaken;
- (2) water discharge activities; and
- (3) waste management operations.

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<sup>33</sup> Environment Agency, *Environment Agency strategy for safe and sustainable sludge use* (March 2020) <https://www.gov.uk/government/publications/environment-agency-strategy-for-safe-and-sustainable-sludge-use/environment-agency-strategy-for-safe-and-sustainable-sludge-use#contents>.

<sup>34</sup> Independent Water Commission, *Final Report* (July 2025) [https://assets.publishing.service.gov.uk/media/687dfcc4312ee8a5f0806be6/Independent\\_Water\\_Commission\\_-\\_Final\\_Report\\_-\\_21\\_July.pdf](https://assets.publishing.service.gov.uk/media/687dfcc4312ee8a5f0806be6/Independent_Water_Commission_-_Final_Report_-_21_July.pdf), para 542.

<sup>35</sup> *R (Fighting Dirty Limited) v Environment Agency and Secretary of State for Environment, Food and Rural Affairs* [2024] EWHC 2029 (Admin).

<sup>36</sup> At paragraphs 8.52 to 8.54 below, we conclude that the legislation providing for the environmental permitting regime (the Environmental Permitting (England and Wales) Regulations 2016) is unsuitable for inclusion in the Code.

<sup>37</sup> As enacted by the UK Ministers and the Welsh Ministers acting jointly.

<sup>38</sup> Environmental Permitting (England and Wales) Regulations 2016, SI 2016/1154, reg 12.

<sup>39</sup> As set out in the Environmental Permitting (England and Wales) Regulations 2016, SI 2016/1154, regs 8(1)(a) to (l).

## EPR 2016: intensive pig and poultry farming

- 6.46 An environmental permit is required for intensive pig or poultry farming.<sup>40</sup> The requirement only applies, however, where the number of pigs, sows or poultry farmed in the installation exceeds specified thresholds.<sup>41</sup>

## EPR 2016: water discharge activities

- 6.47 An environmental permit is required for any water discharge activity and for any ground water activity. A water discharge activity includes, but is not limited to, the entry or discharge into inland freshwaters, coastal waters or territorial waters of any:
- (1) poisonous, noxious or polluting matter;
  - (2) waste matter; or
  - (3) trade effluent or sewage effluent.<sup>42</sup>
- 6.48 There are certain discharges which will not be classified as a water discharge activity for the purposes of the EPR 2016. For example, any discharge that is authorised by or under any statutory provision.<sup>43</sup>
- 6.49 Trade effluent is defined as any effluent discharged from trade or industrial premises and any premises wholly or mainly used for agricultural purposes or for the purposes of fish farming.<sup>44</sup> A farmer would therefore require an environmental permit in order to make a discharge into specified waters of certain agricultural wastes, such as slurry, and other liquid substances with noxious or polluting impact such as fuel oil.<sup>45</sup>
- 6.50 "Groundwater" means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil.<sup>46</sup> A groundwater activity is defined in technical detail in the EPR 2016. In broad terms, a groundwater activity involves indirect or direct discharge of a pollutant that results in or might lead to an input of that pollutant into groundwater.<sup>47</sup>

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<sup>40</sup> An environmental permit is required for "installations" which are defined as stationary technical units where one or more specified activities are carried on. The activity of intensive pig or poultry farming is a specified activity where certain thresholds are met.

<sup>41</sup> The relevant thresholds are prescribed in the Environmental Permitting (England and Wales) Regulations 2016, SI 2016/1154, Part 2 to Sch 1.

<sup>42</sup> Environmental Permitting (England and Wales) Regulations 2016, SI 2016/1154, Sch 21, para 3.

<sup>43</sup> Environmental Permitting (England and Wales) Regulations 2016, SI 2016/1154, Sch 21, para 3.

<sup>44</sup> Environmental Permitting (England and Wales) Regulations 2016, SI 2016/1154, reg 2; Water Resources Act 1991, s 221.

<sup>45</sup> C Rodgers, *Agricultural Law* (4th ed 2016) para 14.14.

<sup>46</sup> Environmental Permitting (England and Wales) Regulations 2016, SI 2016/1154, reg 2.

<sup>47</sup> The full definition of a groundwater activity is provided for under para 3 of Sch 22 to the Environmental Permitting (England and Wales) Regulations 2016, SI 2016/1154.

## EPR 2016: waste operations

- 6.51 An environmental permit is required for waste operations. “A waste operation” is any operation involving the disposal or recovery of waste.<sup>48</sup> “Waste” is defined as any substance or object which the holder discards or intends or is required to discard.<sup>49</sup> Certain materials are, however, excluded from the definition.<sup>50</sup>
- 6.52 There are exemptions to the requirement to obtain an environmental permit for a waste operation. Exemptions commonly relied upon in the agricultural context include the exemption for spreading specific waste on agricultural land to improve or maintain soil quality (known as the U10 waste exemption)<sup>51</sup> and the waste exemption for pig and poultry ash (known as the U15 waste exemption).<sup>52</sup>

## EPR 2016: criteria for inclusion in the prospective Code

- 6.53 The EPR 2016 is an intricate statutory framework which “covers the administration of pollution control”.<sup>53</sup> Joint guidance, as issued by the Welsh Government and Defra, provides further insight into the function of the regime.

Some facilities could harm the environment or human health unless they are regulated. EPR requires operators of “regulated facilities” to obtain a permit or to register some activities, which would otherwise require permits, as “exempt facilities”. In this way EPR provides for ongoing supervision by regulators of activities which could harm the environment.<sup>54</sup>

- 6.54 There are activities undertaken in the agricultural context which are regulated under the EPR 2016 and therefore require an environmental permit. However, the activities regulated by the EPR 2016, known as “regulated facilities”, are broad in scope and encompass:

large industrial installations, waste operations, landfill, water discharge activities, ground water activities, large combustion plants, waste incineration, mining operations and so on.<sup>55</sup>

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<sup>48</sup> Environmental Permitting (England and Wales) Regulations 2016, SI 2016/1154, reg 2.

<sup>49</sup> Directive 2008/98/EC of the European Parliament and of the Council, art 3(1).

<sup>50</sup> See Environmental Permitting (England and Wales) Regulations 2016, SI 2016/1154, reg 2 and Directive 2008/98/EC of the European Parliament and of the Council, art 2(1).

<sup>51</sup> Environment Agency, *Guidance U10: spreading waste to benefit agricultural land* <https://www.gov.uk/guidance/waste-exemption-u10-spreading-waste-to-benefit-agricultural-land>.

<sup>52</sup> A list of those waste exemption mostly commonly relied upon in the agricultural context can be accessed here: [https://www.nfuonline.com/updates-and-information/changes-to-waste-exemptions-latest-updates-and-what-you-need-to-know/#:~:text=Waste%20exemptions%20allow%20farmers%20to,the%20EA%20\(Environment%20Agency\)](https://www.nfuonline.com/updates-and-information/changes-to-waste-exemptions-latest-updates-and-what-you-need-to-know/#:~:text=Waste%20exemptions%20allow%20farmers%20to,the%20EA%20(Environment%20Agency).).

<sup>53</sup> E Fisher, B Lane and E Scotford, *Environmental Law: Text, Cases and Materials* (2nd ed 2019).

<sup>54</sup> Department for Environment, Food and Rural Affairs and the Welsh Government, *Environmental Permitting: Core guidance For the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154)*, (March 2020) p 8.

<sup>55</sup> E Fisher, B Lane and E Scotford, *Environmental Law: Text, Cases and Materials* (2nd ed 2019) p 424.



6.55 In light of the above, we conclude that the EPR 2016 is not concerned with the subject of agriculture. Similarly, we consider that the practical application of the EPR 2016 is not limited to, or primarily concerned with, agriculture. We therefore conclude that the EPR 2016 is unsuitable for inclusion in the prospective Code.

### **Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017**

6.56 The Environment Impact Assessment (Agriculture) (Wales) Regulations 2017 (“the EIA Agriculture Regulations 2017”) form part of the environmental impact assessment (“EIA”) legislative framework applicable to Wales.

6.57 The EIA regime can be described as a process through which decision-makers gather and consider information about the likely environmental impact of a proposed project before granting consent or permission for the proposal.<sup>56</sup>

6.58 Our domestic EIA regime derives from EU legislation, namely the Environmental Impact Assessment Directive 2011/92/EU (“the EIA Directive”), as amended.<sup>57</sup> The EIA Directive was implemented domestically in Wales by various sets of regulations which each concern different types of projects. For example, the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (“TCP EIA (Wales) Regulations”) make provision for the EIA process applicable to developments which are subject to planning permission.<sup>58</sup>

6.59 Projects that “do not require planning permission because they are dealt with under separate consent procedures are governed by separate sets of Regulations”.<sup>59</sup> For example, there are separate regulations which provide for an EIA process for certain forestry projects.<sup>60</sup>

6.60 The EIA Agriculture Regulations 2017 make provision for the EIA process applicable to certain agricultural projects and rural land projects. Subject to limited exemptions, the EIA Agriculture Regulations 2017 require that a screening decision must be undertaken for certain agricultural projects and rural land restructuring projects.

6.61 Namely, a screening decision must be obtained for:

- (1) any project which increases the agricultural productivity of an area of semi-natural and/or uncultivated land; and
- (2) projects which involve the restructuring of rural landholdings and which exceed a specified threshold (referred to as “the applicable threshold”).<sup>61</sup>

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<sup>56</sup> S Bell and others, *Environmental Law* (10th ed 2024) p 362.

<sup>57</sup> The EU EIA regime however has its origins in international law.

<sup>58</sup> SI 2017/567 (W 136).

<sup>59</sup> S Bell and others, *Environmental Law* (10th ed 2024) p 362.

<sup>60</sup> Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228.

<sup>61</sup> See Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017, SI 2017/565 (W 134), regs 2 and 4. For context, we have been unable to identify a definition of a rural landholding.

- 6.62 Where a screening decision is required, the Welsh Ministers will determine whether the project in question is likely to have significant effects on the environment.<sup>62</sup> If a project is assessed as being likely to have those effects, then the person planning to undertake the project will need to apply for consent of the Welsh Ministers for the project.<sup>63</sup>
- 6.63 Farmers, or owners of agricultural land, may also need to comply with the EIA requirements imposed by the TCP EIA (Wales) Regulations. Under those regulations, an environmental impact assessment must be carried out for specified developments before planning permission may be granted.
- 6.64 The TCP EIA (Wales) Regulations are broad in scope and extend to developments undertaken in different contexts or sectors outside of agriculture (for example developments for certain waste-water treatment plants, thermal powers stations, airports and quarries). A farmer may also need to comply with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 if, for example, they intend to undertake an afforestation or deforestation project on their land.<sup>64</sup>

#### Environmental Impact Assessment (Agriculture) (Wales) Regulations: criteria for inclusion

- 6.65 Welsh Government guidance states that the EIA Agriculture Regulations 2017 aim to ensure that the effects of agricultural projects on the environment are considered before those projects commence.<sup>65</sup> The Explanatory Memorandum to the Regulations states:

The [EIA Agriculture Regulations 2017] ensure any projects likely to impact on the environment are adequately assessed before they commence. ...The [EIA Agriculture Regulations 2017] seek to protect farmland habitat sites and historically important land from damaging agricultural activity, as well as preserving Wales' natural resources.<sup>66</sup>

We therefore consider that the EIA Agriculture Regulations 2017 concern the subjects of agriculture and the environment.

- 6.66 Subject to exemptions, the EIA Agriculture Regulations 2017 apply to projects which increase the agricultural productivity of an area of semi-natural or uncultivated land. Such projects are commonly referred to as agricultural intensification projects. The

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<sup>62</sup> Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017, SI 2017/565 (W 134), regs 2 and 7 for the meaning of a significant project.

<sup>63</sup> Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017, SI 2017/565 (W 134), reg 8.

<sup>64</sup> Reg 3 of the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017, SI 2017/565 (W 134) makes provision for the forestry projects which fall within the scope of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228.

<sup>65</sup> Welsh Government, *The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017: General Guidance* (2017) <https://www.gov.wales/sites/default/files/publications/2021-02/environmental-impact-assessment-guidance.pdf>, p 4.

<sup>66</sup> Explanatory Memorandum to the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017, SI 2017/565 (W 134), p 2.



explanatory memorandum to the EIA Agriculture Regulations 2017 describes the practical application of the regulations as follows:

[t]he Regulations will apply mainly to farmers and other managers of agricultural land. They will not apply to non-agricultural land.<sup>67</sup>

- 6.67 We consider therefore that the EIA Agriculture Regulations 2017 satisfy our criteria for inclusion in the prospective Code. However, the EIA Agriculture Regulations 2017 are part of a set of interrelated regulations which together form part of a wider legal framework governing the EIA regime in Wales. The EIA process further forms part of a wider Environmental Assessment regime which encompasses the law on strategic environmental assessments. Detailed consideration of the strategic environmental assessment regime is outside the scope of this paper. However, in brief terms, the regime “requires an assessment of the effect of certain [strategic] plans and programmes on the environment”.<sup>68</sup>
- 6.68 Together, the laws which form part of the EIA regime primarily concern the protection of the environment. Furthermore, aside from the EIA Agriculture Regulations 2017, the laws which underpin the Environmental Assessment regime are significantly wider in scope than agriculture. We consider, therefore, that the wider laws providing for the Environmental Assessment regime would be unsuitable for inclusion in the prospective code of agricultural law for Wales.
- 6.69 Our work for the purposes of this report is set against a wider programme of work led by the Welsh Government to consolidate and codify the law on devolved subjects. The purpose of consolidation and codification is to bring together the laws for a particular subject and publish them together. Accordingly, we consider it would be undesirable to fragment the law on the Environmental Assessment regime by including only the EIA Agriculture Regulations 2017 in the prospective code of agricultural law for Wales.
- 6.70 We further note that, for certain projects, farmers may need to refer to, and comply with, other regulations which form part of that wider EIA legislative framework. For example, a project requiring planning permission which takes place on agricultural land may engage the TCP EIA (Wales) Regulations (see paragraph 6.64 above). Given that farmers may have cause to refer to other laws which form part of the EIA regime, we consider it would be of assistance if those laws were accessible in one place.
- 6.71 For the above reasons, we consider that, on balance, the EIA Agriculture Regulations 2017 are unsuitable for inclusion in the prospective code of agricultural law for Wales.

### **Wildlife and Countryside Act 1981**

- 6.72 Paragraphs 6.74 to 6.94 consider the key provisions within the Wildlife and Countryside Act 1981 (“the 1981 Act”) which regulate or otherwise significantly affect agricultural land use or agricultural activity in Wales.

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<sup>67</sup> Explanatory Memorandum to the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933 (W 253), p 1.

<sup>68</sup> E Fisher, B Lane and E Scotford, *Environmental Law: Text, Cases and Materials* (2nd ed 2019), p 693.

## Sections 1 to 8: wild birds

6.73 Part 1 of the 1981 Act provides for offences aimed at protecting wild birds, their eggs and nests. For example, under section 1 of the 1981 Act, it is an offence intentionally to kill, injure or take any wild bird or to take or destroy an egg of any wild bird. Section 1 also provides for offences aimed at protecting the nests of wild birds. Part 1 of the 1981 Act further provides for offences relating to the possession and sale of wild birds.

## Sections 1 to 8: criteria for inclusion

- 6.74 Defra guidance on the management and protection of wild birds states that the 1981 Act “protects all wild birds and states that they cannot be killed or taken except in certain circumstances”.<sup>69</sup> Similarly, the Royal Society for the Protection of Birds describes the 1981 Act as offering “protection to wild birds, their eggs and nests in England, Scotland and Wales”.<sup>70</sup> We therefore consider that the subject matter of sections 1 to 8 of the 1981 Act is not concerned with agriculture.
- 6.75 The prohibited acts of killing or harming wild birds under Part 1 may be committed in both agricultural and non-agricultural contexts.<sup>71</sup> Therefore, the practical application of sections 1 to 8 of Part 1 of the 1981 Act is not limited to, or primarily concerned with, agriculture. For the above reasons, we consider that sections 1 to 8 of the 1981 Act are unsuitable for inclusion in the prospective Code.

## Sections 9 and 13: protection of wild animals and wild plants

- 6.76 It is an offence for any person intentionally or recklessly to kill, injure or take any wild animal listed in Schedule 5 to the 1981 Act.<sup>72</sup> Under section 9(2), it is also an offence for a person to have in their possession or control any live or dead animal listed in Schedule 5 or anything derived from such an animal.
- 6.77 Section 13 makes it an offence for a person intentionally or recklessly to pick, uproot or destroy a wild plant listed in Schedule 8, or any seed or spore attached to such a plant. It is also an offence for a person intentionally or recklessly to pick any other kind of wild plant unless authorised to do so.<sup>73</sup>

## Sections 9 and 13: criteria for inclusion

6.78 Sections 9 and 13 of the 1981 Act are not concerned with livestock or agricultural crops. In addition, the offences imposed under those provisions can be committed by any person on any type of land. For those reasons, we consider that the relevant

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<sup>69</sup> Department for Environment, Food and Rural Affairs and Natural England, *Wild birds: management and legal protection guidance* (2012) <https://www.gov.uk/guidance/wild-birds#:~:text=The%20main%20law%20applying%20to,the%20authority%20of%20a%20licence>.

<sup>70</sup> RSPB, “What does the Wildlife and Countryside Act 1981 do?” <https://www.rspb.org.uk/birds-and-wildlife/wildlife-and-countryside-act>.

<sup>71</sup> By contrast the offence of a dog worrying or attacking livestock under the Dogs (Protection of Livestock) Act 1953, s 1, does have to take place on agricultural land.

<sup>72</sup> Wildlife and Countryside Act 1981, s 9(1).

<sup>73</sup> Authorised persons for the purposes of s 13 are those listed in the Wildlife and Countryside Act 1981, s 27(1).

provisions – sections 9 and 13 – do not satisfy our criteria for inclusion and consequently are unsuitable for inclusion in the prospective Code.

### Sections 27AA to 33: sites of special scientific interest

- 6.79 A site of special scientific interest (“SSSI”) is a site designated by NRW as being of special interest by reason of any of its flora, fauna, geological or physiographical features.<sup>74</sup> NRW reports that “there are more than 1,000 SSSIs in Wales, covering about 12% of the country’s surface area”.<sup>75</sup> Each SSSI has a list of operations, or activities, that are likely to damage the site’s special interests.
- 6.80 Agricultural operations, such as livestock grazing, ploughing, reseeding or drainage work, will commonly be operations specified in a site notification as likely to damage an SSSI.<sup>76</sup> However, an SSSI designation notice can restrict other operations or activities which are not agricultural in nature. Examples include mineral extraction works, the introduction of woodland management, the construction of roads, the use of the land for recreational activities and the dumping, spreading or discharging of any materials.
- 6.81 The owner or occupier of land within an SSSI must not carry out, or cause or permit to be carried out, any operation that is specified in the notification as likely to damage the conservation interests of the site unless certain requirements are satisfied. The first requirement is that the owner or occupier must provide NRW with notice of the proposal to carry out the operation.<sup>77</sup> The second requirement is that the operation must be carried out:
- (1) with the written consent of NRW;
  - (2) in accordance with the terms of a management agreement;<sup>78</sup> or
  - (3) in accordance with a management scheme or management notice.
- 6.82 Following consultation with specified persons, NRW can prepare and notify a management scheme for all or part of an SSSI.<sup>79</sup> A management scheme is a scheme which is aimed at the conservation or restoration of the flora, fauna, or geological

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<sup>74</sup> Wildlife and Countryside Act 1981, s 28.

<sup>75</sup> Natural Resources Wales, “Types of protected areas of land and sea” (last updated 2023) [https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/types-of-protected-areas-of-land-and-sea/?lang=en#:~:text=Sites%20of%20Special%20Scientific%20Interest%20\(SSSIs\),-SSSIs%20are%20the&text=There%20are%20more%20than%201%2C000,of%20the%20country's%20surface%20area.](https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/types-of-protected-areas-of-land-and-sea/?lang=en#:~:text=Sites%20of%20Special%20Scientific%20Interest%20(SSSIs),-SSSIs%20are%20the&text=There%20are%20more%20than%201%2C000,of%20the%20country's%20surface%20area.)

<sup>76</sup> C Rodgers, *Agricultural Law* (4th ed 2016) para 13.11.

<sup>77</sup> Wildlife and Countryside Act 1981, s 28E(1) states that the notice must specify the nature of the proposed operation and the land on which it is proposed to carry it out.

<sup>78</sup> Natural Resources Wales has powers to enter into such management agreements under provisions including s 16 of the National Parks and Countryside Act 1949 and s 16 of the Environment (Wales) Act 2016 (anaw 3).

<sup>79</sup> Wildlife and Countryside Act 1981, s 28J.

physiographical features by reason of which the land has been designated as an SSSI.

- 6.83 If an occupier or owner of the land is not complying with the terms of a management scheme, then NRW can issue a management notice. A management notice can require the owner or occupier in question to carry out work on the land or to take other steps with respect to the land.<sup>80</sup>

#### Sections 27AA to 33: criteria for inclusion

- 6.84 The SSSI regime protects “not only animals and plants, but also areas of geological interest”.<sup>81</sup> Furthermore, the Welsh Ministers may only designate land for protection as an SSSI where they are of the opinion the land is of special interest by reason of any of its flora, fauna or geological or physiographical features. Accordingly, we consider that the relevant provisions of the 1981 Act – sections 27AA to section 33 – are not concerned with agriculture but rather with the conservation of nature and wildlife.
- 6.85 It is challenging to assess whether SSSIs have a practical application that is limited to or primarily concerned with agriculture. Given that approximately 90% of land in Wales is used for agriculture, it can be reasonably inferred that a high proportion of SSSIs will be located on land used for agricultural purposes. In 2011, Natural England produced a report examining the predominant ownership and land use of SSSIs in England. The report concluded that the majority of SSSIs in England were owned by private individuals (39% of all SSSIs) but that SSSIs were further owned by government (28%), conservation bodies (15%) and local government (4%).<sup>82</sup> The predominant land use for SSSIs in England was ranked as follows:
- (1) agriculture;
  - (2) conservation;
  - (3) recreation, sport leisure;
  - (4) no active use;
  - (5) military; and
  - (6) forestry.
- 6.86 We have not been able to identify the equivalent information concerning the ownership or land use of SSSIs in Wales. However, we have no reason to conclude that the ownership and land use of such sites in Wales is not comparably broad and varied. We therefore tentatively conclude that the practical application of the SSSI legislative regime is not limited to or primarily concerned with agriculture.

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<sup>80</sup> Wildlife and Countryside Act 1981, s 28K.

<sup>81</sup> S Bell and others, *Environmental Law* (10th ed 2024) ch 20.

<sup>82</sup> The remaining 4% of SSSIs in England were categorised as being owned by “other”.

- 6.87 Further, we consider it relevant that the SSSI regime falls within a wider interrelated legal framework governing sites which are designated for nature or wildlife conservation purposes. Collectively these designated sites are often referred to as protected areas. Examples of such sites can include nature reserves, national nature reserves, national parks, special areas of conservation, and special protection areas (among others).
- 6.88 It is further possible for one area to fall within more than one designation or notification. For example, NRW reports that all national nature reserves are also designated as SSSIs and that most are further designated as either special areas of conservation or special protection areas.<sup>83</sup> From a codification perspective, it may be desirable for the various laws which make provision for different protected area regimes to be contained within one code of Welsh law. In that respect, we acknowledge that our work for this report is set against a wider programme of work led by the Welsh Government to consolidate, codify and improve the accessibility of the law on devolved subjects.<sup>84</sup>
- 6.89 In addition, as a pragmatic means of evaluating suitability for inclusion, we have also assessed the proportion of provisions in the 1981 Act concerning the SSSI regime which refer to agriculture. We have identified only one provision: section 32 of the 1981 Act. In brief, section 32 of the 1981 Act makes provision for the Welsh Ministers' duties when issuing farm capital grants under section 29 of the Agriculture Act 1970 in relation to land which is designated as an SSSI.<sup>85</sup> No other provisions in the 1981 Act, which concern the SSSI regime, make direct reference to agriculture.
- 6.90 For the above reasons, we consider that the SSSI regime, as provided for under the 1981 Act, is unsuitable for inclusion in the prospective Code.

### Section 39: management agreements

- 6.91 Under section 39 of the 1981 Act, a local planning authority in Wales can enter into a land management agreement in respect of any land in its area where the agreement is for either of the following purposes:
- (1) conserving or enhancing the natural beauty or amenity of the land; or
  - (2) promoting its enjoyment by the public.

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<sup>83</sup> National Resources Wales, "National Nature Reserves" (last updated 2023) [https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/national-nature-reserves/?lang=en#:~:text=All%20National%20Nature%20Reserves%20\(NNRs,Special%20Scientific%20Interest%20\(SSSI\)\).](https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/national-nature-reserves/?lang=en#:~:text=All%20National%20Nature%20Reserves%20(NNRs,Special%20Scientific%20Interest%20(SSSI)).)

<sup>84</sup> Welsh Government, *The future of Welsh law: revised accessibility programme 2021 to 2026* (January 2024) <https://www.gov.wales/future-welsh-law-revised-accessibility-programme-2021-2026.html>.

<sup>85</sup> In Ch 5, we consider the powers to issue farm capital grants under s 29 of the Agriculture Act 1970 and conclude that they are suitable for inclusion in the prospective Code provided those powers remain of practical use or value. In light of the relationship between s 32 and s 29 of the 1970 Act, we consider that if s 29 of the 1970 Act is included in the prospective Code then it would also be sensible to include s 32 of the 1981 Act in the prospective Code.

6.92 Among other matters, a land management agreement entered into under section 39 may impose restrictions on the use of the land for agricultural purposes.<sup>86</sup>

#### Section 39: criteria for inclusion

6.93 Section 39 of the 1981 Act is concerned with nature conservation and countryside access (as indicated by the statutory purpose referenced at paragraph 6.91 above). A land management agreement can be entered into in relation to any land regardless of whether it is used for an agricultural purpose. Such an agreement can provide for restrictions on the use of land for agricultural purposes, but also in relation to other land uses and activities. The practical application of section 39 is therefore not limited to, or primarily concerned with, agriculture. Accordingly, we consider that section 39 of the 1981 Act is unsuitable for inclusion in the prospective Code.

#### Conservation of Habitats and Species Regulations 2017

6.94 Under the Conservation of Habitats and Species Regulations 2017 (“the 2017 Regulations”) sites can be designated for protection. While the UK remained a member of the EU, the 2017 Regulations implemented Directive 2009/147/EC (known as “the Wild Birds Directive”) and Council Directive 92/43/EEC (known as “the Habitats Directive”).

6.95 The Conservation of Habitats and Species Regulations 2017 allows for sites meeting certain criteria to be designated as:

- (1) special protection areas;
- (2) special areas of conservation; or
- (3) sites of community interest.<sup>87</sup>

6.96 Special protection areas are sites designated in Wales for the purposes of conserving wild birds that are listed as rare and vulnerable in the Wild Birds Directive and certain other species of migratory birds.<sup>88</sup>

6.97 Special areas of conservation are sites designated in Wales under regulation 12 of the 2017 Regulations for the purposes of conserving habitats and wildlife species and maintaining biodiversity.

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<sup>86</sup> Wildlife and Countryside Act 1981, s 39(2).

<sup>87</sup> A site included in the list referred to in the sub-paragraph of art 4(2) of Council Directive 92/43/EEC (list of sites of Community importance) before exit day: Conservation of Habitats and Species Regulations 2017, SI 2017/1012, reg 8(1)(b).

<sup>88</sup> See the Conservation of Habitats and Species Regulations 2017, SI 2017/1012, reg 15 and Natural Resources Wales, “Sites protected by European and international law” (last updated 2023) <https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/sites-protected-by-european-and-international-law/?lang=en>.

- 6.98 Collectively, special areas of conservation and special protection areas, subject to the date of site classification, are known as European Sites.<sup>89</sup> Where a site is designated as a European Site then the 2017 Regulations make provision for restrictions or prohibitions that can be imposed in respect of the way land is used.
- 6.99 For example, NRW may enter into management agreements with a person that has an interest in land which forms part of a European site, or in land adjacent to such a site.<sup>90</sup> Among other matters, such a management agreement may impose restrictions in respect of the use of the land in question.

#### Special protection areas and special areas of conservation: criteria for inclusion

- 6.100 As noted above, land can only be designated as a special protection area and special area of conservation for specified purposes. Broadly speaking the purpose of designating land as a special protection area is to protect certain wild birds. The broad purpose of designating an area as a special area of conservation is to conserve nature and wildlife. Accordingly, we consider that the 2017 Regulations are not concerned with agriculture.
- 6.101 We have not been able to find any sources that offer an overview of the dominant uses of special protection areas or special areas of conservation. Therefore, it is difficult to assess whether the 2017 Regulations have a practical application which is limited to, or primarily concerned with, agriculture. However, similarly to our assessment for the SSSI regime, we note that 90% of land in Wales is used for agriculture. It is therefore logical to conclude that a proportion of special protection areas and special areas of conservation are used for agriculture.
- 6.102 The Joint Nature Conservation Committee maintains a list of special areas of conservation in Wales which records the key characteristics of each of those areas.<sup>91</sup> Collectively, the recorded characteristics indicate that special areas of conservation in Wales can comprise grassland, woodland, bogs and marshes, inland water bodies such as lakes and land used for towns, villages and roads. In addition, much of the land designated as special protection areas in Wales is coastal or marine. The diverse nature of the land comprised in special areas of conservation and special protection areas in Wales indicates that the land in question would be used in practice for a broad range of purposes.<sup>92</sup>
- 6.103 For all the above reasons, we consider that the 2017 Regulations do not satisfy our criteria for inclusion and are unsuitable for inclusion in the prospective Code.

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<sup>89</sup> Special Areas of Conservation and Special Protection Areas, alongside European sites, European marine sites and European offshore marine sites, form part of the national site network (reg 3(1) of the Conservation of Habitats and Species Regulations 2017, SI 2017/1012).

<sup>90</sup> Conservation of Habitats and Species Regulations 2017, SI 2017/1012, reg 20.

<sup>91</sup> JNCC, "List of SACs in Wales" <https://sac.jncc.gov.uk/site/wales>.

<sup>92</sup> Natural Resources Wales, "Protected areas of land and sea" (last updated August 2025) <https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/find-protected-areas-of-land-and-sea/?lang=en>.



## National Parks and Access to the Countryside Act 1949

6.104 Part 2 of the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”) makes provision for national parks. Under sections 4A and 5 of the 1949 Act, NRW can designate as national parks those extensive tracts of country in Wales, which by reason of their natural beauty and the opportunities they afford for open-air recreation, mean it is desirable for necessary measures to be taken to preserve and protect their natural beauty.<sup>93</sup> There are three national parks in Wales: Brecon Beacons (Bannau Brycheiniog), Pembrokeshire Coast (Arfordir Penfro) and Snowdonia (Eryri).

6.105 National parks are managed by national park authorities.<sup>94</sup> The 1981 Act provides that a national park authority may issue orders imposing additional restrictions on the carrying out of agricultural operations on land that comprises moor or heath within a designated national park.<sup>95</sup> We have not identified any such orders made by any of the national parks in Wales.

### National Parks: criteria for inclusion

6.106 The national parks legislative regime aims to:

- (1) conserve and enhance the natural beauty, wildlife and cultural heritage of national park areas; and
- (2) to promote opportunities for the understanding and enjoyment of the special qualities of those areas by the public.<sup>96</sup>

In light of the statutory purpose of the national parks legislative regime, we conclude that the relevant legislation is not concerned with agriculture.

6.107 A study of Welsh national parks, conducted in 2013, reported that agricultural land use is a feature of each of the three national parks designated in Wales. However, the study found that the economies of the national parks were “relatively diverse with a wide representation of different economic sectors”.<sup>97</sup> Therefore, we consider that the practical application of the national parks legislative regime is not limited to or primarily concerned with agriculture.

6.108 Furthermore, within the legislative regime for national parks, we have identified only one statutory provision that expressly refers to agriculture: section 42 of the 1981 Act. Section 42 of the 1981 Act makes provision for the manner in which Welsh Ministers must exercise their functions under section 29 of the Agriculture Act 1970 (“the 1970 Act”) when issuing a farm capital grant in respect of land located in a national park in

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<sup>93</sup> National Parks and Access to Countryside Act 1949, s 5(2).

<sup>94</sup> National park authorities are authorities established by order in powers provided for under s 63 of the Environment Act 1995. The national park authorities for the three national parks in Wales were established by the National Parks Authorities (Wales) Order 1995, SI 1995/2803.

<sup>95</sup> The national park authorities for Wales are those authorities designated in the National Parks Authorities (Wales) Order 1995, SI 1995/2803.

<sup>96</sup> National Parks and Access to the Countryside Act 1949, s 5(1).

<sup>97</sup> National Parks Wales, “Valuing Wales’ National Parks” (September 2013) [https://www.nationalparkswales.uk/\\_data/assets/pdf\\_file/0026/18674/Valuing-Wales-National-Parks-.pdf](https://www.nationalparkswales.uk/_data/assets/pdf_file/0026/18674/Valuing-Wales-National-Parks-.pdf), 14.



Wales. For example, when issuing a farm capital grant in respect of land located in a national park the Welsh Ministers must exercise their grant-making functions in a manner which furthers the conservation and enhancement of the natural beauty and amenity of the countryside. We consider the powers to issue farm capital grants under section 29 of the 1970 Act in Chapter 5, and conclude that they are suitable for inclusion in the prospective Code provided those powers remain of practical use or value.

6.109 For the above reasons, we consider that the provisions contained in Part 2 of the 1949 Act are unsuitable for inclusion in the prospective Code. However, in light of the direct relationship between section 42 of the 1981 Act and section 29 of the 1970 Act, we consider that if section 29 of the 1970 Act is included in the prospective Code, then it would also be sensible to include section 42 of the 1981 Act in the prospective Code.

### **Areas of outstanding natural beauty and nature reserves**

6.110 Under section 82(2) of the Countryside and Rights of Way Act 2000, NRW can designate by order an area of land in Wales as an area of outstanding natural beauty for the purposes of conserving and enhancing the natural beauty of the area.<sup>98</sup> Land falling within a national park cannot, however, be designated as an area of outstanding nature beauty. There are five areas of outstanding natural beauty in Wales, which were rebranded as national landscapes in November 2023.<sup>99</sup> However, the term area of outstanding natural beauty is still used in legislation.

6.111 A conservation board for an area of outstanding natural beauty must publish a plan setting out its policy for the management of the area. Such a policy can make provision about the type or extent of agricultural activity which is permitted within an area of outstanding natural beauty.

6.112 Part 3 of the National Parks and Access to the Countryside Act 1949 Act makes provision for nature reserves. A nature reserve is land managed either:

- (1) solely for a conservation purpose; or
- (2) not only for a conservation purpose but also for a recreational purpose, if the management of the land for the recreational purpose does not compromise its management for the conservation purpose.<sup>100</sup>

6.113 Although not specified in legislation, nature reserves may also be used in practice for agricultural purposes, such as livestock grazing, where the activity is undertaken in a way which supports or complements conservation.<sup>101</sup>

6.114 Under section 21 of the 1949 Act, local authorities in Wales are provided with powers to establish nature reserves in their local areas. Under section 35 of the 1981 Act,

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<sup>98</sup> An order made under the Countryside and Rights of Way Act 2000, s 82(2) must satisfy procedural requirements set out in s 83 which make provision for consultation with local authorities.

<sup>99</sup> Visit Wales, "Wales' top National Landscapes" <https://www.visitwales.com/things-do/nature-and-landscapes/welsh-areas-outstanding-natural-beauty>.

<sup>100</sup> National Parks and Access to Countryside Act 1949, s 15(1).

<sup>101</sup> Wildlife Trusts Wales, "Farming and wildlife" <https://www.wtwales.org/farming-and-wildlife>.

NRW can designate a nature reserve as a national nature reserve where they consider the site to be of national importance, subject to relevant requirements and conditions being satisfied.<sup>102</sup>

#### Areas of outstanding natural beauty and nature reserves: criteria for inclusion

6.115 Although land designated as a nature reserve can be used for agriculture, the statutory purpose of a nature reserve is to protect land for conservation purposes or for both conservation purposes and recreational purposes.<sup>103</sup> We therefore conclude that the subject of the legislation governing nature reserves is not concerned with agriculture. For the same reason, we conclude that legislation does not have a practical application that is limited to or primarily concerned with agriculture.

6.116 Visit Wales describes areas of outstanding natural beauty as “living, working areas whose landscapes, culture, flora and fauna are considered an asset to the nation”.<sup>104</sup> In light of this description and the statutory purpose of areas of outstanding natural beauty, we conclude that the practical application of the relevant law is not limited to, or primarily concerned with, agriculture.

6.117 For the reasons set out above, we consider that the respective legal frameworks for areas of outstanding natural beauty and nature reserves are unsuitable for inclusion in the prospective code of agricultural law for Wales.

#### Crop Residues (Burning) Regulations 1993 and section 152 of the Environmental Protection Act 1990

6.118 The Crop Residues (Burning) Regulations 1993 (“the 1993 Regulations”) apply to England and Wales. The 1993 Regulations prohibit the burning of specified kinds of crop residues (for example, cereal straw and stubble, oilseed residue) on agricultural land. There are, however, exemptions to the prohibition imposed under the 1993 Regulations if the burning is for the purposes of education or research, or for the disposal of straw stack remains or broken bales.<sup>105</sup> Certain restrictions and requirements must be followed in the limited circumstances where such burning is permitted.

6.119 The 1993 Regulations are enacted under powers provided for under section 152 of the Environmental Protection Act 1990 (“the 1990 Act”).<sup>106</sup> Section 152 enables the

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<sup>102</sup> National Resources Wales, “National Nature Reserves” (last updated 2023) <https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/national-nature-reserves/?lang=en>.

<sup>103</sup> An extraordinary challenge: Restoring 30 per cent of our land and sea by 2030, Report of the Environment and Climate Change Committee (2022-23) HL 234.

<sup>104</sup> Visit Wales, “Wales’ top National Landscapes” <https://www.visitwales.com/things-do/nature-and-landscapes/welsh-areas-outstanding-natural-beauty>.

<sup>105</sup> Crop Residues (Burning) Regulations 1993, SI 1993/1366, reg 4 also permits burning for the purposes of disease control or elimination of plant pests where a notice has been served under art 22 of the Plant Health (Great Britain) Order 1993, SI 1993/1320. However, the 1993 Order has since been revoked in Wales by the Plant Health (Wales) Order 2006, SI 2006/1643 (W 158).

<sup>106</sup> The relevant regulation making powers provided for under s 152 of the Environmental Protection Act 1990 have been transferred to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

Welsh Ministers to issue regulations prohibiting or restricting the burning of crop residues on agricultural land by persons engaged in agriculture.

#### Crop burning: criteria for inclusion

6.120 Defra guidance on crop burning indicates that prohibitions and restrictions imposed under the 1993 Regulations are aimed at protecting the environment and avoiding causing public nuisance.<sup>107</sup> The 1993 Regulations apply to burning undertaken by a person engaged in agriculture which takes place on agricultural land only. We therefore consider that the 1993 Regulations and section 152 of the 1990 Act are each concerned with both the subjects of the environment and agriculture. Furthermore, the scope or practical application of section 152 of the 1990 Act and the 1993 Regulations is therefore limited to, or primarily concerned with, agriculture.

6.121 For the above reasons, we consider that both section 152 of 1990 Act and the 1993 Regulations are suitable for inclusion in the prospective code of agricultural law for Wales.

### ISSUES THAT MERIT FURTHER ANALYSIS

#### Scope of the prospective code of agricultural law for Wales

6.122 In this chapter, we have identified a range of laws and legislative provisions suitable for inclusion in the prospective Code.

- (1) Section 97 of the Water Resources Act 1991.
- (2) The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021.
- (3) The Crop Residues (Burning) Regulations 1993.
- (4) Section 152 of the Environmental Protection Act 1990.

6.123 A code of Welsh law is intended to be a comprehensive statement of the law on a particular subject. It may therefore be considered unsatisfactory for the prospective code of agricultural law for Wales to exclude those environmental laws that apply in an agricultural context. Consequently, we consider below the extent to which signposting can satisfactorily mitigate this issue.

#### Signposting to environmental law

6.124 Any webpage which publishes the prospective code of agricultural law for Wales could signpost to environmental laws which fall outside of the prospective Code, but which nonetheless apply to the agricultural sector.<sup>108</sup> This approach would ensure that readers of the prospective Code are made aware of this legislation and are able to identify and locate those environmental laws which may be relevant to them. Signposting could therefore improve the accessibility of environmental law applicable

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<sup>107</sup> Department for Environment, Food and Rural Affairs, *Burning crop residues: restrictions and rules for farmers and land managers* (December 2021) <https://www.gov.uk/guidance/burning-crop-residues-restrictions-and-rules-for-farmers-and-land-managers>.

<sup>108</sup> Ch 1 outlines what we mean by the term signposting.

in the agricultural context even if the majority of such laws are excluded from the scope of the prospective Code.

- 6.125 We recognise, however, that signposting may be an imperfect solution in this context. As others have emphasised, environmental law intersects to a significant extent with agricultural legislation.<sup>109</sup> Therefore, any webpage publishing the prospective code of agricultural law for Wales may need to signpost to a significant volume of fragmented environmental laws. Furthermore, we note that the 2011 *Working Smarter* review of agricultural regulation in Wales reported that: “farmers...cited environmental regulations as amongst the most complex”.<sup>110</sup> Excluding the majority of laws examined in this chapter could therefore be regarded as a missed opportunity to improve the accessibility of environmental laws which apply in the agricultural context.
- 6.126 Our work for this report is set against a wider programme to improve the accessibility of the law applicable in Wales as led by the Welsh Government.<sup>111</sup> For the purposes of this report, we have not been asked to comment on the form and content of other possible future codes of Welsh law on different subjects. However, we note that, in the Welsh context, codification aims to organise the law on devolved subjects into codes of law. Therefore, the development of the prospective code of agricultural law for Wales does not represent the only opportunity to improve the accessibility of those environmental laws that specifically apply in the agricultural context.
- 6.127 Notwithstanding our comments above, we do not underestimate the scale of work that would be involved in any efforts to improve the accessibility of environmental law. It is widely accepted that the laws concerning the protection of the environment and wildlife are highly voluminous and fragmented.<sup>112</sup> To make the task at hand more manageable, any effort to improve the accessibility of those environmental laws that apply to the agricultural sector could focus on a discrete area of environmental law.
- 6.128 The body of environmental law is often treated as encompassing laws aimed at protecting and conserving wildlife and their habitats. For instance, a number of leading texts on environmental law include an examination of laws aimed at supporting wildlife conservation.<sup>113</sup> In that respect, we note that the Welsh Government’s annual report on its Future of Welsh law programme reports that initial scoping work has been undertaken to assess whether wildlife law may be suitable for consolidation.<sup>114</sup>

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<sup>109</sup> C Rodgers, *Agricultural Law* (4th ed 2016) p 3; M Alabrese and others, *Agricultural Law Current Issues from a Global Perspective* (1st ed 2017) p 10.

<sup>110</sup> G Williams, *Working Smarter: A report of recommendations to the Welsh Government on better regulation in farming* (December 2011) p 44.

<sup>111</sup> Legislation (Wales) Act 2019 (anaw 4), s 2.

<sup>112</sup> D Corry, *Delivering economic growth and nature recovery: An independent review of Defra’s regulatory landscape* (April 2025).

<sup>113</sup> See for example, E Fisher, B Lane and E Scotford, *Environmental Law: Text, Cases and Materials* (2nd ed 2019) and also S Bell and others, *Environmental Law* (10th ed 2024).

<sup>114</sup> Welsh Government, *The future of Welsh law: annual report 2023 to 2024* (December 2024) <https://www.gov.wales/sites/default/files/pdf-versions/2024/12/4/1733423879/the-future-of-welsh-law-annual-report-2023-to-2024.pdf>, para 8.

6.129 As we consider in this chapter, there are numerous laws aimed at protecting wildlife and their habitats which apply in an agricultural context. The laws relating to the protection of wildlife are widely considered to be fragmented, as highlighted by our 2016 report on wildlife law.<sup>115</sup> Notably, a recent independent report produced by Professor Nurse and Dr Hejny concluded that the Law Commission’s findings in our wildlife law report regarding the need for consolidation of wildlife law remain valid. Consequently, their report, titled *Wildlife Law Reform*, recommends that “[t]hat UK wildlife law be coordinated into a single statute that strengthens levels of protection across UK wildlife...”.<sup>116</sup> We acknowledge, however, that any decision on whether to take forward such work will be a matter for the Welsh Government.<sup>117</sup>

### Primary enabling powers

6.130 In Chapter 4, we raise for consideration the issue of whether the inclusion of secondary legislation in the prospective code of agricultural law for Wales should be made contingent upon whether the corresponding primary enabling powers are included in the prospective Code. In that chapter, we propose that a flexible approach should be adopted, which allows (on a case-by-case basis) for the possibility of secondary legislation being included in the prospective Code even if the corresponding primary enabling powers are excluded. We use the term primary enabling powers to refer to the provisions contained in primary legislation which provide government ministers with powers to make secondary legislation such as regulations or orders.

6.131 At paragraph 6.26 above, we propose that the CoAP Regulations 2021 are suitable for inclusion in the prospective Code but conclude that the primary enabling powers under which those regulations are made do not satisfy our criteria for inclusion. The primary enabling powers in question are contained in section 92 of the 1991 Act. At paragraph 6.18, we conclude that section 92 of the 1991 Act is unsuitable for inclusion in the prospective Code on the grounds outlined below.

- (1) The provision is concerned with the environment and water pollution.
- (2) The practical application of the provision is not limited to or primarily concerned with agriculture. The primary enabling powers provided for under section 92 have been exercised to regulate for the control of oil in contexts extending far beyond agriculture.

6.132 In Chapter 4, we acknowledge that there is an inherent degree of fragmentation involved in including secondary legislation in the prospective code of agricultural law for Wales while the corresponding primary enabling powers are excluded. However, we consider there to be strong arguments for including the CoAP Regulations 2021 in the prospective Code.

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<sup>115</sup> Wildlife Law Volume 1 (2015) Law Com No 362.

<sup>116</sup> ARU Law School, “Wildlife Law Reform” (February 2025).

<sup>117</sup> Welsh Government, *The future of Welsh law: annual report 2023 to 2024* (December 2024) <https://www.gov.wales/sites/default/files/pdf-versions/2024/12/4/1733423879/the-future-of-welsh-law-annual-report-2023-to-2024.pdf>, para 8.

- (1) The CoAP Regulations 2021 apply in practice to the agricultural sector only.
- (2) The CoAP Regulations 2021 apply to all farms in Wales.<sup>118</sup>
- (3) The CoAP Regulations 2021 impose prescriptive requirements regarding the way in which specific agricultural activity is undertaken. Farmers therefore have a pressing need to access and understand the legal requirements imposed under the 2021 Regulations. Ensuring farmers are able to easily access and understand the CoAP Regulations 2021 will also be key to their effective enforcement.
- (4) The CoAP Regulations 2021 have attracted widespread, sustained debate and scrutiny across the agricultural sector since their introduction, signifying their importance in the agricultural context.

## PROPOSALS FOR REFORM OF THE LAW

6.133 We have not been asked to make recommendations in this report for substantive law reform. However, we acknowledge in Chapter 4 that where there are substantive calls for reform of an area of agricultural law it may be considered desirable to implement those reforms before bringing the legislation in question within the prospective code of agricultural law for Wales. Alternatively, an Act of the Senedd which delivers wholesale reform can be stated to form part of a code of Welsh law. Accordingly, we set out below an example of where there is call for reform of the legislation considered in this chapter.

### Statutory review of the CoAP Regulations 2021

6.134 An independent statutory review of the effectiveness of the measures imposed by the CoAP Regulations 2021 must be undertaken every four years.<sup>119</sup> The findings and recommendations from the first statutory review of the CoAP Regulations 2021 were published on 31 March 2025.<sup>120</sup> Among other matters, the review proposed that statutory definitions used in the regulations be reviewed to ensure improved clarity of requirements.

6.135 In addition, the review recommends that the CoAP Regulations 2021 should be amended to make provision for the protection of soil. Presently, there is no specific legislation concerning soil protection in Wales: an issue which the review described as an “important gap” in the existing regulatory framework.<sup>121</sup>

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<sup>118</sup> Welsh Government, *The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021: guidance for farmers and land managers* (last updated October 2023) p 6.

<sup>119</sup> Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021, SI 2021/77 (W 20), reg 44(2).

<sup>120</sup> S Bolton, *The Review of the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021* (March 2025) <https://www.gov.wales/sites/default/files/publications/2025-03/statutory-review-control-agricultural-pollution-regulations-2025-review.pdf>.

<sup>121</sup> Welsh Government, “Agricultural Soil Policy Statement” (April 2025) <https://www.gov.wales/sites/default/files/publications/2025-04/agricultural-soil-policy-statement.pdf>.

- 6.136 The Welsh Government has announced its intention to implement the recommendations from the review in full.<sup>122</sup> Notwithstanding, there remains continued calls within the agricultural sector for a review of “the cumulative burdens imposed on Welsh farming families” under the CoAP Regulations 2021.<sup>123</sup>

## TECHNICAL ISSUES

- 6.137 Establishing a code of Welsh law involves bringing the primary law on a subject together under an Act, or series of Acts, of the Senedd that are stated to form part of a code of Welsh law on the subject in question. In addition, we understand that establishing a code of Welsh law on a subject will usually involve “a process of rationalisation of subordinate legislation”.<sup>124</sup> As we discuss in Chapter 1, rationalising existing secondary legislation to form part of a code of Welsh law could involve restating the secondary legislation on a particular subject in a new set of Welsh statutory instruments. We set out below an example of where the secondary laws regulating the burning of vegetation in the agricultural context could potentially benefit from the process of rationalisation.

### Rationalisation of secondary legislation

- 6.138 Both the Heather and Grass etc Burning (Wales) Regulations 2008 and the Crop Residues (Burning) Regulations 1993 concern the burning of specified types of vegetation in the agricultural context.<sup>125</sup> It may therefore be desirable for these regulations to be restated in one Welsh statutory instrument. That statutory instrument could be organised in Parts dealing with the specific prohibitions or restrictions which apply to the burning of different classes of vegetation.
- 6.139 Restating the Heather and Grass etc Burning (Wales) Regulations 2008 and Crop Residues (Burning) Regulations 1993 would further present an opportunity to modernise any outdated statutory terms or references. For example, we note that the Crop Residues (Burning) Regulations 1993 permit burning of specified crop residues on agricultural land for the purposes of disease control or elimination of plant pests where a notice has been served under article 22 of the Plant Health (Great Britain) Order 1993 (“the 1993 Order”). However, the 1993 Order has since been revoked in Wales.<sup>126</sup>

## CONCLUSION

- 6.140 In this chapter, we have identified a range of laws that are suitable for inclusion in the prospective code of agricultural law for Wales. However, we have concluded that the majority of the environmental laws considered in this chapter are unsuitable for

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<sup>122</sup> Welsh Government, *Written Statement: Water Quality and Agricultural Pollution Regulations* (March 2015) <https://www.gov.wales/written-statement-water-quality-and-agricultural-pollution-regulations>.

<sup>123</sup> National Farmers' Union Cymru, “NFU Cymru ‘frustrated’ by Welsh Government response to review of agricultural pollution regulations” (March 2025) <https://www.nfu-cymru.org.uk/news-and-information/nfu-cymru-frustrated-by-welsh-government-response-to-review-of-agricultural-pollution-regulations/>.

<sup>124</sup> Explanatory Notes to the Legislation (Wales) Act 2019 (anaw 4), para 23.

<sup>125</sup> See Ch 5 for a consideration of the Heather and Grass etc Burning (Wales) Regulations 2008, SI 2008/1081 (W 115).

<sup>126</sup> Plant Health (Wales) Order 2006, SI 2006/1643 (W 158), Sch 19.



inclusion in the prospective Code. Notwithstanding our conclusions, we acknowledge that the legislation in question is of significance to agriculture in Wales. Accordingly, we propose that any webpage which publishes the prospective code of agricultural law for Wales ought to signpost to those environmental laws that apply in an agricultural context.

- 6.141 By signposting to the legislation in question, we consider that the development of the prospective code of agricultural law for Wales can serve to improve the accessibility of legislation that falls outside of its scope, but which is nonetheless relevant to agriculture. This is because the tool of signposting will in theory make it easier for farmers to find the environmental laws applicable in the agricultural context. Signposting would not, however, address the fragmentation or volume of environmental legislation applicable to agriculture in Wales. Nor would it answer concerns as to the complexity of the law. In that respect, we acknowledge that our work for this report is set against a wider, ongoing programme of work to consolidate, codify and otherwise improve the accessibility of the law on devolved subjects in Wales.<sup>127</sup>

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<sup>127</sup> Welsh Government, *The future of Welsh law: revised accessibility programme 2021 to 2026* (January 2024) <https://www.gov.wales/future-welsh-law-revised-accessibility-programme-2021-2026-html>.



# Chapter 7: Livestock health and welfare

## INTRODUCTION

- 7.1 The soil quality, climate and mountainous topography of Wales mean that agriculture is predominately livestock based. 78% of all agricultural land in Wales is used for livestock grazing, and livestock grazing accounts for 78% of all farm types in Wales.<sup>1</sup> Consequently, laws which concern the welfare and health of livestock are of central importance to agriculture in Wales.
- 7.2 Animal health law can be broadly described as those laws which are aimed at eradicating, preventing or controlling the spread of animal disease. Such laws concern diseases that affect animals and those that can be transmitted from animals to humans.
- 7.3 Animal welfare law can be described, in similarly broad terms, as those laws which are aimed at protecting and promoting the welfare of animals. “Welfare” is not a term which is defined in domestic animal welfare legislation. However, it is widely accepted that there are five basic freedoms which lay the foundation for minimum animal welfare standards.
- (1) The freedom from thirst, hunger and malnutrition.
  - (2) The freedom from thermal and physical discomfort.
  - (3) The freedom from pain, injury and disease.
  - (4) The freedom from fear and distress.
  - (5) The freedom to express normal behaviour.<sup>2</sup>
- 7.4 The above freedoms are often referred to as the “five freedoms”. The concept of the five freedoms originates from a report published by the Brambell Committee: a committee established by the UK Government in the 1960s to investigate the welfare of intensively farmed animals. The Brambell Committee’s report was endorsed by the Farm Animal Welfare Council and led to the development of the five freedoms in their current form, as outlined at paragraph 7.3 above. Since then, the five freedoms have:
- achieved public recognition worldwide and can be found in national legislation, marketing and farm assurance schemes, sometimes with minor modifications. They

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<sup>1</sup> Welsh Government, *Farm Incomes: April 2023 to March 2024* (January 2025) <https://www.gov.wales/farm-incomes-april-2023-march-2024-html#:~:text=LFA%20grazing%20livestock%20make%20up,of%20the%20land%20in%20Wales.>

<sup>2</sup> University of Edinburgh, “Understanding the Five Domains Model of Animal Welfare” <https://vet.ed.ac.uk/sites/default/files/2024-09/5%20Domains%20Model.pdf>.

have withstood much criticism and, within Great Britain, are the cornerstone of Government and industry policy.<sup>3</sup>

- 7.5 The five freedoms - and in particular the freedom from pain, injury and disease - underline the close connection between the subject matters of animal health and animal welfare. Despite the nexus in subject matter, the law on animal health is mostly contained in statutes or statutory instruments distinct from the law on animal welfare.
- 7.6 The law on animal welfare, as applicable in Wales, encompasses primary legislation enacted by the UK Parliament, secondary legislation made by the Welsh Ministers and secondary legislation made by UK Ministers. A significant amount of the law in this area originates from the EU and now forms part of our domestic law as assimilated law by virtue of the European Union (Withdrawal) Act 2018 and the Retained EU Law (Revocation and Reform) Act 2023. The law concerning animal health, as applicable in Wales, originates from the same sources.
- 7.7 This chapter considers those animal health laws and animal welfare laws which apply to livestock. The meaning of “livestock” is open to interpretation. The term will commonly be understood to include animals such as cattle, sheep and pigs. It may be less clear whether the term encompasses other animals such as poultry or goats. The ambiguity as to the meaning of “livestock” is exacerbated by the fact that different statutes adopt different definitions of the term.
- 7.8 We have two main tasks for the purposes of this chapter. Firstly, we must identify those animal health laws and animal welfare laws which are relevant to the agricultural sector because they apply to livestock. Secondly, we must consider whether those laws are suitable for inclusion in the prospective code of agricultural law for Wales by applying our criteria for inclusion set out in Chapter 3.
- 7.9 For the above purposes, we consider it important to adopt a broadly constructed definition of the term “livestock”. This is to ensure we do not overlook any animal health and animal welfare laws that could be suitable for inclusion in the prospective Code. Accordingly, we have referred to the definition provided for under section 51(2) of the Agriculture (Wales) Act 2023:

[I]livestock includes, among other things, any animal kept to produce food, drink, oils, fibres or leathers, or to graze land.<sup>4</sup>

We understand the above definition of livestock includes, but is not limited to, cattle, pigs, sheep, poultry and goats.

- 7.10 As outlined at paragraph 7.7 above, different statutes adopt different definitions of the term livestock. We highlight instances where any statute considered in this chapter adopts a different definition to that provided for under section 51(2) of the Agriculture (Wales) Act 2023. For the avoidance of doubt, we are not proposing that all the legislation considered in this chapter should adopt the definition of livestock provided for under section 51(2) of the Agriculture (Wales) Act 2023. In Chapter 4, we do,

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<sup>3</sup> Farm Animal Welfare Council, *Farm Animal Welfare in Great Britain: Past, Present and Future* (2009) p 2.

<sup>4</sup> Agriculture (Wales) Act 2023 (asc 4), s 51(2).

however, consider the implications of the prospective Code bringing together legislation which relies on different statutory definitions of the same term.

- 7.11 Alongside evaluating whether animal health and welfare law is suitable for inclusion in the prospective Code, we also consider whether the legislation in question may require or benefit from changes or adjustments aimed at simplification, modernisation or streamlining the law (see paragraphs 7.143 to 7.164). In addition, we examine whether bringing such legislation within the scope of the prospective Code may engage issues requiring further consideration or analysis (see paragraphs 7.165 to 7.173).

## **WELFARE OF LIVESTOCK: THE SCOPE OF THE LAW**

- 7.12 The following section (paragraphs 7.15 to 7.73) considers those animal welfare laws that apply to livestock only or to specific categories of livestock. It also considers those animal welfare laws which apply to livestock, but also to a broader category of animals. It does not consider those laws that only concern the welfare of animals other than livestock.
- 7.13 The laws considered in the following section include those which concern the welfare of livestock while on farm, at slaughter, during transport and while at markets. As a general rule, we do not examine in the report whether the laws applicable to the post-farm stages of the agricultural supply chain are suitable for inclusion in the prospective code of agricultural law for Wales.<sup>5</sup> This is to ensure that the parameters of our task for this report are manageable and that our review focuses on those laws applicable on farm.
- 7.14 However, at paragraphs 7.132 to 7.135 below, we consider whether the scope of the prospective Code could be extended to encompass animal welfare law. For that reason, we do consider in this chapter those animal welfare laws that apply to livestock at the point of slaughter. Similarly, legislation banning the export of certain species of livestock for slaughter on welfare grounds is considered at paragraphs 7.69 to 7.73.

### **Animal Welfare Act 2006**

- 7.15 The Animal Welfare Act 2006 (“the 2006 Act”) is broad in scope. It protects vertebrate animals which are commonly domesticated in the British Islands, under the control of man and not living in a wild state.<sup>6</sup>
- 7.16 The definition of protected animals under the 2006 Act encompasses our intended meaning of “livestock”. However, it also includes animals such as pets, companion animals and service or other working animals. It does not include wild animals except those which are held in captivity either permanently (for example, animals kept in a zoo) or temporarily (for example, wild animals caught in traps).<sup>7</sup>

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<sup>5</sup> See Ch 10 where we set out the basis for this position at paras 10.8 to 10.13.

<sup>6</sup> Animal Welfare Act 2006, s 2.

<sup>7</sup> Welsh Government, *Wales Animal Health and Welfare Framework Implementation Plan 2022 -2024* (January 2022) p 41.

- 7.17 The 2006 Act creates offences aimed at preventing cruelty to animals and, otherwise, preventing animals from being subjected to unnecessary suffering or harm. The main offences relevant to livestock are described in broad terms below.
- (1) The offence of causing, whether by an act or a failure to act, a protected animal to endure unnecessary suffering.<sup>8</sup>
  - (2) The offence of undertaking prohibited procedures (mutilation) on protected animals (see paragraph 7.31 below).<sup>9</sup>
  - (3) The offence of administering poisons or injurious drugs or substances to a protected animal.<sup>10</sup>
- 7.18 A person also commits an offence under the 2006 Act if they do not take all reasonable steps to ensure that the needs of animals under their responsibility are met (to the extent required by good practice).<sup>11</sup>
- 7.19 Powers to enforce the 2006 Act are conferred on inspectors who can be appointed, in Wales, by a local authority or the Welsh Ministers.<sup>12</sup> In practice, the enforcement of the 2006 Act in relation to livestock on farms is primarily undertaken by inspectors employed by local authorities in Wales. The Animal and Plant Health Agency also monitors and inspects the welfare of livestock on farm.
- 7.20 There are codes of practice issued under section 14 of the 2006 Act which provide guidance on compliance with the Act. In Wales, there are relevant codes of practice applicable to the welfare of sheep, meat chickens and meat breeding chickens, laying hens and pullets, cattle, and pigs.<sup>13</sup>
- 7.21 There are eight substantive statutory instruments made under the 2006 Act. Three of those statutory instruments are relevant to the welfare of livestock and are considered in subsequent sections of this chapters.

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<sup>8</sup> Animal Welfare Act 2006, s 4.

<sup>9</sup> Animal Welfare Act 2006, s 5.

<sup>10</sup> Animal Welfare Act 2006, s 7. It is also an offence to cause any poisonous or injurious drug or substance to be taken by a protected animal knowing it to be poisonous or injurious.

<sup>11</sup> Animal Welfare Act 2006 s, 9.

<sup>12</sup> Animal Welfare Act 2006, ss 51 and 62(1)(b). S 62(1)(b) defines the appropriate national authority as being the National Assembly for Wales (now named the Senedd). However, the powers conferred on the Assembly as the appropriate national authority were transferred to the Welsh Ministers by virtue of para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>13</sup> Welsh Assembly Government, *Code of Practice for the Welfare of Livestock: Sheep* (March 2010); Welsh Government, *Code of Practice for the Welfare of Meat Chickens and Meat Breeding Chickens* (March 2020); Welsh Government, *Code of Practice for the Welfare of Laying Hens and Pullets* (March 2020); Welsh Assembly Government, *Code of Practice for the Welfare of Livestock: Cattle* (March 2010); Department for Environment, Planning and Countryside, *Code of Recommendations for the Welfare of Livestock: Pigs* (2004). We note that there is a draft updated version of the code for pig welfare, which is under development following consultation in 2020.

- (1) The Mutilations (Permitted Procedures) (Wales) Regulations 2007.<sup>14</sup>
- (2) The Welfare of Farmed Animals (Wales) Regulations 2007.<sup>15</sup>
- (3) The Mandatory Use of Closed Circuit Television in Slaughterhouses (Wales) Regulations 2024.<sup>16</sup>

The remaining statutory instruments concern other types of animals which are not kept as livestock.<sup>17</sup>

#### Animal Welfare Act 2006: criteria for inclusion

- 7.22 The 2006 Act is “based on and adopts the principle that the welfare of animals is paramount”.<sup>18</sup> Indeed, the Act is commonly described as the “principal law relating to animal welfare”.<sup>19</sup>
- 7.23 The 2006 Act concerns the welfare of protected animals in almost all contexts other than when living in the wild. Therefore, we consider that the practical application of the Act is not limited to, or primarily concerned with, agriculture.
- 7.24 For the above reasons, we consider that the 2006 Act is unsuitable for inclusion in the prospective code of agricultural law for Wales. We further consider that including the 2006 Act within the prospective Code would risk creating a misleading impression that the Act is only of relevance to the agricultural sector. From a symbolic perspective, including the 2006 Act in the prospective Code could also signal that the welfare of animals is only of concern in the context of economic activity rather than in and of itself.

#### Welfare of Farmed Animals (Wales) Regulations 2007

- 7.25 The Welfare of Farmed Animals (Wales) Regulations 2007 (“the 2007 Regulations”) “protect the welfare of farmed animals by setting minimum standards for their care and husbandry”.<sup>20</sup> Farmed animals are defined as animals “bred or kept for the production of food, wool or skin or other farming purposes”.<sup>21</sup> Certain animals are excluded from the scope of this definition including wild animals, fish, reptiles and amphibians.<sup>22</sup>

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<sup>14</sup> SI 2007/1029 (W 96). See para 7.31 to 7.39.

<sup>15</sup> SI 2007/3070 (W 264). See para 7.25 to 7.30.

<sup>16</sup> SI 2024/682 (W 94). See para 7.56 to 7.61.

<sup>17</sup> Namely secondary legislation concerning the welfare of cats, dogs and animals kept as pets.

<sup>18</sup> N Sweeney, *A Practical Approach to Animal Welfare Law* (2nd ed 2017) para 2.2.

<sup>19</sup> Department for Environment, Food and Rural Affairs and the Animal and Plant Health Agency, *Animal welfare* (April 2013) <https://www.gov.uk/guidance/animal-welfare>.

<sup>20</sup> Welsh Government, *Cross-compliance: welfare standards for farmed animals* (December 2024) <https://www.gov.wales/cross-compliance-welfare-standards-farmed-animals-smr-13-2025-html#:~:text=They%20protect%20the%20welfare%20of,are%20kept%20for%20agricultural%20purposes.>

<sup>21</sup> Welfare of Farmed Animals (Wales) Regulations 2007, SI 2007/3070 (W 264), reg 3(2). Certain animals are, however, excluded from the definition (for example fish, reptiles and amphibians).

<sup>22</sup> Welfare of Farmed Animals (Wales) Regulations 2007, SI 2007/3070, reg 3(2).

- 7.26 A person responsible for farmed animals must take all reasonable steps to ensure that the conditions in which the animal is kept or bred comply with requirements specified in the 2007 Regulations. For example, farmed animals must be fed a wholesome diet and have access to a suitable water supply.<sup>23</sup> There are additional requirements which apply to the welfare conditions of specific types of farmed animals (for example poultry, laying hens or calves).<sup>24</sup> The 2007 Regulations also impose requirements on operators of slaughterhouses to record the mortality rates of chicken from flocks which meet certain thresholds.<sup>25</sup>
- 7.27 Local authorities in Wales enforce the 2007 Regulations on farms.<sup>26</sup> It is an offence to fail to comply with the requirements of the regulations.<sup>27</sup>
- 7.28 While the UK was a member of the EU, the 2007 Regulations implemented Council Directive 98/58/EC concerning the protection of animals kept for farming purposes and various other EU Directives concerning the welfare of specific livestock species.<sup>28</sup>

#### Welfare of Farmed Animals (Wales) Regulations 2007: criteria for inclusion

- 7.29 The 2007 Regulations provide for the welfare of farmed animals while on farms. In the agricultural context, high animal welfare standards help protect the health of livestock. Research finds that healthy livestock “produce more meat and animal by products and require fewer resources than animals suffering from disease.”<sup>29</sup> The adoption of high welfare standards can also increase consumer confidence and be used as a marketing tool to attract a modern consumer base which is increasingly concerned with making ethical purchases.<sup>30</sup> We therefore consider that the 2007 Regulations concern both the subjects of animal welfare and agriculture.
- 7.30 The 2007 Regulations apply to the welfare of “farmed animals” as defined under regulation 3: a statutory definition which closely mirrors the definition of “livestock” under section 51 of the Agriculture (Wales) Act 2023. In practice, it is farmers, and

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<sup>23</sup> Welfare of Farmed Animals (Wales) Regulations 2007, SI 2007/3070 (W 264), Sch 1.

<sup>24</sup> Welfare of Farmed Animals (Wales) Regulations 2007, SI 2007/3070 (W 264), reg 5.

<sup>25</sup> This information must be collected for the purposes of Annex 2 to UK Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin.

<sup>26</sup> Animal Welfare Act 2006, ss 28(1) and s 51. See also Animal and Plant Health Agency, *Animal welfare on farms inspection* (January 2016) <https://www.gov.uk/guidance/animal-welfare-on-farms-inspection#:~:text=These%20inspections%20are%20normally%20carried,your%20farm%20in%20your%20absence>.

<sup>27</sup> Welfare of Farmed Animals (Wales) Regulations 2007, SI 2007/3070 (W 264), reg 7.

<sup>28</sup> Following the UK's exit from the EU, EU Directives no longer form part of our domestic law (except in limited circumstances) by virtue of the European Union Withdrawal Act 2018. However, the Welfare of Farmed Animals (Wales) Regulations 2007, SI 2007/3070 (W 264) still relies on definitions contained in EU Directives concerned with the welfare of livestock such as Directive 2008/120/EC laying down minimum standards for the protection of pigs.

<sup>29</sup> Health for Animals, “How better animal health supports sustainable food systems” (January 2024) <https://healthforanimals.org/wp-content/uploads/2024/01/How-Better-Animal-Health-Supports-Sustainable-Food-Systems-2501.pdf>.

<sup>30</sup> Welsh Government, *Wales Animal Health and Welfare Framework* (July 2014) <https://www.gov.wales/sites/default/files/publications/2018-01/animal-health-and-welfare-framework.pdf>, para 25.

those organisations enforcing the 2007 Regulations, who will primarily need to comply with, or refer to, the regulations.<sup>31</sup> Therefore, the 2007 Regulations have a practical application that is primarily concerned with, or limited to, agriculture. For those reasons, we consider that the 2007 Regulations are suitable for inclusion in the prospective Code.

### **Mutilations (Permitted Procedures) (Wales) Regulations 2007**

- 7.31 It is an offence under the Animal Welfare Act 2006 to carry out, or cause to be carried out, a prohibited procedure on an animal. It is also an offence, in certain circumstances, to permit a prohibited procedure to be carried out. A prohibited procedure is one which involves interference with the sensitive tissue or bone structure of an animal, otherwise than for the purpose of its medical treatment.
- 7.32 The Mutilations (Permitted Procedures) (Wales) Regulations 2007 (“the Mutilations Regulations”) provide that certain procedures are permitted by law and will not be classed as offences under the 2006 Act. We will refer to such procedures as permitted procedures. The Mutilations Regulations further make provision as to how permitted procedures should be performed.
- 7.33 While the UK was a member of the EU, the Mutilations Regulations implemented certain EU Directives concerned with the welfare of livestock.<sup>32</sup>

### **Mutilations (Permitted Procedures) (Wales) Regulations 2007: criteria for inclusion**

- 7.34 The guidance produced by the Department for Environment, Food and Rural Affairs (“Defra”) on permitted procedures underlines that the 2006 Act prohibits animal cruelty. Many of the permitted procedures are those which are commonly undertaken on livestock in the agricultural context. Examples include ear-tagging, dehorning and castration.
- 7.35 However, the permitted procedures include those which may be undertaken on animals other than livestock. For example, wing tagging and web tagging of wild birds are both permitted procedures commonly undertaken for conservation and research purposes.<sup>33</sup> Therefore, the Mutilations Regulations can be said to concern both agriculture and animal welfare.
- 7.36 It is difficult to conclude that the Mutilations Regulations have a practical application which is primarily concerned with agriculture. As noted above, the permitted procedures include those carried out on livestock and other animals. However, we have been unable to identify any statistics, or other information, which may indicate whether the permitted procedures are, in practice, most commonly undertaken on livestock.

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<sup>31</sup> There are limited provisions which apply to operators of slaughterhouses. See the Welfare of Farmed Animals (Wales) Regulations 2007, SI 2007/3070 (W 264), reg 5A and Part 3 of Sch 5A. However, the majority of the provisions in the 2007 Regulations concern the welfare of farmed animals while on farm.

<sup>32</sup> For example, Council Directive 91/630/EEC laying down minimum standards for the protection of pigs and Council Directive 1999/74/EC laying down minimum standards for the protection of laying hens.

<sup>33</sup> Draft Mutilations (Permitted Procedures) (England) (Amendment) Regulations 2008 Deb 12 May 2008, col 4.



- 7.37 In the absence of any such information, we find it helpful to evaluate the proportion of provisions in the Mutilations Regulations concerned with procedures either primarily or solely undertaken on species most typically kept as livestock. Schedule 1 to the 2007 Regulations lists the relevant permitted procedures. The procedures are organised by category of species. For example, under the heading of “cattle” there is a list of procedures permitted to be undertaken on cattle.
- 7.38 The headings in Schedule 1 are as follows: cattle, pigs, sheep, birds, horses, deer, goats and other species. Cattle, pigs, sheep and goats are all animals commonly kept as livestock. Deer may also be kept as livestock, but deer farming is currently uncommon in Wales. The category of permitted procedures for birds will include procedures undertaken on farmed poultry but also those undertaken on wild birds. The categories of procedures listed under the heading ‘other species’ includes procedures undertaken on fish, dogs and cats. There are 16 categories of permitted procedure listed under the heading for cattle, 13 under pigs, 16 under birds, 16 under sheep, 7 under horses, 10 under deer, 15 under goats and 20 under other species.
- 7.39 In light of the above, it is difficult to say that the provisions of the Mutilations Regulations are primarily concerned with procedures undertaken on livestock. Consequently, we provisionally conclude that the Mutilations Regulations are unsuitable for inclusion in the prospective code of agricultural law for Wales. However, we think any final decision on whether the Mutilations Regulations are suitable for inclusion in the prospective Code would be best informed by an assessment of whether the procedures permitted under the regulations are of a kind primarily performed on livestock.

### **Welfare of Animals at Markets Order 1990**

- 7.40 The Welfare of Animals at Markets Order 1990 (“the 1990 Order”) is enacted under the Animal Health Act 1981 and applies to England, Scotland and Wales.<sup>34</sup> It provides for the welfare of animals in markets. Many farmers in Wales purchase or sell livestock at livestock markets. Such markets have been “a feature of agricultural life in the UK for over two hundred years”.<sup>35</sup> While the number of markets is reported to be in decline,<sup>36</sup> there remain approximately 30 livestock markets operating across Wales.<sup>37</sup>
- 7.41 For the purposes of the 1990 Order, animals are defined as “cattle, sheep, goats and all other ruminating animals, pigs, rabbits and poultry”.<sup>38</sup> A market is a place, sale-

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<sup>34</sup> SI 1990/2628.

<sup>35</sup> C Nye, M Winter and M Lobley, “More than a Mart: The Role of UK Livestock Auction Markets in Rural Communities” (2021) 15.

<sup>36</sup> MLCSL, *Livestock Markets in the 21st Century* (December 2010) [https://democracy.e-lindsey.gov.uk/documents/s33209/p\\_cp\\_livestockmarket2010040111%20App%20Q.pdf](https://democracy.e-lindsey.gov.uk/documents/s33209/p_cp_livestockmarket2010040111%20App%20Q.pdf), p 8.

<sup>37</sup> Livestock Auctioneers Association, “Locate a Livestock Mart” <https://laa.co.uk/locate-a-mart/?regions=1502&counties=&saletype=&day=>.

<sup>38</sup> Welfare of Animals at Markets Order 1990, SI 1990/2628, art 3. Certain arts of the Order also apply to other specific species of animals such as bulls.



yard or any other premises or place where such animals are brought to and exposed for sale.<sup>39</sup>

- 7.42 The 1990 Order provides for various offences aimed at protecting the welfare of animals at livestock markets. For example, it is an offence for any person to permit an unfit animal to be exposed for sale at a market.<sup>40</sup>
- 7.43 The 1990 Order further imposes duties on operators of livestock markets. For example, market operators must ensure that animals are properly penned and caged and provided with adequate lighting and bedding.<sup>41</sup> Owners of animals for sale at markets must ensure that such animals are adequately watered and fed.<sup>42</sup> Local authorities are responsible for the enforcement of the 1990 Order.

#### Welfare at Markets Order 1990: criteria for inclusion

- 7.44 Livestock markets are a place where those working in, or connected to, the agricultural sector come together to trade livestock. Indeed, livestock markets have been described as existing to “service an industry that rears livestock primarily for the production of meat or milk and dairy products”.<sup>43</sup>
- 7.45 In our assessment, the 1990 Order concerns the welfare of animals when traded for agricultural purposes at livestock markets. We therefore conclude that the 1990 Order concerns both the subjects of agriculture and animal welfare. For the same reasons, we consider that the 1990 Order has a practical application which is primarily concerned with agriculture. Consequently, the 1990 Order satisfies our criteria for inclusion in the prospective Code.

#### Welfare of Animals (Transport) (Wales) Order 2007

- 7.46 While the UK was a member of the EU, the Welfare of Animals (Transport) (Wales) Order 2007 (“the 2007 Order”), was enacted under the Animal Health Act 1981, to make provision for the administration and enforcement of UK Regulation (EC) No 1/2005 on the protection of animals during transport (“the 2005 Regulation”).<sup>44</sup> Following the UK’s departure from the EU, the 2005 Regulation forms part of our domestic law, as assimilated law. Provisions in the 2007 Order frequently cross-refer to the 2005 Regulation meaning it is necessary to read both pieces of legislation together to understand the effect of the law in this area.
- 7.47 The 2007 Order imposes certain requirements which apply to the transport of animals that takes place in connection with an economic activity.<sup>45</sup> In general, the 2007 Order

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<sup>39</sup> Welfare of Animals at Markets Order 1990, SI 1990/2628, art 3. The definition further includes any lairage adjoining a market and used in connection with it and any visitor car parking space for the market.

<sup>40</sup> Welfare of Animals at Markets Order 1990, SI 1990/2628, art 5.

<sup>41</sup> Welfare of Animals at Markets Order 1990, SI 1990/2628, arts 10, 12 and 16 respectively.

<sup>42</sup> Welfare of Animals at Markets Order 1990, SI 1990/2628, art 11(2).

<sup>43</sup> MLC SL, *Livestock Markets in the 21st Century*, (December 2010) [https://democracy.e-lindsey.gov.uk/documents/s33209/p\\_cp\\_livestockmarket2010040111%20App%20Q.pdf](https://democracy.e-lindsey.gov.uk/documents/s33209/p_cp_livestockmarket2010040111%20App%20Q.pdf), p 11.

<sup>44</sup> As amended by the Animal Welfare (Miscellaneous Amendments) Regulations 2022, SI 2022/846.

<sup>45</sup> By virtue of UK Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations, art 1(5).

and 2005 Regulation apply to all vertebrate animals. There are limited provisions of the 2007 Order which also apply to cold-blooded invertebrates. An example is the offence of transporting animals in way which causes, or is likely to cause injury or unnecessary suffering, which applies to cold-blooded invertebrates.<sup>46</sup>

7.48 Economic activity is not defined in the 2007 Order or the 2005 Regulation. However, Defra guidance on the welfare of animals in transport in England offers the following examples of journeys which would be considered to take place in connection with an economic activity:

- (1) the transport of animals by farmers and commercial livestock hauliers;
- (2) the transport of horses for the purposes of professional horse racing;
- (3) the transport of animals to be kept in zoos and leisure parks; and
- (4) the transport of animals by commercial pet breeders.<sup>47</sup>

7.49 There are, however, exceptions relevant to the agricultural context, such as where an animal is being transported to receive veterinary treatment.<sup>48</sup> Defra guidance (for England) also states that the transport of livestock by a farmer from one grazing ground to another would not be classified as an economic activity, nor would the transport of livestock by a farmer within 50 kilometres of their farm.<sup>49</sup>

7.50 There are certain provisions in the 2007 Order which apply to all vertebrate animals (where transported in connection with an economic activity). For instance, it is an offence to transport any animal in a way which causes, or is likely to cause, injury or unnecessary suffering to that animal.<sup>50</sup> There are also additional requirements which apply to specific species: for example, horses, cattle, sheep, goats, pigs, rabbits, poultry and birds.

### Welfare of Animals (Transport) (Wales) Order 2007: criteria for inclusion

7.51 The 2007 Order provides for the administration and enforcement of the 2005 Regulation. The aim of the 2005 Regulation has been described as “to prevent injury or undue suffering to animals during transport”.<sup>51</sup>

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<sup>46</sup> Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047 (W 105), art 4.

<sup>47</sup> Department for Environment, Food and Rural Affairs, *Welfare of Animals During Transport* (February 2011) <https://localgovernmentanimalwelfare.org/wp-content/uploads/2020/03/Guidance-on-Welfare-of-Animals-During-Transport.pdf#page17>.

<sup>48</sup> UK Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations, art 1(5).

<sup>49</sup> Department for Environment, Food and Rural Affairs, *Animal Welfare in Transport* (May 2024) <https://www.gov.uk/guidance/animal-welfare-in-transport>.

<sup>50</sup> Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047 (W 105), arts 4(2) and 5(1); UK Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations, art 3(1).

<sup>51</sup> European Parliamentary Research Service, “Regulation (EC) No 1/2005 on the protection of animals during transport and related operations: European Implementation Assessment” (October 2018) [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621853/EPRS\\_STU\(2018\)621853\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621853/EPRS_STU(2018)621853_EN.pdf), para 1.2.2.

- 7.52 The 2007 Order concerns the welfare of livestock transported for the purposes of agricultural trade. However, it imposes general transport requirements that apply to all animals transported for the purposes of a business or a trade. There are also additional requirements which apply to the transport of specific species. Some of those requirements apply only to species of livestock, but there are specific requirements which apply to other types of animals. For those reasons, we consider that the 2007 Order concerns agriculture, but also the subject of animal welfare.
- 7.53 As outlined above, the 2007 Order can apply to the transport of animals other than livestock for the purposes of economic activities which are unconnected to agriculture. Consequently, it is difficult to conclude that the 2007 Order has a practical application which is limited to, or primarily concerned with, agriculture. However, we note that (now withdrawn) guidance from Defra on the welfare of animals in transport stated that “the transport of ‘livestock’ ... accounts for a significant proportion of animal-related journeys”.<sup>52</sup>
- 7.54 In the absence of statistical information on the species of animals most commonly transported, we assess the proportion of provisions in the 2007 Order which apply solely or primarily to the transport of livestock. Of the 18 provisions in the 2007 Order which imposes requirements relating to the transport of animals, 10 provisions are concerned with the welfare of animals more generally. Eight provisions apply more specifically to animals typically kept as livestock.<sup>53</sup> It is therefore difficult to conclude that the 2007 Order is primarily concerned with the transport of livestock.
- 7.55 There are finely balanced arguments as to whether the 2007 Order and 2005 Regulation are suitable for inclusion in the prospective Code. We consider that statistical information on the proportion of journeys involving the transport of livestock could inform a decision on whether the 2007 Order is included in the prospective Code. If the majority of journeys subject to the 2007 Order are those involving the transport of livestock, then this would present a persuasive rationale for including the 2007 Order and 2005 Regulation in the prospective Code.

## **Mandatory Use of Closed Circuit Television in Slaughterhouses (Wales) Regulations 2024**

- 7.56 The Mandatory Use of Closed Circuit Television in Slaughterhouses (Wales) Regulations 2024 (“the 2024 CCTV Regulations”) require business operators of slaughterhouses to install closed circuit television (“CCTV”) systems to capture, and retain for set periods, images of killing and related operations in all areas of the

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<sup>52</sup> Department for Environment, Food and Rural Affairs, *Welfare of Animals During Transport* (February 2011) para 1.20.

<sup>53</sup> We excluded from this assessment, those provisions which were procedural in nature. By this, we mean those that set out the title, commencement date and any subsequent amendments.

slaughterhouse where live animals are present.<sup>54</sup> It is an offence to contravene the requirements to install or retain such images.<sup>55</sup>

- 7.57 Local authorities, the Animal and Plant Health Agency (“APHA”) and the Food Standards Agency are responsible for enforcing the 2024 CCTV Regulations. The 2024 CCTV Regulations make provision which is complementary to UK Regulation 1099/2009 on the protection of animals at the time of killing.

#### Mandatory Use of Closed Circuit Television in Slaughterhouses (Wales) Regulations 2024: criteria for inclusion

- 7.58 The explanatory memorandum to the 2024 CCTV Regulations states that:

As a result of more comprehensive and more accessible CCTV coverage, we expect there to be behavioural change on the part of slaughterhouses which may not be currently fully compliant with existing requirements. ...

CCTV in areas where live animals are present will improve the efficiency of monitoring and enforcement activity.<sup>56</sup>

- 7.59 The 2024 CCTV Regulations make provision for the welfare of livestock which are kept and bred for the purposes of producing meat. We therefore consider that the 2024 CCTV Regulations concerns both the subjects of animal welfare and agriculture.

- 7.60 The requirements imposed by the 2024 CCTV Regulations apply to slaughterhouses. The slaughter of livestock does not clearly fall within our intended meaning of agriculture (as defined in section 51 of the Agriculture (Wales) Act 2023). Section 51 of the Agriculture (Wales) Act 2023 defines agriculture by reference to a list of activities. The keeping and breeding of livestock falls within the definition of agriculture as provided under section 51. However, on our reading, the slaughter and processing of livestock for the production of meat does not fall within that definition.<sup>57</sup> Consequently, the practical application or scope of the 2024 CCTV Regulations is not limited to or primarily concerned with agriculture within our intended meaning of the term.

- 7.61 For the above reasons, we conclude that the 2024 CCTV Regulations do not satisfy our criteria for inclusion in the prospective Code. Chapter 10 considers in further detail whether the scope of the prospective Code could extend to those laws that apply throughout the supply chain for agricultural produce.

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<sup>54</sup> Related operations means operations such as handling, lairaging, restraining, stunning and bleeding of animals taking place in the context and at the location where they are to be killed (UK Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing, art 2).

<sup>55</sup> Mandatory Use of Closed Circuit Television in Slaughterhouses (Wales) Regulations 2024, SI 2024/682 (W 94), reg 9.

<sup>56</sup> Explanatory Memorandum to the Mandatory Use of Closed Circuit Television in Slaughterhouses (Wales) Regulations 2024, SI 2024/682 (W 94), p 3.

<sup>57</sup> It would, however, fall within the definition of an ancillary activity as defined under s 52 of the Agriculture (Wales) Act 2023 (asc 4).

## Welfare of Animals at the Time of Killing (Wales) Regulations 2014

- 7.62 The Welfare of Animals at the Time of Killing (Wales) Regulations 2014 (“the 2014 Regulations”) apply in Wales and make provision for the welfare of animals at the time of killing.<sup>58</sup> The 2014 Regulations make provision for the administration and enforcement of UK Regulation (EC) No 1099/2009 on the protection of animals at the time of killing.
- 7.63 The 2014 Regulations cross-refer substantially to UK Regulation (EC) No 1099/2009 meaning it is necessary to refer to both pieces of legislation in order to understand the effect of the law.
- 7.64 UK Regulation (EC) No 1099/2009 provides that killing of animals and certain operations related to killing (such as bleeding and stunning) must only be carried out by persons who are appropriately competent to do so without causing the animals any avoidable pain, distress or suffering. The 2014 Regulations provide for a certification regime to ensure that only appropriately competent persons carry out certain operations. Examples of such operations include slaughtering, stunning, bleeding, restraining or shackling animals.<sup>59</sup>
- 7.65 Subject to specified exemptions, a licence is required to undertake certain operations on animals at the time of killing other than in an approved slaughterhouse.<sup>60</sup> For example, the slaughter of livestock could take place on farms, on private property or at a knacker’s yard: the latter being a place where old or injured animals are taken to be slaughtered. A licence will also be required in order to carry out the same operations in respect of the killing of poultry, rabbits and hares for the purposes of supplying small quantities of meat directly to customers or to local retailers.<sup>61</sup>

## Welfare of Animals at the Time of Killing (Wales) Regulations 2014: criteria for inclusion

- 7.66 The 2014 Regulations made provision for the administration and enforcement of UK (EC) No 1099/2009 which provides that “animals shall be spared any avoidable pain, distress, or suffering during their killing and related operations”.<sup>62</sup> The 2014 Regulations apply to the killing of animals in slaughterhouses but also in other contexts (for example on farms and at a knacker’s yards).
- 7.67 The 2014 Regulations primarily provide for the welfare of livestock which are kept and bred for agricultural purposes. Certain provisions in the 2014 Regulations also make provision for the welfare of other types of animals at the time killing, including reptiles and amphibians.<sup>63</sup> Consequently, we consider that the 2014 Regulations concern both the subject of animal welfare and agriculture. As outlined above, the killing of animals at slaughterhouses does not fall within our intended meaning of the term ‘agriculture’,

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<sup>58</sup> SI 2014/951 (W 92).

<sup>59</sup> Welfare of Animals at the Time of Killing (Wales) Regulations 2014, SI 2014/951 (W 92), reg 6; Council Regulation (EC) No 1099/2009, art 7.

<sup>60</sup> Welfare of Animals at the Time of Killing (Wales) Regulations 2014, SI 2014/951 (W 92), reg 13.

<sup>61</sup> Welfare of Animals at the Time of Killing (Wales) Regulations 2014, SI 2014/951 (W 92), reg 13(b).

<sup>62</sup> UK Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing, art 3(1).

<sup>63</sup> Welfare of Animals at the Time of Killing (Wales) Regulations 2014, SI 2014/951 (W 92), reg 28 and Sch 4.

applying the definition of the term as provided for under section 51 of the Agriculture (Wales) Act 2023. We therefore consider that the practical application of the 2014 Regulations is not limited to or primarily concerned with agriculture.

- 7.68 For the above reasons, we conclude that the 2014 Regulations do not satisfy our criteria for inclusion in the prospective Code. Chapter 10 considers in further detail those laws that apply throughout the supply chain for agricultural produce.

### **Animal Welfare (Livestock Exports) Act 2024**

- 7.69 The Animal Welfare (Livestock Exports) Act 2024 (“the 2024 Act”) extends and applies to England and Wales and Scotland (save for limited provisions which extend and apply to Scotland only). The 2024 Act makes it an offence to export certain live livestock animals from Great Britain for slaughter, or for fattening for the purposes of slaughter, outside of the British Islands.<sup>64</sup> The livestock animals to which the Act applies are cattle or other bovine animals, horses and other equine animals, sheep, goats, pigs, and wild boar.<sup>65</sup> Poultry are not covered by the provisions. The offence applies to journeys from or through Great Britain to a destination outside the British Islands.

- 7.70 Local authorities are responsible for the enforcement of the 2024 Act as provided for under the Animal Welfare (Livestock Exports) Enforcement Regulations 2024 (“the 2024 Regulations”).<sup>66</sup>

### **Animal Welfare (Livestock Exports) Act 2024: criteria for inclusion**

- 7.71 The House of Commons research briefing for the 2024 Act states:

Live animals have long been exported to EU countries from the UK for breeding, fattening, and slaughter. There have been long running campaigns, including the RSPCA’s Stop Live Exports campaign, to end such exports. This reflects concerns that animals transported to Europe suffer from unnecessarily long journeys, experiencing stress, exhaustion, thirst and rough handling.<sup>67</sup>

- 7.72 The 2024 Act aims to protect the welfare of livestock which are kept and bred for agricultural purposes. The 2024 Act, therefore, concerns both the subjects of animal welfare and agriculture. The 2024 Act prohibits the export of livestock for slaughter or for fattening prior to slaughter. As outlined at paragraph 7.60, the slaughter of livestock does not fall within our intended meaning of the term livestock (as provided for under section 51 of the Agriculture (Wales) Act 2023). Furthermore, sector evidence provided by the National Farmers’ Union Cymru (“NFU Cymru”) on the 2024 Act, reports that, prior to the ban, farmers would not have been “directly involved with

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<sup>64</sup> The substantive provisions of the Animal Welfare (Livestock Exports) Act 2024 came into force in relation to Wales on 22 July 2024.

<sup>65</sup> The prohibition on exporting under the 2024 Act does not apply to poultry because the exportation of such animals is not currently considered to raise welfare concerns.

<sup>66</sup> Animal Welfare (Livestock Exports) Enforcement Regulations 2024, SI 2024/1146, reg 4(1).

<sup>67</sup> House of Commons Library, “Animal Welfare (Livestock Exports) Act 2024: Research Briefing” (July 2024) <https://researchbriefings.files.parliament.uk/documents/CBP-9912/CBP-9912.pdf>.



the live export of animals”.<sup>68</sup> We therefore consider that the practical application of the 2024 Act is not limited to or primarily concerned with agriculture.

- 7.73 Consequently, we consider that the 2024 Act does not satisfy our criteria for inclusion in the prospective Code. In any event, we acknowledge that there may be policy considerations which inform whether the 2024 Act and supporting regulations are brought within the prospective code of agricultural law for Wales. For example, we note that the Welsh Ministers recently gave consent for the UK Ministers to enact the 2024 Regulations, which implement the 2024 Act, on the grounds that:

[I]livestock transport journeys can start and travel through the different countries of Great Britain to reach destination. Separate regulations, or any divergence in the coming into force of regulations, across Great Britain could lead to complexity, inconsistencies and administrative burden for industry and enforcement agencies.<sup>69</sup>

## ANIMAL HEALTH LEGISLATION

- 7.74 The following section (paragraphs 7.75 to 7.99) considers the domestic law (including assimilated legislation) governing animal health insofar as it applies to livestock. The body of legislation governing animal health law is substantial in volume. Consequently, this chapter focuses on those animal health laws we consider to be most relevant to the agricultural sector.

### Animal Health Act 1981

- 7.75 The Animal Health Act 1981 (“the 1981 Act”) regulates the prevention, control and eradication of animal diseases.
- 7.76 The 1981 Act provides for a regime requiring the notification of certain animal diseases to the relevant authorities. In practice, these diseases are referred to as notifiable diseases.<sup>70</sup> We note that the term “notifiable diseases” is also used to refer to notifiable human diseases under the Public Health (Control of Disease) Act 1984. In this report, we use the term “notifiable diseases” to refer to those animal diseases which are treated as notifiable under the 1981 Act.
- 7.77 Notifiable diseases are those specified in section 88 of the 1981 Act and in certain orders made under the Act. Examples of notifiable disease include foot and mouth disease, swine fever, avian influenza, and bovine tuberculosis. Notifiable diseases can be endemic meaning they are already present in the UK or exotic meaning they are not normally present in the UK.

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<sup>68</sup> NFU Cymru, “Consultation Response to the Senedd Economy, Trade and Rural Affairs Committee – Legislative Consent: Animal Welfare (Livestock Exports) Bill” (2024) <https://business.senedd.wales/documents/s144529/Evidence%20paper%20-%20National%20Farmers%20Union%20Cymru.pdf>.

<sup>69</sup> H Irranca-Davies, Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, “Written Statement: The Animal Welfare (Livestock Exports) Enforcement Regulations 2024” (September 2024) <https://www.gov.wales/written-statement-animal-welfare-livestock-exports-enforcement-regulations-2024>.

<sup>70</sup> Welsh Government, “Report notifiable diseases” <https://www.gov.wales/notifiable-diseases-0>.

- 7.78 A person having in their possession or under their charge an animal affected by a notifiable disease, or an animal suspected to be affected by such a disease, must notify the relevant authority of that fact.<sup>71</sup> In certain circumstances, a vet or person analysing a sample from an animal may also be required to report instances where an animal is affected or suspected to be affected by a notifiable disease. In practice, instances or suspected instances of notifiable diseases must be reported to the APHA.<sup>72</sup>
- 7.79 Animals are defined under the 1981 Act as “cattle, sheep, goats, all other ruminating animals and swine”.<sup>73</sup> The definition of an animal under the 1981 Act can be extended by order.<sup>74</sup>
- 7.80 The 1981 Act provides the Welsh Ministers with broad powers, exercisable in relation to Wales, to make orders to prevent and control the spread of animal disease, including orders which:
- (1) impose restrictions on the movement of animals;
  - (2) regulate the identification of animals;
  - (3) provide for biosecurity measures (for example, requirements as to cleansing and disinfection of areas where animals are held);
  - (4) prohibit or regulate the importation of animals, poultry and animal or poultry carcasses (among other things);
  - (5) prohibit or regulate the exportation of animals, poultry and carcasses; and
  - (6) prescribe and regulate the seizure, detention, and disposal of diseased animals (or animals suspected to be diseased).
- 7.81 The Welsh Ministers can also require animals to be treated with vaccines or serums to prevent the spread of animal disease. In addition, the 1981 Act imposes duties upon the Welsh Ministers including the requirement to produce national contingency plans for responding to outbreaks of animal disease.<sup>75</sup>
- 7.82 Part 3 of the 1981 Act concerns the welfare of animals during export and provides the Welsh Ministers with powers to make orders in that regard.<sup>76</sup> The 1981 Act also

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<sup>71</sup> Animal Health Act 1981, s 15 and relevant provisions in the orders made under the Act.

<sup>72</sup> The APHA is the executive agency with responsibility for identifying and controlling animal and plant health diseases (among other matters).

<sup>73</sup> Animal Health Act 1981, s 87.

<sup>74</sup> The relevant powers have since been transferred to the Welsh Ministers in so far as exercisable in relation to Wales by way of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>75</sup> Animal Health Act 1981, s 14A. See for example the Welsh Government’s contingency plan for exotic notifiable disease: <https://www.gov.wales/sites/default/files/publications/2021-03/exotic-animal-diseases-contingency-plan.pdf>.

<sup>76</sup> Animal Health Act 1981, ss 38 to 39.



provides the Welsh Ministers with miscellaneous powers such as the power to make orders relating to the control of dogs.<sup>77</sup>

### Secondary legislation made under the 1981 Act

7.83 There is an abundance of secondary legislation made under the 1981 Act. We have identified 53 substantive statutory instruments made under the 1981 Act which apply to Wales and remain in force.<sup>78</sup>

7.84 The subject matter of the statutory instruments made under the 1981 Act falls into the broad categories outlined below.

- (1) Orders which make provision for the prevention and control of specific types of animal diseases (such as avian influenza and foot and mouth disease).
- (2) Orders which are concerned with preventing the spread of animal disease generally, for example, by restricting the movement of animals or imposing controls on imported animals.
- (3) Orders which are concerned with the health or welfare of animals in specific contexts: namely, at markets, gatherings and during transport.
- (4) Orders which make provision that is supplementary or ancillary to the prevention and control of animal disease. For example, orders which provide for compensation measures where an animal has been slaughtered in order to prevent or control the spread of animal disease.

7.85 There is also one order made under the 1981 Act that appears unrelated, or at best loosely related, to the subject of animal disease: the Control of Dogs Order 1992.<sup>79</sup>

### Animal Health Act 1981 and orders made under the 1981 Act: criteria for inclusion

7.86 The 1981 Act is primarily concerned with the spread of disease among livestock. Disease for the purposes of the Act is defined to mean any of the following: cattle plague, pleuro-pneumonia, foot and mouth disease, sheep-pox, sheep scab, or swine fever.<sup>80</sup> Furthermore, the definition of animals in the 1981 Act primarily focuses on livestock namely, “cattle, sheep and goats, and all other ruminating animals and swine”.<sup>81</sup>

7.87 The scope of the Act is, however, broader than those diseases primarily affecting livestock insofar as:

- (1) the term “ruminating animals” can include animals living in the wild such as deer;

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<sup>77</sup> Animal Health Act 1981, s 13.

<sup>78</sup> By substantive SIs we mean any SIs other than those which revoke or amend other legislation.

<sup>79</sup> SI 1992/901.

<sup>80</sup> Animal Health Act 1981, s 88(1).

<sup>81</sup> Animal Health Act 1981, s 87(1).

- (2) the definition of animals can be extended by order;<sup>82</sup>
- (3) specific provisions within the Act extend to other types of animals including horses; and
- (4) the meaning of the term “disease” can be extended by order.<sup>83</sup>

7.88 Under the 1981 Act, the Welsh Ministers have powers to impose standards, measures and controls which owners and keepers of certain animals must comply with. The Welsh Ministers, and in some select cases the UK Ministers, have legislated for such standards, measures and controls through numerous statutory instruments that apply in relation to Wales. The overarching purpose of such laws is to prevent and eradicate animal disease and to control the spread of such disease where an outbreak or instance of disease occurs.

7.89 In our assessment, the prevention, eradication and control of animal disease concerns agriculture to the extent that healthy livestock are essential to the productivity of the Welsh agricultural sector. Research finds that healthy livestock produce more meat and other agricultural produce and require fewer resources than animals affected by disease.<sup>84</sup>

7.90 Furthermore, outbreaks of animal disease can be financially catastrophic for the agricultural sector. It is estimated that, as a result of the outbreak of foot and mouth disease in 2001, the agricultural sector, the food chain, and supporting services incurred net costs after compensation of £0.6 billion.<sup>85</sup> By the time the disease was eradicated in late 2001, more than 6 million animals in the UK had been slaughtered.<sup>86</sup>

7.91 The agricultural sector is, however, one of many sectors affected by outbreaks of animal disease. The outbreak of foot and mouth disease in 2001 is estimated to have cost the UK public sector £3 billion.<sup>87</sup> Tourism and the supporting industries were estimated to have lost revenues of between £4.5 billion and £5.4 billion.<sup>88</sup> Therefore, while animal health law can be said to support and protect the agricultural industry, it also serves to safeguard the national economy more broadly.

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<sup>82</sup> Animal Health Act 1981, s 87(2).

<sup>83</sup> Animal Health Act 1981, s 88(2).

<sup>84</sup> Health for Animals, “How better animal health supports sustainable food systems” (January 2024) <https://healthforanimals.org/wp-content/uploads/2024/01/How-Better-Animal-Health-Supports-Sustainable-Food-Systems-2501.pdf>.

<sup>85</sup> The 2001 Outbreak of Foot and Mouth Disease, Report of the Select Committee on Public Accounts (2002-03) HC 487 <https://publications.parliament.uk/pa/cm200203/cmselect/cmpubacc/487/48703.htm>.

<sup>86</sup> The 2001 Outbreak of Foot and Mouth Disease, Report of the Select Committee on Public Accounts (2002-03) HC 487 <https://publications.parliament.uk/pa/cm200203/cmselect/cmpubacc/487/48703.htm>.

<sup>87</sup> The 2001 Outbreak of Foot and Mouth Disease, Report of the Select Committee on Public Accounts (2002-03) HC 487 <https://publications.parliament.uk/pa/cm200203/cmselect/cmpubacc/487/48703.htm>.

<sup>88</sup> The 2001 Outbreak of Foot and Mouth Disease, Report of the Select Committee on Public Accounts (2002-03) HC 487 <https://publications.parliament.uk/pa/cm200203/cmselect/cmpubacc/487/48703.htm>.

7.92 Animal health law also provides protection for public health. The 1981 Act not only seeks to prevent, eradicate and control diseases which can be transmitted between animals, but also those diseases which are capable of passing from animals to humans, known as zoonotic diseases. As reported by the World Organization for Animal Health, “many established human infectious diseases originate in animals”.<sup>89</sup> In addition, it is reported that “almost all new infectious agents that emerge in humans have an animal source”.<sup>90</sup> Indeed, the recent coronavirus pandemic has demonstrated the devastating effect zoonotic diseases can have on human health on a global scale.<sup>91</sup>

7.93 Furthermore, the internationally adopted “One Health” approach to policymaking is based on the fundamental recognition that the subjects of animal health and human health are interrelated. One Health is an approach to designing and implementing policy, adopted by international organisations such as the EU and World Health Organization, which recognises that:

the health of humans, domestic and wild animals, plants, and the wider environment (including ecosystems) are closely linked and interdependent.<sup>92</sup>

7.94 The One Health concept is embedded in the Welsh Government’s Animal Health and Welfare Implementation Plan for 2022 to 2024. The Plan recognises that protecting animal health helps secure food supply which, in turn, reduces “the potential for serious public health problems caused by food shortages and protein deficiencies”.<sup>93</sup>

7.95 Overall, the 1981 Act, and secondary legislation implementing the Act, aim to prevent, eradicate, and control the spread of animal disease in order to:

- (1) protect public health;
- (2) protect the health of animals;
- (3) promote high standards of animal welfare; and
- (4) safeguard the economy from the serious financial losses which can stem from outbreaks of animal diseases.

Consequently, we consider that the 1981 Act concerns agriculture but also broader subject matters including animal health, animal welfare, public health and the economy.

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<sup>89</sup> World Organisation for Animal Health, “Animal Health and Welfare” <https://www.woah.org/en/what-we-do/animal-health-and-welfare/>.

<sup>90</sup> World Organisation for Animal Health, “Animal Health and Welfare” <https://www.woah.org/en/what-we-do/animal-health-and-welfare/>.

<sup>91</sup> UK Parliament POST, “Preventing emerging zoonoses” (January 2022) <https://researchbriefings.files.parliament.uk/documents/POST-PN-0660/POST-PN-0660.pdf>.

<sup>92</sup> World Health Organization, “One Health” [https://www.who.int/health-topics/one-health#tab=tab\\_1](https://www.who.int/health-topics/one-health#tab=tab_1).

<sup>93</sup> Welsh Government, *Wales Animal Health and Welfare Framework Implementation Plan 2022 to 2024* (January 2022) <https://www.gov.wales/animal-health-and-welfare-framework-implementation-plan-2022-2024>, p 13.

7.96 In terms of its practical application, the 1981 Act is primarily concerned with animal health and welfare matters that:

are traditionally associated with farmed animals such as movement and identification, TB and animal disease, animal by-products and restrictions during a disease outbreak.<sup>94</sup>

Consequently, farmers and agricultural workers are one of the main stakeholder groups who must comply with the body of laws concerned with animal health.

7.97 However, other stakeholders - for example, those who farm for their own consumption and those who keep livestock animals as domesticated pets - will also need to comply with any animal health laws relevant to the animals in their possession.

7.98 Furthermore, many of the diseases which commonly affect livestock can also affect other animals. For example, there are numerous orders made under the 1981 Act which concern the prevention and control of avian influenza: a disease affecting poultry, but which can also infect wild birds. In addition, there are orders made under the 1981 Act which seek to prevent or control diseases which are not known to occur in livestock. For instance, there are a number of orders made under the Act which seek to prevent or control diseases affecting horses.<sup>95</sup> In addition, as outlined above, the 1981 Act also makes provision for preventing the spread of animal disease which can pass from animals to humans.

7.99 For the reasons outlined above, it is difficult to determine whether the practical application of the Act is primarily concerned with agriculture. Consequently, we think there are competing and finely balanced arguments as to whether the Animal Health Act 1981, and secondary legislation made under that Act, are suitable for inclusion in the prospective Code. We therefore consider the options for encompassing animal health law in the prospective code of agricultural law for Wales at paragraphs 7.119 to 7.136 below.

## ASSIMILATED ANIMAL HEALTH LAW

7.100 It has been reported that, prior to the UK departing the EU, there were 400 pieces of legislation originating from the EU which concerned animal health.<sup>96</sup> Much of that legislation will now form part of our domestic statute book as assimilated law. It has not been possible within the confines of our work for this report to consider every assimilated law concerning animal health. Instead, we focus on those assimilated laws

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<sup>94</sup> Department for Environment, Food and Rural Affairs and Animal and Plant Health Agency, *Animal Health and Welfare Framework* (updated September 2022) <https://www.gov.uk/government/publications/animal-health-and-welfare-framework-2018/animal-health-and-welfare-framework#managing-the-animal-health-and-welfare-framework>.

<sup>95</sup> Generally, the law does not regard horses to fall within the meaning agricultural livestock unless kept for grazing purposes. See by way of example, P Williams, *Scammell, Densham and Williams Law of Agricultural Holdings* (11th ed 2023) para 3.54.

<sup>96</sup> Welsh Government, "Agriculture and horticulture: Animals" (March 2021) <https://law.gov.wales/environment/agriculture-and-horticulture/animals>.

which we consider most central to the health of livestock. Those laws can be divided into the categories below:

- (1) assimilated laws concerned with the identification, tracing and registration of livestock; and
- (2) assimilated laws concerned with the control of specific animal diseases affecting livestock.

7.101 There are also assimilated laws relating to the regulation of veterinary surgeons. However, the regulation of veterinary medicinal products and veterinary professional standards are reserved matters.<sup>97</sup> This means those matters fall outside of the Senedd's legislative competence. Consequently, our report does not consider assimilated laws concerning such matters.

7.102 In addition, there are those laws which underpin the enforcement of assimilated animal health and welfare law including the legislation on official controls.<sup>98</sup> There are also laws which aim to prevent and control the spread of animal disease by regulating international trade in animal and animal by-products.<sup>99</sup> However, in Chapter 10, we explain that, in order to place manageable parameters on the scope of our review of agricultural law, we do not examine those laws that apply to the post-farm stages of the agricultural supply chain.

### **Assimilated laws concerned with the control of specific animal diseases**

7.103 There are a substantial number of assimilated laws which impose measures aimed at preventing, eradicating or controlling the spread of specific types of animal diseases. Such measures are often referred to as biosecurity measures which, in the agricultural context, can be described as measures taken "to prevent and limit the spread of infectious disease on ... farm and elsewhere".<sup>100</sup> Examples of assimilated laws of this kind are set out below.

- (1) The Bluetongue (Wales) Regulations 2008, which provide for biosecurity measures aimed at eradicating, preventing and controlling the spread of bluetongue: a viral disease affecting sheep.<sup>101</sup>
- (2) The Disease of Poultry (Wales) Order 2003, which provides for notification requirements and biosecurity measures aimed at eradicating, preventing and

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<sup>97</sup> Government of Wales Act 2006, Sch 7A, paras 140 and 150.

<sup>98</sup> For example, UK Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020, SI 2020/44 (W 5).

<sup>99</sup> For example, the Trade in Animals and Related Products (Wales) Regulations 2011, SI 2011/2379 (W 252).

<sup>100</sup> AHDB, "Biosecurity" <https://ahdb.org.uk/knowledge-library/biosecurity>.

<sup>101</sup> The Bluetongue (Wales) Regulations 2008, SI 2008/1090 (W 116) make provision for the enforcement of UK Regulation (EC) No 1266/2007.

controlling the spread of specific diseases affecting poultry, for example, Newcastle disease.<sup>102</sup>

- (3) Diseases of Swine Regulations 2014, which provide for notification requirements and biosecurity measures aimed at eradicating, preventing and controlling the spread of specific diseases affecting pigs, for example, classical swine fever.<sup>103</sup>

7.104 There are also assimilated laws which make provision for biosecurity measures or other kinds of restrictions or standards which are aimed at eradicating, preventing or controlling the spread of animal diseases generally (rather than specific types of diseases). Examples are listed below.

- (1) The Poultry Compartments (Wales) Order 2010, which makes provision for a voluntary regime recognising poultry compartments which meet high biosecurity standards.<sup>104</sup>
- (2) The Bovine Embryo (Collection, Production and Transfer) Regulations 1995, which impose restrictions on the import of bovine embryos for the purposes of protecting animal health and preventing the spread of animal disease.<sup>105</sup>

#### Assimilated laws imposing biosecurity measures: criteria for inclusion

7.105 The assimilated laws considered at paragraphs 7.103 to 7.104 above are aimed at eradicating, preventing and controlling the spread of animal diseases affecting livestock. At paragraph 7.95 we conclude that the Animal Health Act 1981, and the secondary legislation made under that Act, are concerned with the subject of agriculture but also wider subjects including animal welfare, human health and the economy. We consider the same analysis applies to the assimilated laws considered at paragraphs 7.103 to 7.104 above.

7.106 Many of the diseases which are the subject of the assimilated laws considered at paragraph 7.103 are those which primarily affect livestock but can also spread to other species. For example, it is reported that bluetongue can affect livestock but also wild animals such as deer and, in rare instances, dogs.<sup>106</sup> Similarly, avian influenza (commonly known as bird flu) is known to affect poultry but also wild birds and wild and kept mammals.<sup>107</sup> For those reasons, it is difficult to conclude that the assimilated laws outlined at paragraphs 7.103 to 7.104 have a practical application that is limited to or primarily concerned with agriculture. We consider therefore that there are

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<sup>102</sup> The Diseases of Poultry (Wales) Order 2003, SI 2003/1079 (W 148) makes provision for the enforcement of UK Commission Regulation (EC) No 616/2009.

<sup>103</sup> SI 2014/1894.

<sup>104</sup> The Poultry Compartments (Wales) Order 2010, SI 2010/1780 (W 169) makes provision for the enforcement of UK Commission Regulation (EC) No 616/2009.

<sup>105</sup> SI 1995/2478.

<sup>106</sup> Department for Environment, Food and Rural Affairs and Animal and Plant Health Agency, "Bluetongue: how to spot and report it" (August 2014) <https://www.gov.uk/guidance/bluetongue>.

<sup>107</sup> Department for Environment, Food and Rural Affairs and Animal and Plant Health Agency, "Bird flu (avian influenza): latest situation in England" (November 2022) <https://www.gov.uk/government/news/bird-flu-avian-influenza-latest-situation-in-england>.

competing and finely balanced arguments as to whether the assimilated laws in question are suitable for inclusion in the prospective Code. Consequently, we consider the options for encompassing these assimilated animal health laws in the prospective Code at paragraphs 7.119 to 7.136 below.

### **Assimilated laws concerning the identification, tracing and registration of livestock**

7.107 There are three pieces of secondary legislation which are concerned with the identification and tracing of livestock for animal health purposes. The relevant secondary legislation is listed below.

- (1) Cattle Identification (Wales) Regulations 2007.
- (2) Pigs (Records, Identification and Movement) (Wales) Order 2011.
- (3) Sheep and Goats (Records, Identification and Movement) (Wales) Order 2015.<sup>108</sup>

7.108 The above three laws impose requirements relating to the identification and tracing of livestock for disease control purposes. By way of example, the Cattle Identification (Wales) Regulations 2007 require cattle farmers to affix ear tags to their cattle, register each animal with the Welsh Ministers and apply for a cattle passport. Anyone transporting cattle must ensure that each animal transported is accompanied by a valid cattle passport.

7.109 There are also laws requiring the Welsh Ministers to maintain registers of establishments keeping laying hens for animal disease control purposes. The Registration of Establishments (Laying Hens) (Wales) Regulations 2004 require the Welsh Ministers to maintain registers of establishments keeping more than 350 laying hens (other than rearing breeding laying hens).<sup>109</sup> Furthermore, regulation 7 of the Avian Influenza Preventative Measures (Wales) Regulations 2006 requires keepers of poultry or other captive birds to register with the Welsh Ministers regardless of the number of poultry or captive birds kept.<sup>110</sup> However, the information which must be supplied for the purposes of the register differs according to flock size.

### **Identification and tracing laws for livestock: criteria for inclusion**

7.110 The livestock, tracing and registration laws described above are concerned with preventing, controlling and eradicating the spread of animal disease among livestock.

7.111 At paragraph 7.95 we consider how animal health laws applicable to diseases affecting livestock concern agriculture but also wider subjects including animal health, animal welfare, public health and the economy. We consider the same analysis applies to the livestock identification, tracing and registration laws considered at paragraphs 7.107 to 7.109 above. Indeed, the broad aim of animal health law originating from the EU has been described as being to:

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<sup>108</sup> SI 2007/842 (W 74); SI 2011/2830 (W 303); SI 2015/1992 (W 302).

<sup>109</sup> SI 2004/1432 (W 145).

<sup>110</sup> SI 2006/2803 (W 242).

enable trade in the Single Market, to ensure high standards of animal and public health in the EU and the rational development of the agriculture and aquaculture sectors, and to increase productivity.<sup>111</sup>

Furthermore, the Welsh Government describe livestock identification as being “integral for disease prevention, control and eradication and the protection of public health”.<sup>112</sup>

7.112 The livestock identification, tracing and registration laws considered at paragraphs 7.103 to 7.104 impose requirements which livestock farmers must comply with while animals are kept on farm (for example ear-tagging animals and the relevant registration requirements). There are also requirements which apply to transporters of livestock, but we consider that those journeys will be undertaken for the purposes of facilitating agricultural trade. Therefore, we are satisfied that the practical application of the laws is limited to, or primarily concerned with, agriculture.

7.113 For the above reasons, we consider that the livestock identification, tracing and registration laws in question are suitable for inclusion in the prospective Code.

## SCOPE OF THE PROSPECTIVE CODE

7.114 In this chapter we have concluded that a modest number of animal welfare laws satisfy our criteria for inclusion in the prospective code of agricultural law for Wales:

- (1) the Welfare of Farmed Animals (Wales) Regulations 2007; and
- (2) the Welfare of Animals at Markets Order 2009.

7.115 However, we consider that the majority of animal welfare laws considered in this chapter do not meet our criteria for inclusion in the prospective Code. This is because the laws in question are more closely connected to the subject of animal welfare than to agriculture. Alternatively, or in addition, we have determined that the laws in question have a practical application which is not limited to or primarily concerned with agriculture.

7.116 Similarly, we have concluded that a modest number of animal health laws satisfy our criteria for inclusion: those which concern the identification, tracing and registration of livestock. The laws, and legislative provisions, in question are listed below.

- (1) Cattle Identification (Wales) Regulations 2007.
- (2) Pigs (Records, Identification and Movement) (Wales) Order 2011.
- (3) Sheep and Goats (Records, Identification and Movement) (Wales) Order 2015.

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<sup>111</sup> Animal Health and Welfare Common Framework: Provisional Framework Outline Agreement and Concordat (2022) CP 590.

<sup>112</sup> Welsh Government, *Changes to Livestock Identification, Registration and Movement Reporting Consultation* (September 2021) <https://www.gov.wales/sites/default/files/consultations/2021-10/livestock-consultation-document.pdf>, p 8.



- (4) Registration of Establishments (Laying Hens) (Wales) Regulations 2004.
- (5) Regulation 7 of the Avian Influenza Preventative Measures (Wales) Regulations 2006.

7.117 For the remainder of the animal health legislation considered in this chapter, there are finely balanced arguments as to whether such laws are suitable for inclusion in the prospective Code. Firstly, we consider that the laws in question are concerned with agriculture but also with a wider range of subjects including animal welfare more generally, public health and the economy. Secondly, we consider that the practical application of the laws includes, but extends beyond, the agricultural sector. Thirdly, we consider it is difficult to discern whether the laws have a practical application which is primarily concerned with agriculture. This is because many animal diseases affecting livestock can be transmitted between and affect multiple species including wildlife.<sup>113</sup>

7.118 In light of our assessment on the above, we consider that there are three options for incorporating the law on livestock health and welfare into the prospective Code.

#### **Option one: signpost to the law on livestock health and welfare**

7.119 Under option one, the prospective Code would only include the modest number of animal welfare laws and animal health laws which we have identified as satisfying our criteria for inclusion.

- (1) Cattle Identification (Wales) Regulations 2007.
- (2) Pigs (Records, Identification and Movement) (Wales) Order 2011.
- (3) Sheep and Goats (Records, Identification and Movement) (Wales) Order 2015.
- (4) Registration of Establishments (Laying Hens) (Wales) Regulations 2004.
- (5) Avian Influenza Preventative Measures (Wales) Regulations 2006.
- (6) Welfare of Farmed Animals Regulations 2007.
- (7) Welfare of Animals at Markets Order 1990.

7.120 The main advantage of option one is that it would ensure the prospective Code is focused on those animal health laws and animal welfare laws which are directly and primarily relevant to the agricultural sector. It would further ensure that the prospective Code does not encompass legislation which may be better suited to falling within a possible future code of Welsh law on a different subject, such as a code of Welsh law encompassing legislation affecting animals generally.

7.121 Of the three options proposed, we also consider that option one would be the least resource-intensive to implement. The laws proposed for inclusion under option one

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<sup>113</sup> A Wiethoelter and others, "Global trends in infectious diseases at the wildlife-livestock interface" (July 2015).

are all contained in secondary legislation and the majority in instruments made by the Welsh Ministers.<sup>114</sup>

7.122 The main disadvantage of the model proposed under option one is that it would mean that the prospective Code would exclude key animal health and welfare laws with which farmers must comply. For example, the Animal Health Act 1981 and the animal health orders made under that Act would fall outside of its scope. A code of Welsh law is intended to be a comprehensive statement of the law on a particular topic which is published together. Therefore, it could be considered unsatisfactory for the prospective Code not to include all the animal health laws and animal welfare laws applicable to livestock. In addition, individuals referring to the prospective Code may assume that laws excluded from its scope are irrelevant to the agricultural sector.

7.123 However, signposting could help mitigate against the risks outlined above. Signposting could involve a webpage publishing the prospective Code providing links to those animal health laws and animal welfare laws which fall outside of the scope of the prospective Code but which are relevant to the agricultural sector.

7.124 Nonetheless, we acknowledge that signposting can only provide a partial solution to tackling the inaccessibility of the law in this area. This is because the prospective Code would be signposting to areas of law - animal health law and animal welfare law - which would remain fragmented and voluminous.

7.125 Excluding the majority of animal health law and animal welfare law from the scope of the prospective Code could therefore be viewed as a missed opportunity to consolidate, simplify and modernise the law in these areas. However, our work for this report is set against a wider, ambitious programme of work to codify the law on devolved subjects in Wales; a task which has been aptly described as requiring a generational effort.<sup>115</sup> Therefore, any work stemming from this report does not represent the only opportunity to codify the laws on animal health and animal welfare.

### **Option two: include animal health law and select livestock welfare laws in the prospective Code**

7.126 Under option two, we propose that the following legislation would be included in the prospective Code:

- (1) the Animal Health Act 1981;
- (2) the secondary legislation enacted under the Animal Health Act 1981;
- (3) the assimilated law which seeks to prevent, eradicate and control the spread of specific animal diseases (see paragraphs 7.103 to 7.104);

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<sup>114</sup> The only exception is the Welfare of Animals at Markets Order 1990, SI 1990/2628: an order made by UK Government Ministers which applies to England, Scotland and Wales. However, the Welsh Ministers have powers to enact the 1990 Order on a Wales only basis.

<sup>115</sup> Welsh Government, *The future of Welsh law: A programme for 2021 to 2026 – annual report 2021 to 2022* (November 2022) <https://www.gov.wales/the-future-of-welsh-law-annual-report-2021-to-2022-html>, para 51.

- (4) the livestock identification, tracing and registration laws considered at paragraphs 7.107 to 7.109;
- (5) the Welfare of Farmed Animals (Wales) Regulations 2007; and
- (6) the Welfare of Animals at Markets Order 1990.

7.127 In comparison with the first option, option two has the advantage of encompassing a significantly broader scope of animal health laws and animal welfare laws with which farmers need to comply.

7.128 In addition, option two avoids fragmentation of animal health law. Outbreaks of animal disease can escalate rapidly and pose serious risks to the agricultural sector, animal welfare, human health and the economy. Consequently, it is critical that the Welsh Government, and those agencies or bodies with responsibility in this area, are able to easily identify the full range of executive powers available to respond to animal disease outbreaks. Accordingly, there is a compelling case for ensuring that animal health law is contained in a single, coherent and comprehensive legislative framework (in the form of a code of Welsh law).

7.129 The main disadvantage of option two is that it means that the law on animal health and the majority of the laws on animal welfare would not be included in the same code of Welsh law. Animal health and animal welfare are closely intertwined subjects. It is well documented that the adoption of high animal welfare standards reduces the risk of animal disease outbreaks and safeguards animal health. Poor animal welfare “usually leads to greater susceptibility to diseases because of the effects on the immune system of having to cope with difficult living conditions”.<sup>116</sup>

7.130 It is further recognised that animals which are “cared for appropriately and in accordance with existing biosecurity and welfare standards are more likely to be healthy and less likely to spread disease”.<sup>117</sup> Given that the subjects of animal health and welfare are inextricably linked, there are disadvantages to developing a model of the prospective Code which divides those areas of law.

7.131 Finally, bringing animal health law within the scope of the prospective Code could create a misleading impression that the scope and relevance of animal health law does not extend beyond the agricultural sector. While the majority of animal health laws may be regarded as being centrally concerned with the health of livestock, those laws also concern the health of a broader categories of animals and diseases not known to pose particular risk to livestock. However, a webpage that may publish the prospective Code could, in principle, signal the broader scope of any animal health laws contained within it.

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<sup>116</sup> University of Edinburgh, *Understanding the Five Domains Model of Animal Welfare* <https://vet.ed.ac.uk/sites/default/files/2024-09/5%20Domains%20Model.pdf>.

<sup>117</sup> Department for Environment, Food and Rural Affairs, “Animal health and welfare framework: 2015 to 2017” (November 2015) <https://assets.publishing.service.gov.uk/media/5a7f205540f0b6230268d97c/animal-health-welfare-framework-2015-2017.pdf>, 3.

### **Option three: expand the scope of the prospective Code and include animal health law and animal welfare law**

- 7.132 Option three would include animal health law and animal welfare law in the prospective Code. Under this option, the prospective Code would encompass the law on the health and welfare of animals including but not limited to livestock. We consider this option would involve expanding the scope of the prospective Code to encompass a code of law for agriculture and animals. If the scope of the prospective Code were expanded in this manner then we think it would be important to make clear that the law on animal welfare extends far beyond the agricultural context.
- 7.133 Under option three, the prospective Code would contain the law on animal health and on animal welfare making it easier for individuals to identify and access the animal health and welfare laws that apply to the agricultural sector. Option three would also present an opportunity to consolidate the currently fragmented and voluminous bodies of animal health law and animal welfare law into a cohesive legal framework.
- 7.134 However, the model of the prospective Code proposed under option three would result in a code of Welsh law which is vast in scope. We consider the work involved in codifying such legislation could be undertaken in stages. For instance, a prospective code of law for agriculture and animals could be developed in stages by implementing each of the models proposed under options one, two and three in sequence.
- 7.135 Relatedly, the potential size of a prospective code of law for agriculture and animals could potentially detract from the main objective of codification: to improve the accessibility of the law. We consider the relationship between the volume of law contained in a code of law and its accessibility in Chapter 4.

### **Our preferred option: option two**

- 7.136 Our preferred model of the prospective code of agricultural law for Wales is the model proposed under option two. We consider option two strikes an appropriate balance between ensuring that the prospective code of agricultural law for Wales encompasses the key laws concerning animal health and welfare which apply in the agricultural context, without significantly expanding the scope of the prospective Code into distinct areas of law. As above, we consider that signposting could be used to direct users of the prospective Code to those laws that fall outside of scope but apply to the agricultural sector. We further acknowledge that the model proposed under option two could be expanded in scope to reflect the model proposed under option three. We consider that this possible expansion of the prospective Code should be read alongside a similar suggestion offered in Chapter 8 in respect of plant health law. This means that the prospective Code would become a code of law for agriculture, animals and plants.<sup>118</sup>

## **COMMON FRAMEWORKS**

- 7.137 Following the UK's departure from the EU, the UK Government "has been working with the Welsh Government, Scottish Government and the Northern Ireland Executive

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<sup>118</sup> Although it does not represent the Welsh Government's settled policy on the taxonomy of prospective codes of law, we note that the Office of the Legislative Counsel's "Draft Taxonomy of Code" proposes a possible code of law for agriculture, animals and plants.

to develop UK Common Frameworks”.<sup>119</sup> Common frameworks are discussed in Chapter 2. In brief, common frameworks ensure that:

- (1) “a common approach is taken where powers have returned from the EU which intersect with policy areas of devolved competence”;<sup>120</sup> and
- (2) “the UK can negotiate, enter into and implement new trade agreements and international treaties, and ensure compliance with international obligations”.<sup>121</sup>

7.138 Subject to limited reservations, animal health and animal welfare are each subjects falling within the legislative competence of the Senedd.<sup>122</sup> Prior to the UK’s departure from the EU, animal health and welfare law was largely “harmonised at an EU level”.<sup>123</sup> This means that the EU legislatures enacted fundamental laws governing animal health and welfare which the UK, as a former member state of the EU, implemented domestically. The EU legislative framework governing animal health law and animal welfare law provided some scope for “different parts of the UK to do things differently, but as a minimum, compliance was needed with the standards set in EU regulation”.<sup>124</sup>

7.139 The Welsh Government, UK Government, Scottish Government and Northern Ireland Executive (“the parties”) have provisionally approved a provisional common framework for animal health and welfare (“the AHW Provisional Framework”).<sup>125</sup> The AHW Provisional Framework is stated to apply to all animal health and welfare legislation applicable in the UK.<sup>126</sup>

7.140 Under the framework, the parties have provisionally committed “not to diverge from baseline standards in a manner harmful to biosecurity, welfare or the UK internal market across relevant policy areas”.<sup>127</sup> Furthermore, where making changes to animal health and welfare legislation, the parties have provisionally agreed to “aim to

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<sup>119</sup> Cabinet Office, “UK Common Frameworks” (December 2020) <https://www.gov.uk/government/collections/uk-common-frameworks>.

<sup>120</sup> Cabinet Office, “UK Common Frameworks” (December 2020) <https://www.gov.uk/government/collections/uk-common-frameworks>.

<sup>121</sup> Animal Health and Welfare Common Framework: Provisional Framework Outline Agreement and Concordat (2022) CP 590, p 4.

<sup>122</sup> Relevant reserved matters including the reservation for procedures on live animals for scientific or educational purposes (para 61 of Sch 7B to the Government of Wales Act 2006) and the regulation of the veterinary profession and veterinary medicine (respectively paras 140 and 150 of Sch 7B to the Government of Wales Act 2006).

<sup>123</sup> Animal Health and Welfare Common Framework: Provisional Framework Outline Agreement and Concordat (2022) CP 590, p 5.

<sup>124</sup> Animal Health and Welfare Common Framework: Provisional Framework Outline Agreement and Concordat (2022) CP 590, p 6.

<sup>125</sup> The provisional framework must then undergo parliament scrutiny by the UK Parliament, Senedd and other devolved legislatures before receiving final ministerial approval.

<sup>126</sup> Animal Health and Welfare Common Framework: Provisional Framework Outline Agreement and Concordat (2022) CP 590, p 12.

<sup>127</sup> Animal Health and Welfare Common Framework: Provisional Framework Outline Agreement and Concordat (2022) CP 590, p 14.

develop common policy approaches, where this is appropriate, through cross-cutting mechanisms”.<sup>128</sup>

7.141 Where animal health law and animal welfare law is currently contained in primary legislation enacted by the UK Parliament, then including that law within the scope of the prospective Code would involve restating it in an Act made by the Senedd. We therefore acknowledge that any code of Welsh law which encompasses laws concerning animal health law and animal welfare would need to be developed against the backdrop of commitments made under the AHW Provisional Framework.

7.142 In addition, numerous stakeholders have emphasised to us that animal health “does not respect borders” meaning that outbreaks of animal disease in one nation of the UK can have consequences for other UK nations. We acknowledge therefore that there may be policy considerations - falling beyond the scope of this report - which may influence whether and how animal health legislation is subsumed within the prospective code of agricultural law for Wales.

## TECHNICAL ISSUES

7.143 Alongside identifying those laws which are suitable for inclusion in the prospective Code, we have also considered whether the law in question may require or benefit from changes or adjustments aimed at simplification, modernisation or streamlining.

7.144 By way of example, the Animal Health Act 1981 was drafted over 40 years ago and, unsurprisingly, would benefit from modernisation in certain respects. We offer below a non-exhaustive list of examples where the law in this area could potentially benefit from technical improvements.

### Modernising the duty to report notifiable animal diseases

7.145 The 1981 Act makes provision for the notifiable animal diseases regime, which requires that certain animal diseases must be notified. Section 15(1) of the 1981 Act provides that when an animal becomes infected with a disease the owner of the animal, or the person in charge of the animal, must notify the police. “Disease” is defined in section 88(1) of the 1981 Act by reference to a list of diseases. In addition, there are numerous orders made under section 88(2) of the 1981 Act which add new diseases to the scope of the statutory definition under section 88. Some of those orders in question provide that instances of those additional notifiable diseases must be notified to the local authority or to the Welsh Ministers.<sup>129</sup>

7.146 However, in practice we understand that instances or suspected instances of notifiable diseases must be notified to the APHA.<sup>130</sup> Therefore, bringing agricultural law together in the way proposed presents an opportunity to update the wording of section 15 of the 1981 Act to reflect how the law operates in practice.

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<sup>128</sup> Animal Health and Welfare Common Framework: Provisional Framework Outline Agreement and Concordat (2022) CP 590, p 14.

<sup>129</sup> See for example, the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179 (W 30).

<sup>130</sup> Welsh Government, “Report notifiable diseases” <https://www.gov.wales/notifiable-diseases-0>. The APHA is the executive agency with responsibility for identifying and controlling animal and plant health diseases.

## Defining notifiable animal diseases

- 7.147 In the animal health context, the term “notifiable disease” is widely used in Welsh and UK Government and industry guidance to refer to those animal diseases which must be reported to the APHA where an instance or suspected instance of the disease occurs.<sup>131</sup> The term “notifiable disease” is not defined or used in the 1981 Act. In the absence of a statutory definition, we understand notifiable diseases to mean any animal disease for which a duty to notify the APHA exists. This means notifiable diseases are those which fall within the definition of disease under section 88(1) of the 1981 Act,<sup>132</sup> and those diseases specified in orders made under section 88(2) of the Act.
- 7.148 Section 88(1) provides that “disease” means cattle plague, pleuro-pneumonia, foot and mouth disease, sheep-pox, sheep scab or swine fever. This means those diseases are treated as notifiable diseases for the purposes of the 1981 Act.
- 7.149 Although sheep scab is listed in section 88(1), it is unclear from government guidance whether sheep scab is treated in practice as a notifiable disease. Defra guidance states that sheep scab is a notifiable disease in Scotland but does not explicitly confirm the position in Wales and England.<sup>133</sup> Welsh Government guidance describes sheep scab as a reportable disease rather than as a notifiable disease.<sup>134</sup>
- 7.150 The term “reportable disease” is not defined within legislation. However, guidance issued by Defra and the APHA advise that the term “reportable disease” refers to diseases which “only require notification following detection in diagnostic testing in a laboratory, the field or other setting”.<sup>135</sup> By contrast, the guidance describes notifiable diseases as diseases which must be reported immediately where an animal is infected or suspected to be infected.
- 7.151 The absence of a statutory definition, and the ambiguities outlined above, illustrate that it can be difficult to discern which diseases are notifiable diseases for the purposes of the 1981 Act. This difficulty is compounded by the fact there is no publicly available exhaustive list of all notifiable diseases.<sup>136</sup> Instead, it is necessary to refer to the provisions of the 1981 Act, the vast number of orders made under that Act and government guidance to piece together those diseases which are treated as notifiable diseases. We therefore suggest that consideration could be given to whether animal health legislation could be made clearer in this respect. For instance, it may be

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<sup>131</sup> As outlined at para 7.76, the term “notifiable disease” is also used to describe notifiable human diseases under the Public Health (Control of Disease) Act 1984.

<sup>132</sup> By virtue of the fact that s 15(1) of the Animal Health Act 1981 imposes a duty to notify instances of diseases which are defined to mean those listed in s 88.

<sup>133</sup> Department for Environment, Food and Rural Affairs and Animal and Plant Health Agency, “Sheep scab: how to spot and report the disease” (August 2014) <https://www.gov.uk/guidance/sheep-scab>.

<sup>134</sup> Welsh Government, “Sheep scab” (November 2018) <https://www.gov.wales/sheep-scab-0>.

<sup>135</sup> Department for Environment, Food and Rural Affairs and Animal and Plant Health Agency, “Reportable diseases: immediate reporting requirements for diagnostic laboratories” (March 2025) <https://www.gov.uk/government/publications/listed-diseases-in-animals-case-definitions-testing-and-reporting/reportable-diseases-immediate-reporting-requirements-for-diagnostic-laboratories>.

<sup>136</sup> Department for Environment, Food and Rural Affairs’ website provides a non-exhaustive list of notifiable diseases: <https://www.gov.uk/government/collections/notifiable-diseases-in-animals>.



desirable to introduce statutory definitions of the terms “notifiable disease” and “reportable diseases”, or to restructure the legislation to make the full list of notifiable disease easier to identify.

7.152 In the EU context, Regulation 2016/429 (“the EU Animal Health Regulation”) has made it easier to identify the animal diseases which must be notified to competent authorities in EU member states.<sup>137</sup> The EU Animal Health Regulation consolidates between 40 to 50 different EU animal health laws and lists those animal diseases which must be notified to a competent authority for a member state in an annex to the Regulation. Furthermore, the EU Animal Health Regulation allows for diseases to be added or removed to the annexed list of animal diseases by way of secondary legislation (known as delegated legislation in the EU context).

7.153 In addition, one stakeholder told us that it would be helpful to understand the basis on which the Welsh Government or UK Government decides which diseases are notifiable diseases. In that respect, we note that the EU Animal Health Regulation specifies criteria which must be satisfied in order for an animal disease to be added to the scope of the regulation.

#### **Extending existing powers to amend the definition of “disease”.**

7.154 “Disease” is defined in section 88(1) of the Animal Health Act 1981. Presently, the Welsh Ministers can add, by order, new diseases to the definition of a “disease” for the purposes of the 1981 Act (see section 88(2)).<sup>138</sup> The Welsh Ministers could also revoke an order made under section 88(2) of the 1981 Act. The effect of doing so would be to remove the disease(s) in that revoked order from the scope of diseases for which a duty to notify APHA exists.

7.155 However, the Welsh Ministers do not have powers to remove a disease from the list of diseases presented in section 88(1) of the 1981 Act. This means that currently the Welsh Ministers cannot, by way of secondary legislation at least, remove any of the diseases expressly listed in section 88(1). As outlined above, we are unclear whether sheep scab continues to be treated as a notifiable disease in practice in Wales. However, sheep scab is currently listed in the section 88(1) definition of “disease”. Consideration could therefore be given to extending the scope of the Welsh Ministers’ existing order-making powers to allow them to remove diseases from the list presented in section 88(1) of the 1981 Act.

#### **Standardising the duty to notify**

7.156 Similarly, we consider that the law could be amended to make clearer that there is a requirement to report to the APHA (the executive agency with responsibility for identifying and controlling animal diseases).

7.157 We have reviewed a sample of the orders made under the 1981 Act which have the effect of designating specific diseases as notifiable diseases. The orders in question

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<sup>137</sup> The EU Animal Health Law came into force after the UK left the EU and does not form part of our domestic statutebook.

<sup>138</sup> The Animal Health Act 1981 also provides for a distinct definition of disease insofar as the Act applies to poultry and further provides the Welsh Ministers with separate powers to add to that definition by way of secondary legislation (see respectively ss 88(3) and (4) of the Animal Health Act 1981).



provide that a person in possession or in charge of an animal which is affected by the notifiable disease in question must report that fact to the relevant authority, in practice the APHA. The orders reviewed also expressly provide that such persons must make a notification where an animal is suspected to be affected by the relevant notifiable disease.

7.158 For those diseases which fall within the definition of disease under section 88 of the 1981 Act - cattle plague, pleuro-pneumonia, foot and mouth disease, sheep-pox, sheep scab and swine fever - the duty to notify the APHA derives from section 15 of the 1981 Act. Section 15 requires a person in possession or in charge of an animal affected by a disease within the meaning of section 88 of the Act to notify the police. As outlined at paragraph 7.146 above, notification must be made in practice to the APHA. Section 15 does not, however, expressly require notification where an animal is suspected of being affected by such a disease. We consider therefore that the regime for notifiable disease could be made clearer if the duty to notify instances, and suspected instances, of notifiable disease was drafted in consistent terms across the relevant legislative provisions.<sup>139</sup>

7.159 Separately, there is some inconsistency across the notifiable disease regime as to which persons are expressly responsible for notifying the APHA. Many of the orders made under the 1981 Act provide that those responsible for notifying the APHA include animal owners, veterinary surgeons and persons analysing samples for the purposes of identifying the presence of disease.<sup>140</sup> For those notifiable diseases which are listed in section 88(1) (cattle plague, pleuro-pneumonia, foot and mouth disease, sheep-pox, or swine fever), the 1981 Act only requires a person responsible for, or in charge of, an infected animal to make the notification.<sup>141</sup> The duty in this instance does not expressly extend to veterinary surgeons or those undertaking analysis of testing samples.

7.160 We acknowledge there may be policy or practical reasons for the difference in approach. That said, if the 1981 Act were included in the prospective Code, then there would be an opportunity to examine whether the scope of the duty could be standardised across all notifiable diseases.

### **Rationalising the law on livestock identification**

7.161 As outlined in Chapter 1, developing a code of Welsh law will also usually involve a process of rationalising the secondary legislation for the relevant subject.

7.162 Codification therefore presents an opportunity to consider whether secondary laws applicable to agriculture could be rationalised, for example, by restating their subject matter in a single Welsh statutory instrument. For instance, there are four different statutory instruments that each concern the identification requirements applicable to distinct species of livestock:

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<sup>139</sup> That is across Animal Health Act 1981, s 88 and the provisions of the various orders made under the 1981 Act which impose a duty to notify in respect of a specific disease or group of diseases.

<sup>140</sup> See for example the Specified Diseases (Notification) Order 1996, SI 1996/2628, art 3.

<sup>141</sup> Animal Health Act 1981, s 15.

- (1) Cattle Identification (Wales) Regulations 2007;
- (2) Pigs (Records, Identification and Movement) (Wales) Order 2011;
- (3) Sheep and Goats (Records, Identification and Movement) (Wales) Order 2015;  
and
- (4) Registration of Establishments (Laying Hens) (Wales) Regulations 2024.

7.163 The subject matter of the above statutory instruments could be brought together and restated in one statutory instrument, making it easier for individuals to find the law governing the identification of different species of livestock. In that respect we note that the Welsh Government has previously indicated its intention to replace the existing separate laws governing livestock identification with new legislation.<sup>142</sup>

7.164 We also note that the above livestock identification laws cross-refer to provision made in various EU-derived Regulations which now form part of our domestic statute book as assimilated law.<sup>143</sup> The Cattle Identification (Wales) Regulations 2007 refer to at least four assimilated laws concerning cattle identification, indicating there is further scope to streamline the law in this area. As discussed in Chapter 5, Defra has consulted on bringing domestic regulations on cattle identification and various assimilated laws on the same subject together in one single statutory instrument.<sup>144</sup>

## ISSUES OR AREAS REQUIRING FURTHER ANALYSIS

7.165 We have not been asked in this report to make proposals for substantive reform of agricultural law. Accordingly, we do not make proposals for legislative reforms which would involve changes to the policy underpinning agricultural law.

7.166 However, our terms of reference ask us to highlight any issues engaged by the codification of agricultural law which may require further consideration or analysis. We set out below examples of such issues.

### Review of enforcement powers

7.167 The powers of local authorities and the APHA to enforce animal health law are spread across a patchwork of legislation including the 1981 Act and the orders made under that Act. Owing to the piecemeal development of the law in this area, those laws which make provision for enforcement powers in the animal health context can be inconsistent in their wording. For example, provisions in the 1981 Act, and certain orders made under that Act, make inconsistent provision regarding the time of day at which certain statutory powers of entry can be exercised. Some powers of entry are

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<sup>142</sup> Welsh Government, *Changes to Livestock Identification, Registration and Movement Reporting Consultation* (September 2021) <https://www.gov.wales/sites/default/files/consultations/2021-10/livestock-consultation-document.pdf>.

<sup>143</sup> UK Commission Regulation (EC) No 494/98, UK Commission Regulation (EC) No 911/2004, UK Regulation (EC) No 1760/2000 of the European Parliament and of the Council and UK Commission Regulation (EC) No 644/2005. The Cattle Identification (Wales) Regulations 2007, SI 2007/842 (W 74) also refer to Commission Regulation (EC) No 509/1999, since repealed by Commission Delegated Regulation (EC) 2019/2035.

<sup>144</sup> Department for Environment, Food and Rural Affairs, *Changes to bovine identification, registration and movement in England: consultation document* (September 2023).

expressed as being exercisable “at any time”,<sup>145</sup> whereas others are expressed as being exercisable “at all reasonable hours”,<sup>146</sup> or “at all reasonable times”.<sup>147</sup> We acknowledge there may be policy reasons for making distinct provision for different enforcement powers. However, bringing animal health law within the prospective Code presents an opportunity to examine whether the wording of enforcement powers could be standardised or whether such powers could be consolidated.<sup>148</sup>

7.168 We note that a similar issue was reported on by the Independent Farm Inspection and Regulation review in respect of the regulatory framework applicable in England:

[the] Animal and Plant Health Agency has substantial powers to undertake surveillance and investigations, and access to wider powers (through Defra) to address disease outbreaks. The evolution of these powers over many years and through many different statutory orders has led to variation so that powers of entry, for example, critical for disease control purposes, are cast differently according to their legislative source. This sometimes causes practical difficulties on the ground.<sup>149</sup>

### **Reviewing the maximum fines which may be imposed for criminal offences**

7.169 It falls outside of our remit to make recommendations concerning the maximum fine which may be imposed where an individual commits an offence under agricultural legislation. However, we have identified some instances where the maximum fines which may be imposed for certain offences stemming from similar actions or omissions appear potentially inconsistent.

7.170 By way of example, the maximum fines which may be imposed for offences concerning the identification of livestock differ across the relevant statutory instruments. The Cattle Identification (Wales) Regulations 2007 create a number of criminal offences relating to the identification of cattle. For example, it is an offence for an occupier of a holding who begins to keep cattle to fail to notify the Welsh Ministers within a specified period of their name, address and the address of the holding.<sup>150</sup> The penalty for committing an offence under the Cattle Identification (Wales) Regulations 2007 is:

- (1) on summary conviction, a fine not exceeding the statutory maximum or imprisonment not exceeding three months or both; or
- (2) on conviction on indictment, a fine or imprisonment for a term not exceeding two years or both.

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<sup>145</sup> Animal Health Act 1981, s 63.

<sup>146</sup> Animal Health Act 1981, s 64A.

<sup>147</sup> Enzootic Bovine Leukosis (Wales) Order 2006, SI 2006/867 (W 79), art 15.

<sup>148</sup> In addition, we note that the Welsh Ministers have powers to issue a code of practice containing guidance about the exercise of devolved powers of entry under the Protection of Freedoms Act 2012, s 53 and Sch 3.

<sup>149</sup> Farm Inspection and Regulation Review, *Final Report* (December 2018) p 59.

<sup>150</sup> Cattle Identification (Wales) Regulations 2007, SI 2007/842 (W 74), reg 3.

7.171 Similarly, it is an offence to contravene a requirement imposed under the Pigs (Records, Identification and Movement) (Wales) Regulations 2011.<sup>151</sup> For example, it is an offence for an occupier of a holding who begins to keep pigs on that holding to fail to notify the Welsh Ministers within a specified period of their name, address and the address of the holding.<sup>152</sup>

7.172 An individual who commits an offence under the Pigs (Records, Identification and Movement) (Wales) Regulations Order 2011 is “liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both”.<sup>153</sup> For summary offences committed before 13 March 2015 the maximum fine which may be imposed is £5,000. On or after 13 March 2015, an offence that is stated to be punishable by a maximum fine of £5,000 (however expressed) is converted into an offence punishable by a fine of any amount.<sup>154</sup>

7.173 We acknowledge that there may be policy reasons for providing different maximum fines which may be imposed for different offences. However, codification presents an opportunity to examine whether the maximum fines which can be imposed for offences provided for under agricultural legislation are consistent.

## OTHER RELEVANT LAWS

### Dogs (Protection of Livestock) Act 1953

7.174 Under the Dogs (Protection of Livestock) Act 1953 (“the 1953 Act”), if a dog attacks or worries livestock on agricultural land, then the owner is guilty of an offence.<sup>155</sup> In addition, or in the alternative, the person in charge of the dog at the time of the attack (if not the owner) may also be guilty of an offence. NFU Cymru reports that farm animals worth an estimated value of £883,000 were severely injured or killed by dogs in Wales in 2023.<sup>156</sup>

7.175 The Dogs (Protection of Livestock) (Amendment) Act 2025 (“the 2025 Act”) introduces amendments to the 1953 Act which will:

- (1) extend the definition of livestock to include camelids, meaning the 1953 Act would offer protection for alpacas and llamas;
- (2) bring instances of worrying or attacks that take place on roads and paths within the scope of the offence under section 1 of the 1953 Act; and

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<sup>151</sup> By virtue of the Animal Health Act 1981, s 73.

<sup>152</sup> Pigs (Records, Identification and Movement) (Wales) Regulations 2011, SI 2011/2830 (W 303), reg 4; Animal Health Act, s 73.

<sup>153</sup> Animal Health Act 1981, s 75.

<sup>154</sup> By virtue of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 85.

<sup>155</sup> Dogs (Protection of Livestock) Act 1953, s 6.

<sup>156</sup> NFU Cymru, “Cost of dog attacks on livestock in Wales more than doubles” (April 2024) <https://www.nfu-cymru.org.uk/news-and-information/cost-of-dog-attacks-on-livestock-in-wales-more-than-doubles/#:~:text=The%20NFU%20has%20been%20working,investigate%20dog%20attacks%20on%20livestock>.

- (3) increase the maximum penalty in relation to offences in section 1 of the 1953 Act from £1,000 to an unlimited fine.

7.176 A legislative consent memorandum has been agreed by the Senedd for the 2025 Act which records that the Welsh Government and UK Government hold differing views as to whether the Senedd can enact primary legislation on the subject of dogs attacking or worrying livestock.<sup>157</sup> In light of the positions recorded in the relevant legislative consent memorandum, we do not offer a view on whether the subject matter of the 1953 Act is suitable for inclusion in the prospective Code.

## CONCLUSION

7.177 In this chapter we propose that animal health laws and animal welfare laws affecting livestock should, at least to some extent, be subsumed within the prospective code of agricultural law for Wales. We offer three potential models for incorporating these laws into the prospective Code to varying degrees. We express a preference for developing the model of the prospective Code proposed under option two but note that the scope of prospective Code could be subsequently expanded in line with the model proposed under option three. We further identify areas of animal health law which engage technical issues, and highlight those wider issues which may require further analysis in the context of establishing the prospective code of agricultural law.

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<sup>157</sup> Welsh Government, *Legislative Consent Memorandum, Dogs (Protection of Livestock) (Amendment Bill)*, May 2025. As agreed by the Senedd on 23 September 2025.

# Chapter 8: Forestry, plant health, plant varieties and seeds

## INTRODUCTION

- 8.1 In this chapter we consider whether those laws on forestry, plant health, plant varieties and seeds, and hedgerows which apply to the agricultural sector are suitable for inclusion in the prospective code of agricultural law for Wales (“the prospective Code”). We consider each of these areas of law separately, beginning with forestry. As part of our assessment of the forestry law that applies to agriculture, we first consider whether forestry is generally regarded as a distinct sector from agriculture. Our understanding of the relationship between forestry and agriculture thereafter informs our assessment of whether the prospective Code ought to encompass the law concerning plant health, plant varieties and hedgerows. We apply our criteria for inclusion, as set out in Chapter 3, to inform our analysis as to whether the legislation considered in this chapter is suitable for inclusion in the prospective Code.
- 8.2 Although most farms in Wales are livestock farms, roughly 6% of agricultural land is used for horticulture and arable crops.<sup>1</sup> In addition, farm woodland amounted to 7.5% of the 1,770,100 hectares of agricultural land in Wales in 2025,<sup>2</sup> and 42% of all woodland in Wales is located on Welsh farms.<sup>3</sup>
- 8.3 Trees and hedgerows can offer a multitude of benefits to farms including:
- acting as boundary features, livestock barriers, biosecurity and shelter and shade for livestock. Other benefits could also include the production of fruit or additional income streams, such as commercial woodlands.<sup>4</sup>
- 8.4 Trees are also “one of the ways to mitigate diffuse pollution from agriculture”.<sup>5</sup> It is therefore vital to the agricultural sector that crops and trees are healthy, well-preserved and can adapt to ever-changing conditions.
- 8.5 The law concerning trees is vast in scope and spread across a patchwork of primary legislation, secondary legislation and case law. It spans issues including the ownership of trees according to the type of land on which they are situated, special protection afforded to certain trees and liability for harm arising from trees. In this

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<sup>1</sup> Welsh Government, *Survey of agriculture and horticulture* (2025) <https://www.gov.wales/sites/default/files/pdf-versions/2025/12/2/1765272643/survey-agriculture-and-horticulture-june-2025.pdf>, p 6.

<sup>2</sup> Forest Research reported 132,000 hectares of farm woodland in Wales in its 2025 report while the 2025 survey of agriculture and horticulture identified a total of 1,770,100 hectares of agricultural land in total.

<sup>3</sup> Forest Research, *Forestry Statistics 2025* (September 2025) [https://cdn.forestresearch.gov.uk/2025/09/FS2025\\_Ch1-68d4f71b97f6f.pdf](https://cdn.forestresearch.gov.uk/2025/09/FS2025_Ch1-68d4f71b97f6f.pdf), ch 1, pp 9 and 48.

<sup>4</sup> NFU Cymru, “Growing Together: A strategy for sustainably increasing tree cover in Wales” (2021) <https://www.nfu-cymru.org.uk/media/rx5jui5k/growing-together.pdf>, 6.

<sup>5</sup> Woodland Trust, *Benefits of trees on arable farms* (2012) p 9.

chapter, we focus on statutory controls which relate to forests and similar areas of land covered with trees as opposed to the law which relates to trees more generally.

- 8.6 Forestry law covers more than just our typical understanding of forests. It is aimed at supporting the establishment of trees in areas with no previous tree cover (known as afforestation), maintaining adequate reserves of trees, and facilitating the production and supply of timber. Modern forestry practice and Welsh Government and UK Government policies seek to deliver upon a multitude of aims which encompass:

“the making of improvements to the landscape, protecting wildlife, facilitating recreation and sport [and] enhancing the economy of rural areas ....<sup>6</sup>

The Welsh Government’s strategy, *Woodlands for Wales*, further emphasises the crucial role which trees play in contributing to the well-being goals of Wales and national commitments to tackle climate change.<sup>7</sup>

- 8.7 Forestry law does not apply only to trees found in forests. It also applies to trees found on other types of land - such as agricultural land. It is the characteristics of a particular tree, rather than the land it is situated on, which determine whether a felling licence is required. Forestry law does not offer statutory definitions of terms such as “tree”, “forest” or “woodland”. While we acknowledge that there is some debate as to the definition of a “tree”, that is not a barrier to our work in this chapter given that the legal framework which we consider does not hinge on the meaning of these concepts.<sup>8</sup> As considered in *The Law of Trees, Forests and Hedges*:

there is no legal definition of a “tree” that is generally applicable, but ... this does not in fact matter since the law applies in principle equally to plants that are undoubtedly trees as to those that only might be.<sup>9</sup>

- 8.8 In addition, even though there existed a historical distinction between forests and woodlands, it does not seem that the factors which distinguish forests and woodlands are commonly agreed upon.<sup>10</sup> For example, size, density and canopy cover are identified as factors which may help define a piece of land as either forest or woodland, but the figures attributed to each of these factors differ depending on the source.<sup>11</sup> As the UK Forestry Standard acknowledges, the “legislation or grant conditions will determine the minimum area of land classed as a forest” in each country.<sup>12</sup>

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<sup>6</sup> C Mynors, S Hall and E Nicholls, *The Law of Trees, Forests and Hedges* (3rd ed 2022) p 376.

<sup>7</sup> Welsh Government, *Woodlands for Wales* (June 2018) [https://www.gov.wales/sites/default/files/publications/2018-06/woodlands-for-wales-strategy\\_0.pdf](https://www.gov.wales/sites/default/files/publications/2018-06/woodlands-for-wales-strategy_0.pdf); Well-being of Future Generations (Wales) Act 2015 (anaw 2), s 4.

<sup>8</sup> C Mynors, S Hall and E Nicholls, *The Law of Trees, Forests and Hedges* (3rd ed 2022) pp 21 to 23.

<sup>9</sup> C Mynors, S Hall and E Nicholls, *The Law of Trees, Forests and Hedges* (3rd ed 2022) p 23.

<sup>10</sup> Historically, forests were managed as preserves of large land for hunting purposes. In more recent times, there is less of a distinction and there are many definitions as to what constitutes a forest or a wood. Definitions vary as to the required tree density, canopy cover and size.

<sup>11</sup> See Forestry Commission, “Definition of trees and woodland” (updated July 2025), s 6.

<sup>12</sup> Forestry Commission, *The UK Forestry Standard* (5th ed 2023) p 2.



- 8.9 Although we refer to the body of law that governs tree felling as “forestry law”, the land which may be subject to this law is not necessarily forest. Often, such areas of land may be “known by a variety of terms such as forests, woods, copses, spinneys or shelterbelts, and they include wooded areas on farms and in parks”.<sup>13</sup> We adopt the terminology “forestry law” so that it is consistent with both the approach of the Welsh Government and that of other bodies, such as Natural Resources Wales (“NRW”).<sup>14</sup>
- 8.10 As discussed later in this chapter, forestry law may apply to trees that form part of hedgerows. Nevertheless, there is a separate legal framework for protecting hedgerows, which are commonly understood to be a mixture of trees and shrubs closely planted to form a border.<sup>15</sup>
- 8.11 Broadly speaking, plant health law is concerned with maintaining and promoting healthy trees, shrubs and plants, including agricultural crops and horticultural crops.<sup>16</sup> Therefore, plant health law – which seeks to prevent and control spread of diseases that affect plants and trees – is vital to ensuring the economic health of the agricultural sector.
- 8.12 The law governing plant varieties and seeds protects and regulates the many plant varieties that exist. A plant variety is a subgroup of a species, which has a distinct characteristic.<sup>17</sup> The law in this area provides a framework for intellectual property rights vested in eligible varieties of plants and trees (known as plant breeders’ rights). It further ensures that certain seed and plant propagating material marketed throughout the sector is of the highest quality, through mandating a national list of varieties.
- 8.13 The law on forestry, hedgerows, plant health and plant varieties is spread across multiple sources. This includes primary legislation enacted by the UK Parliament, secondary legislation made by the Welsh Ministers, secondary legislation made by the UK Ministers and assimilated law.

## FORESTRY LAW

- 8.14 Paragraphs 8.15 to 8.34 below consider those forestry laws that may apply to agricultural land, but which also apply more broadly to other land.

### Forestry Act 1967 and subordinate legislation

- 8.15 The Forestry Act 1967 (“the 1967 Act”) makes provision for afforestation in Great Britain and also provides a legislative framework for tree felling. NRW is the

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<sup>13</sup> Forestry Commission, *The UK Forestry Standard* (5th ed 2023) p 2.

<sup>14</sup> See for example the Law Wales page on forestry: <https://law.gov.wales/environment/forestry>.

<sup>15</sup> We have referred to the following sources when considering the commonly understood meaning of a hedgerow: Woodland Trust, “Hedgerows” <https://www.woodlandtrust.org.uk/trees-woods-and-wildlife/habitats/hedgerows/>; Department for Environment, Food and Rural Affairs, *Hedgerow Survey Handbook* (2nd ed 2007).

<sup>16</sup> Plant Health Act 1967, s 1.

<sup>17</sup> The term “plant variety” derives from the International Union for the Protection of New Varieties of Plants and has since been recognised in domestic law by the Plant Varieties Act 1997.



appropriate forestry authority in Wales.<sup>18</sup> As the appropriate forest authority, NRW has a general duty to promote:

- (1) forestry and the development of forests;
- (2) the production and supply of timber and other forestry products; and
- (3) the establishment and maintenance of adequate reserves of growing trees.

NRW must seek to achieve a reasonable balance between pursuing the above aims, and the conservation and enhancement of natural beauty and of flora, fauna and geological or physiographical features of special interest.<sup>19</sup> The effect of this duty is that NRW must have regard to the conservation of the environment in the discharge of their forestry functions under the 1967 Act.

8.16 The main functions of NRW under the 1967 Act include:

- (1) creating, developing and managing the Welsh Government's woodland estate - those forests and woodlands which are publicly owned;
- (2) producing and selling timber from the woodlands it manages; and
- (3) administering and regulating the felling licence system.<sup>20</sup>

NRW also undertakes work to develop sources of renewable energy within the Welsh Government's woodland estate. Although not a function provided for under the 1967 Act, we also note that NRW administers the regime for the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (see paragraphs 8.35 to 8.38 below).<sup>21</sup>

8.17 Section 8A of the 1967 Act also imposes a duty on the Welsh Ministers to have regard to the national interest in maintaining and expanding the forestry resources of Wales when performing functions under the Act. In furtherance of this duty, the Welsh Government are reported to own in Wales:

almost two-thirds of conifer woodland (including planted woodland on ancient woodland sites), and one fifth of the native woodland and a smaller proportion of the ancient semi-natural woodland.<sup>22</sup>

8.18 A licence to fell growing trees is required unless an exemption listed in section 9 of the 1967 Act or the Forestry (Exceptions from Restriction of Felling) Regulations 1979

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<sup>18</sup> Forestry Act 1967, s 1.

<sup>19</sup> Forestry Act 1967, s 1.

<sup>20</sup> Natural Resources Wales, "Our roles and responsibilities: forestry" (last updated 2024) <https://naturalresourceswales.gov.uk/about-us/what-we-do/our-roles-and-responsibilities/forestry/?lang=en>.

<sup>21</sup> SI 1999/2228.

<sup>22</sup> Welsh Government, *Woodlands for Wales* (June 2018) [https://www.gov.wales/sites/default/files/publications/2018-06/woodlands-for-wales-strategy\\_0.pdf](https://www.gov.wales/sites/default/files/publications/2018-06/woodlands-for-wales-strategy_0.pdf), p 7.

applies.<sup>23</sup> For example, a felling licence is not required for trees in public open spaces,<sup>24</sup> orchards, gardens or churchyards, regardless of the size or quantity of the trees felled.<sup>25</sup> NRW, in considering felling licence applications, must consider the interests of agriculture as well as the conservation of natural beauty.<sup>26</sup> Felling licences may also be subject to conditions, including environmental conditions which are aimed at:

- (1) conserving or enhancing natural beauty; or
- (2) conserving flora, fauna, geological or physiographical features or natural habitats.<sup>27</sup>

8.19 In addition to felling licences, the 1967 Act empowers NRW to issue felling directions. NRW may direct an owner of trees to fell certain trees,<sup>28</sup> where it would be in the interests of good forestry or for the purposes of promoting the establishment and maintenance of adequate tree reserves.<sup>29</sup> In considering whether to issue a felling direction, NRW must have regard to the interests of agriculture.<sup>30</sup>

8.20 Forestry law interacts with other subjects, such as planning law. Tree preservation orders are ordinarily issued under the Town and Country Planning Act 1990. Any application to fell trees under the Forestry Act 1967 which are subject to tree preservation orders must be considered by the local planning authority in addition to NRW.<sup>31</sup>

8.21 There are three substantive statutory instruments (“SIs”) enacted under the 1967 Act which are in force and apply to Wales: the Forestry (Felling of Trees) Regulations 1979, the Forestry (Exceptions from Restriction of Felling) Regulations 1979 and the Forestry Commission Byelaws 1982.<sup>32</sup> They supplement the primary legislation by detailing the procedure for felling licences, establishing exceptions to felling licences

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<sup>23</sup> SI 1979/792.

<sup>24</sup> Forestry Act 1967, s 9(6) defines the meaning of the term “public open space” for the purposes of the Act.

<sup>25</sup> It is important to note, however, that the felling of trees on such land may still require different consents or permissions. See guidance issued by the Forestry Commission as applicable in England: <https://www.gov.uk/government/publications/tree-felling-getting-permission/tree-felling-getting-permission#environmental-legislation-and-protection>.

<sup>26</sup> Forestry Act 1967, s 10(2).

<sup>27</sup> Forestry Act 1967, s 10(2)(c); Natural Resources Wales, “Felling Licences: Guidance for felling licence applications” (June 2024) <https://cdn.cyfoethnaturiol.cymru/a1dbxp0b/guidance-for-applicants-and-licence-holders-convert-eng.pdf>. From 1 April 2024 all felling licences will be subject to certain baseline environmental conditions. Additional and bespoke environmental conditions may also be imposed subject to the nature or location of the felling operation.

<sup>28</sup> An owner is defined in s 34 of the Forestry Act 1967 as the person within whom the legal estate in fee simple is vested.

<sup>29</sup> Forestry Act 1967, s 18.

<sup>30</sup> Forestry Act 1967, s 18(2).

<sup>31</sup> Forestry Act 1967, s 15.

<sup>32</sup> SI 1979/791; SI 1979/792; SI 1982/648. We note that the Forestry (Modification of Felling Restrictions) Regulations 1985, SI 1985/1958 is in force and applies to Wales, but it only makes a textual amendment to a provision in the Forestry Act 1967.

and setting out forestry byelaws. Because these three SIs are so closely related in subject matter to their enabling Act – the 1967 Act – we consider it appropriate to evaluate these laws together with the Act against our guiding criteria.

8.22 There are other laws which may also apply to forestry such as:

- (1) the Environment (Wales) Act 2016;
- (2) the Conservation (Natural Habitats &c.) Regulations 1994 and the Conservation of Habitats and Species Regulations 2017;<sup>33</sup>
- (3) the Town and Country Planning (Trees) Regulations 1999;<sup>34</sup> and
- (4) the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999.

The first two of these enactments are considered respectively in Chapters 2 and 7. The Town and Country Planning (Trees) Regulations 1999 are not considered in this report as we understand the regulations are intended to form part of the code of law relating to planning. The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 are addressed at paragraphs 8.35 to 8.38.

### Forestry as a separate sector

8.23 Before we apply our guiding criteria to the forestry laws, it is helpful to consider whether forestry is generally regarded as a separate sector from agriculture. Our starting point is that there is no clear answer to this question. Instead, there are instances where forestry is considered a separate sector from agriculture as well as instances where forestry and agriculture are considered as one sector. For example, the Health and Safety Executive publishes health and safety reports per sector.<sup>35</sup> Its reports on various matters subsume agriculture, forestry and fishing to create one set of statistics, and these figures are usually abbreviated to “agriculture”. A similar approach is taken by the Retained EU Law Dashboard, produced by the UK Department for Business and Trade.<sup>36</sup>

8.24 Contrastingly, the Office for National Statistics Census separates forestry from agriculture in its 2021 data by industry.<sup>37</sup> The legal regime for environmental impact assessments similarly makes separate provision for agriculture and forestry projects.<sup>38</sup> The Welsh Government has published separate strategy documents for agriculture

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<sup>33</sup> SI 1994/2716; SI 2017/1012.

<sup>34</sup> SI 1999/1892.

<sup>35</sup> See the Health and Safety Executive, “Agriculture, forestry and fishing statistics in Great Britain, 2025” (November 2025) <https://www.hse.gov.uk/statistics/assets/docs/agriculture.pdf>.

<sup>36</sup> Department for Business and Trade, “Retained EU law and assimilated law dashboard” (2022) <https://reul.businessandtrade.gov.uk/dashboard>.

<sup>37</sup> Office for National Statistics, “Census 2021: Industry” (2021) <https://www.ons.gov.uk/datasets/TS060/editions/2021/versions/5>.

<sup>38</sup> Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228; Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017, SI 2017/565 (W 134).

and for forestry.<sup>39</sup> Those working in agriculture and those working in forestry are further represented in Wales by distinct membership bodies. For example, the National Farmers' Union Cymru ("NFU Cymru") and the Farmers' Union of Wales represent the agricultural sector, and Confor (the Confederation of Forest Industries) and the Institute of Chartered Foresters represent the forestry sector.

- 8.25 As discussed in Chapter 4, agricultural law is not a body of law with a universally or commonly agreed scope. Consequently, we are guided by the definition of agriculture set out in section 51 of the Agriculture (Wales) Act 2023 ("the 2023 Act"); section 51(1)(f) states that using land as farm woodland or for agroforestry constitutes agriculture.<sup>40</sup>
- 8.26 Farm woodlands and agroforestry are practices which merge agricultural land use and trees. The 2023 Act does not offer a statutory definition of either term. Our understanding is that agroforestry involves integrating trees and shrubs into farming practices. Agroforestry practices may not necessarily be arranged in a formation which is generally regarded as amounting to woodland. One of the practices, low density silvopasture, involves scattered individual trees combined with livestock. Farm woodland describes woodland situated on agricultural land that provides an opportunity to "increase production of usable timber" thereby supporting "the development of smaller businesses".<sup>41</sup>
- 8.27 Agroforestry and farm woodland activities are included in the exhaustive statutory definition of agriculture under the 2023 Act. However, the general activity of forestry is excluded, indicating that agriculture and forestry are treated as distinct sectors under the law. Indeed, the law applicable to forestry is generally contained in different statutes and statutory instruments to that applicable to agriculture. As noted above, the primary legislation governing forestry is contained in the Forestry Act 1967. In the same year, the UK Parliament enacted a separate Act governing the agricultural sector: the Agriculture Act 1967.
- 8.28 However, we are mindful that the Agriculture (Wales) Act 2023 contains provisions amending the Forestry Act 1967 (and also provisions amending the Wildlife and Countryside Act 1981). Broadly speaking, the amendments to the Forestry Act 1967 involve amending the powers and duties of NRW in relation to tree felling licences and tree preservation orders. As we have outlined in Chapter 5, we do not consider that either Parts of the Agriculture (Wales) Act 2023 which deal with forestry or wildlife belong in the prospective code of agricultural law for Wales. Therefore, the fact that amendments to forestry law are contained in the 2023 Act does not indicate that forestry falls within the agricultural sector. The Legislation, Justice and Constitution Committee noted that the Agriculture (Wales) Bill was "quite disparate in nature",<sup>42</sup>

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<sup>39</sup> Amaeth Cymru, "The future of agriculture in Wales: the way forward" (November 2017) <https://www.gov.wales/sites/default/files/publications/2018-02/amaeth-cymru-the-future-of-agriculture-in-wales.pdf>; Welsh Government, *Woodlands for Wales* (June 2018) [https://www.gov.wales/sites/default/files/publications/2018-06/woodlands-for-wales-strategy\\_0.pdf](https://www.gov.wales/sites/default/files/publications/2018-06/woodlands-for-wales-strategy_0.pdf).

<sup>40</sup> Agriculture (Wales) Act 2023 (asc 4), s 51(6).

<sup>41</sup> Welsh Government, "Making Wood Work for Wales" (July 2025) para 1.4.2.

<sup>42</sup> Senedd Cymru Legislation, Justice and Constitution Committee, *Report on the Agriculture (Wales) Bill* (January 2023) para 76.

and that Parts 4 and 5 on forestry and wildlife were “perhaps tenuously linked”<sup>43</sup> to agriculture.

- 8.29 Although both forestry and agriculture are highly complementary and intertwined, we consider that forestry and agriculture are generally regarded as separate sectors. We therefore assess forestry laws against our guiding criteria with this conclusion in mind.

#### Forestry laws: criteria for inclusion

- 8.30 Between 2015 and 2024, reported farm woodland in Wales increased from 78,000 hectares to 132,000.<sup>44</sup> The increase in farm woodland in the past decade reflects the growing popularity of combining trees and shrubs with agricultural land use. There are many reasons for doing this. While the growth of trees and shrubs offer environmental benefits, agroforestry and farm woodland practices can support agricultural production. For example, trees may be grown on agricultural land in order to provide shelter for livestock and crops from extreme weather conditions. In addition, trees may be grown to act as windbreakers providing protection for crops and livestock and reducing soil erosion.<sup>45</sup>
- 8.31 As agroforestry and farm woodland have become more prevalent in Wales, forestry law has a greater relevance to the Welsh agricultural sector. However, forestry law aims to support afforestation and sustainably manage tree reserves and also timber for a range of objectives irrespective of whether trees are situated on agricultural land.
- 8.32 The balancing duty in section 1(3A) of the 1967 Act means that environmental and wildlife considerations are also a fundamental aspect of forestry law. This is further reflected by the amendments introduced to the 1967 Act by the Agriculture (Wales) Act 2023, which provide NRW with the power to attach environmental conditions to felling licences. For all the above reasons, we do not consider forestry law to be directly concerned with agriculture.
- 8.33 Forestry laws will apply to all forest management, whether commercially managed or otherwise. As touched upon above, the Welsh Government reported 132,000 hectares of farm woodland in Wales in 2024.<sup>46</sup> However, the overall woodland in Wales (owned both publicly and privately) is estimated at 312,000 hectares, meaning that farm woodland reflects approximately 42% of the woodland in Wales. Farmers practising agroforestry and farm woodland techniques therefore represent a sizeable portion of those who must comply with these laws, but not all. Based on this, we consider that the practical application of forestry laws is not limited to, or primarily concerned with, agriculture.
- 8.34 It follows that we regard the Forestry Act 1967, and the three SIs listed at paragraph 8.21 as being unsuitable for inclusion in the prospective code of agricultural law for Wales. Our provisional view is that including the forestry laws in the prospective Code

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<sup>43</sup> Senedd Cymru Legislation, Justice and Constitution Committee, *Report on the Agriculture (Wales) Bill* (January 2023) para 76.

<sup>44</sup> Forest Research, *Forestry Statistics 2025* (September 2025) ch 1, p 48.

<sup>45</sup> Forestry Commission, “A guide to agroforestry” (August 2024) <https://www.gov.uk/guidance/a-guide-to-agroforestry>.

<sup>46</sup> Forest Research, *Forestry Statistics 2025* (September 2025) ch 1, p 48.

risks signalling that they only apply within an agricultural context. We consider that users of the prospective Code may therefore incorrectly assume that forestry laws only apply to agricultural land use.<sup>47</sup> However, we suggest it would be beneficial for any webpage that may publish the prospective code of agricultural law for Wales to signpost to forestry law.

### **Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999**

- 8.35 Although the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (“the EIA Forestry Regulations”) form a central part of forestry law, we do not apply our criteria for inclusion to those regulations in this report.<sup>48</sup>
- 8.36 In Chapter 6 we examine the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 (“the EIA Agriculture Wales Regulations”).<sup>49</sup> In that chapter, we conclude that although the EIA Agriculture Wales Regulations satisfy our criteria for inclusion in the prospective Code, they are likely better suited to fall within a possible future code of Welsh law on a different devolved subject. This is because the EIA Agriculture Wales Regulations form part of a wider regime governing environmental assessment: a regime which we regard, as a whole, as being concerned with the environment rather than with agriculture.<sup>50</sup> Consequently, we form the view that it would be undesirable to fragment the wider EIA regime by including only the EIA Agriculture Wales Regulations in the prospective Code.
- 8.37 Applying our reasoning on the EIA Agriculture Wales Regulations, it logically follows that we regard the EIA Forestry Regulations as also being unsuitable for inclusion in the prospective code of agricultural law for Wales. This also aligns with our wider position that forestry law is unsuitable for inclusion in the prospective Code (as set out above at paragraphs 8.30 to 8.34).
- 8.38 In making this assessment, we recognise that the EIA Forestry Regulations form an important area of the law with which farmers in Wales may need to comply. Under the EIA Forestry Regulations, certain forestry projects which are likely to have significant effects on the environment will require NRW’s consent. Such projects are ones involving afforestation, deforestation, forest road works and forest quarry works.<sup>51</sup> If a farmer intends to undertake a project falling in any of the aforementioned categories, then the EIA Forestry Regulations may be engaged.<sup>52</sup> We therefore conclude that any

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<sup>47</sup> We note that if specific legislation were enacted for either agroforestry or farm woodland, we would view this as potentially suitable for inclusion in the prospective Code.

<sup>48</sup> SI 1999/2228.

<sup>49</sup> In Ch 6, we consider those laws that protect the environment, natural resources and wildlife.

<sup>50</sup> See Ch 6 for further analysis.

<sup>51</sup> The terms “project”, “afforestation”, “deforestation”, “forest road works” and “forestry quarry works” are each defined in the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228.

<sup>52</sup> Whether or not the project in question will require consent from Natural Resources Wales will depend on whether the project is likely to have a significant effect on the environment by virtue of factors such as its nature, size or location.

webpage that may publish the prospective Code ought to signpost to the EIA Agriculture Wales Regulations and the EIA Forestry Regulations.

## PLANT HEALTH LAW

8.39 The following paragraphs 8.40 to 8.58 consider the law governing plant health, which is primarily the Plant Health Act 1967 (“the PHA 1967”), the subordinate legislation made under that Act and assimilated law on phytosanitary conditions. There are also other laws which are regarded to form part of plant health legislation, however, we seek to focus on those which appear most relevant to agriculture.

### Plant Health Act 1967

8.40 The PHA 1967 is the main enactment relating to the control of the introduction and spread of pests in the UK. It empowers the Welsh Ministers to make orders for the purpose of pursuing that aim<sup>53</sup> and the division of responsibility in relation to plant health in Wales is set out below.

- (1) The Welsh Ministers are responsible for plant health policy.
- (2) The Animal and Plant Health Agency is responsible for implementing plant health regulatory functions on behalf of the Welsh Ministers.
- (3) NRW and the Forestry Commission also deliver regulatory functions in relation to plant health (forestry).

8.41 The PHA 1967 extends to both agricultural and horticultural crops, and to trees and bushes. What constitutes a pest is defined rather broadly. “Pests” for the purposes of the PHA 1967 are defined as:

insects, bacteria, fungi and other vegetable or animal organisms, viruses and all other agents causative of any transmissible disease of agricultural or horticultural crops or of trees or bushes, and also as including references to pests in any stage of existence.<sup>54</sup>

8.42 There are two substantive SIs enacted under the PHA 1967 which are in force, and which apply to Wales.<sup>55</sup> Since these are concerned with controlling diseases that affect trees, we will consider these against our guiding criteria separately from the Plant Health Act 1967.

### Plant Health Act 1967: criteria for inclusion

8.43 Section 1 of the PHA 1967 confirms that the Act aims to provide a framework for controlling pests which would otherwise harm agricultural and horticultural crops, and trees and bushes. We take horticulture to form part of agriculture, in line with the definition of agriculture under section 51 of the Agriculture (Wales) Act 2023. With this in mind, and having regard to the objective set out in section 1 of the Act, the PHA

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<sup>53</sup> Plant Health Act 1967, ss 2 and 3(1).

<sup>54</sup> Plant Health Act 1967, s 1(1)(a).

<sup>55</sup> Dutch Elm Disease (Local Authorities) Order 1984, SI 1984/687; Watermark Disease (Local Authorities) Order 1974, SI 1974/768.

1967 is concerned with agriculture because it explicitly seeks to protect agricultural and horticultural crops. Nevertheless, we recognise that the PHA 1967 is also concerned with other subject areas, such as forestry. As such section 1 of the PHA 1967 also seeks to explicitly control pests and diseases which might otherwise injure trees.

- 8.44 The practical application of the Act will extend to activities which are agricultural, and to those which fall outside our understanding of agriculture. The Welsh Ministers have powers under section 3 of the PHA 1967 to direct or authorise the removal of any crop, or any seed, plant or part of a plant. Such restrictions would clearly affect the agricultural sector but also other sectors including the gardening supplies industry (for example garden centres).<sup>56</sup> Moreover, the PHA 1967 empowers the Welsh Ministers to regulate and restrict the import of articles of any description (such as plants, trees or bushes) likely to introduce a pest into Great Britain. Those importing and exporting will therefore have to comply with any such restrictions imposed.<sup>57</sup>
- 8.45 Plant health legislation also applies to trees. Healthy trees are vital to forestry, which we consider is generally regarded as a separate sector. The application of plant health legislation to the forestry sector demonstrates that the law in this area is not limited in its practical application to agriculture.
- 8.46 We have heard from stakeholders that it is not possible to conclude that plant health has a greater relevance to agriculture than forestry. Therefore, whether plant health law is suitable for inclusion in the prospective Code is a finely balanced argument. On the one hand, we have identified that the legislation is clearly concerned with protecting the health of agricultural and horticultural crops. On the other hand, plant health legislation plays a similar role for forestry. For this reason, we set out below various possible approaches to delineating the scope of the prospective Code (paragraphs 8.95 to 8.107).

### **Plant health: SIs**

- 8.47 There are two substantive SIs made under the PHA 1967 that are concerned with pests or diseases affecting trees:
- (1) the Dutch Elm Disease (Local Authorities) Order 1984; and
  - (2) the Watermark Disease (Local Authorities) Order 1974.<sup>58</sup>
- 8.48 These laws are considered along with the assimilated law, Plant Health (Fees) (Forestry) (Wales) Regulations 2019.<sup>59</sup> Both the Dutch Elm Disease Order 1984 and

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<sup>56</sup> Our assessment is that the power to make an order to remove or destroy any crop, seed or plant can subsequently restrict the selling or distribution of agricultural produce. If crops, seeds or plants grown for sale are destroyed or removed because of such an order, the result is that this could significantly decrease ancillary activities, such as selling or distribution.

<sup>57</sup> See art 3 of the Plant Health (Export Certification) (Wales) Order 2006, SI 2006/1701 (W 163) as an example of such a measure. Although the order is no longer in force, it provides an example of the measures taken which may regulate trade.

<sup>58</sup> SI 1984/687; SI 1974/768.

<sup>59</sup> SI 2019/497 (W 114).



the Watermark Disease Order 1974 make provision for local authorities to take measures against diseases affecting those trees. The assimilated law sets out the fees payable to the Welsh Ministers in relation to inspections, plant health checks and documentation for consignments of wood and related products.

#### Plant health SIs: criteria for inclusion

- 8.49 We conclude in paragraph 8.29 that agriculture and forestry are generally regarded as separate sectors and similarly we propose that forestry law is not included in the scope of the prospective code of agricultural law for Wales. The two orders made under the Plant Health Act 1967 and the assimilated law setting out fees (as considered at paragraphs 8.47 to 8.48 above) are concerned with the health of trees.
- 8.50 As we consider above, farmers are increasingly incorporating tree-based practices on their land meaning laws concerning the health of trees could conceivably be considered to concern agriculture. But the plant health secondary laws (outlined at paragraphs 8.47 to 8.48) are concerned with maintaining the health of trees irrespective of whether they are grown on farms or elsewhere. As discussed above, approximately 42% of woodland in Wales is found on farms. However, plant health legislation will also apply to a broader category of trees: those which are not necessarily woodland, but which are found in urban settings. This may include trees found on streets, in parks and gardens. It cannot therefore be said that these laws are primarily concerned with agriculture. For this reason, we believe that these three SIs are unsuitable for inclusion in the prospective code of agricultural law for Wales.

#### Plant health assimilated law: phytosanitary conditions and fees

- 8.51 While the UK was a member of the EU, the EU had shared competence in respect of plant health. During this time, the EU passed many laws which sought to regulate plant health and biosecurity. Since the UK left the EU, EU laws that applied in the UK and have been incorporated into our statute book as domestic laws known as assimilated laws. There are five main laws which form part of the plant health landscape that apply to agriculture.<sup>60</sup>
- (1) UK Regulation (EU) 2016/2031 on protective measures against pests of plants (“UK Regulation 2016/2031”).
  - (2) UK Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 as regards protective measures against pests of plants (“UK Implementing Regulation 2019/2072”).
  - (3) Plant Health etc (Fees) (Wales) Regulations 2018.<sup>61</sup>
  - (4) UK Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

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<sup>60</sup> As noted by the Department for Environment, Food and Rural Affairs on its UK Plant Health Information Portal: <https://planthealthportal.defra.gov.uk/trade/helpful-content/specific-commodity-guidance/>.

<sup>61</sup> SI 2018/1179 (W 238).

(5) Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020.<sup>62</sup>

For the purposes of this chapter, we only intend to assess the first three assimilated laws. The official controls legislation is briefly considered in Chapter 10.

- 8.52 UK Regulation 2016/2031 provides a proactive framework for dealing with pests and diseases that would otherwise injure plants. Among other matters, the Regulation introduced UK plant passports as a requirement for professional operators who move plants within or into Great Britain.<sup>63</sup> UK Implementing Regulation 2019/2072 is complementary to UK Regulation 2016/2031 establishing uniform conditions for those protective measures against plant pests. It details lists of quarantine pests, provisional quarantine pests<sup>64</sup> and Great Britain pest-free areas.<sup>65</sup>
- 8.53 There is also an assimilated law which makes provision for fees connected with inspections, plant passports and export certification services. The Plant Health etc (Fees) (Wales) Regulations 2018 set out fees payable for “plant health services and the certification of seed potatoes, fruit plants and fruit plant propagating material”.<sup>66</sup>

[Plant health assimilated law on phytosanitary measures and fees: criteria for inclusion](#)

- 8.54 The first three assimilated laws considered at paragraphs 8.51 to 8.53 aim to provide uniform phytosanitary measures to eradicate and control pests that are otherwise harmful to plants. Phytosanitary measures refer to measures aimed at controlling plant health such as inspections, ensuring that plants and plant material come from disease-free areas, certification and testing. The introductory text to UK Regulation 2016/2031 explains that:

Plant health is very important for plant production, forests, natural and planted areas, natural ecosystems, ecosystem services and biodiversity in... [Great Britain]. Plant health is threatened by species injurious to plants and plant products which now present a greater risk of being introduced into... [Great Britain] ... owing to globalisation of trade and climate change. In order to fight that threat, it is necessary to adopt measures concerning the determination of the phytosanitary risks posed by those pests and the reduction of those risks to an acceptable level.<sup>67</sup>

- 8.55 Similarly to the conclusion drawn in respect of the PHA 1967, we are satisfied that these three assimilated laws are concerned with agriculture. Healthy crops, trees and bushes are key to being able to generate agricultural produce. The invasion of a pest

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<sup>62</sup> SI 2020/206 (W 48).

<sup>63</sup> Professional operators include any individual or company which regularly sells plants for profit or which offer a professional service.

<sup>64</sup> Quarantine pests are pests falling within the definition in UK Regulation (EU) 2016/2031 on protective measures against pests of plants, arts 3 and 4. A provisional quarantine pest is one meeting the definition set out in UK Regulation (EU) 2016/2031 on protective measures against pests of plants, art 30(A1).

<sup>65</sup> A GB pest-free area is one that satisfies the threshold defined in UK Regulation (EU) 2016/2031 on protective measures against pests of plants, art 2(31).

<sup>66</sup> Explanatory Notes to the Plant Health etc (Fees) (Wales) Regulations 2018, SI 2018/1179 (W 238).

<sup>67</sup> UK Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants.

may have severe implications on crops and, in turn, may have harmful economic effects on the agricultural sector. Nevertheless, the assimilated laws also seem to be concerned with subjects beyond agriculture, including forestry and the environment.

- 8.56 Many of the pests listed in the Annexes to UK Implementing Regulation 2019/2072 are pests which specifically target agricultural and horticultural crops. An example of this is *synchytrium endobioticum* (known more commonly as potato wart disease), which affects cultivated potatoes in the UK. Previously one of the most serious diseases of potatoes in the UK, it has since been controlled by statutory measures.<sup>68</sup> This helps demonstrate the importance of the application of these laws to the agricultural sector.
- 8.57 However, these phytosanitary measures will undoubtedly apply to activities which are either deemed ancillary to agriculture or which are outside of the sector. Examples of broader applications are listed below.
- (1) Many of the pests affect trees, which will affect the forestry sector. Since forestry is generally regarded as a separate sector, the application of the law to forestry extends beyond the agricultural sector.
  - (2) A significant number of restrictions and requirements apply to imports and exports. While these imports and exports may be agricultural produce, our view is that this does not automatically encompass trade as part of agriculture.
  - (3) Organisations who supply plants to retailers or to customers for personal use will need plant passports when they are moving certain material within Great Britain.
- 8.58 We concluded at paragraph 8.46 that it is difficult to determine whether the Plant Health Act 1967 is suitable for inclusion in the prospective Code. Our view is that a consistent approach should be taken with the Plant Health Act 1967 and the assimilated law: UK Regulation 2016/2031, UK Implementing Regulation 2019/2072 and Plant Health etc (Fees) (Wales) Regulations 2018. To treat the Plant Health Act 1967 and the assimilated law differently risks fragmenting an area of the law which is highly complementary and interrelated.

## PLANT VARIETIES AND SEEDS LAW

- 8.59 “Plant varieties” is a term used to describe a precisely defined group of plants, falling within a particular plant species, which have a common set of characteristics. The law on plant varieties and seeds is contained in primary legislation, secondary legislation and assimilated law. Paragraphs 8.60 to 8.69 below consider those laws which govern the legal protection afforded to certain plant varieties and paragraphs 8.70 to 8.78 consider the framework for seeds. Laws concerning plant varieties and seeds can be broadly categorised as follows.

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<sup>68</sup> Department for Environment, Food and Rural Affairs, “Plant pest factsheet: potato wart disease” (September 2024)  
[https://planthealthportal.defra.gov.uk/assets/factsheets/Plant\\_Pest\\_Factsheet\\_Potato\\_Wart\\_Disease\\_final-v2.pdf](https://planthealthportal.defra.gov.uk/assets/factsheets/Plant_Pest_Factsheet_Potato_Wart_Disease_final-v2.pdf).

- (1) Plant breeders' rights.
- (2) Variety registration.
- (3) Certification of seed and plant propagating material.
- (4) Marketing seed and plant propagating material.

For the purposes of this chapter, we firstly consider plant breeders' rights law and subsequently registration, certification and marketing law collectively.

### Plant breeders' rights law

- 8.60 Plant breeders' rights are a form of intellectual property, which seek to afford the owners of registered plant varieties exclusive commercial rights over the plant material (such as the seeds). The law that substantially governs this intellectual property right includes the Plant Varieties Act 1997 ("the 1997 Act"), seven statutory instruments made under that Act and an assimilated law.<sup>69</sup> The 1997 Act and the seven SIs made under the Act administer plant breeders' rights, which gives the right holder exclusive control over any commercial use of propagating materials. Propagating involves creating new plants from a parent plant, which can be achieved using various methods and different parts of the parent plant. For a variety to qualify for plant breeders' rights, it must undergo official testing to demonstrate it is new, distinct, uniform and stable.<sup>70</sup> Once granted by the UK Plant Variety Rights Office, these rights will have effect for either 25 or 30 years, depending on the variety.<sup>71</sup> However, private, non-commercial or experimental uses will not infringe upon these rights.<sup>72</sup>
- 8.61 Farm saved seed is an exception introduced in the 1997 Act<sup>73</sup> and further supplemented by the Plant Breeders' Rights (Farm Saved Seed) (Specification of Species and Groups) Order 1998. This means that a farmer can use propagating material, such as seeds, which have been harvested from crops of a protected plant variety grown on their holding, in order to produce more plants of that protected variety. They must, however, disclose the farm saved seed to the British Society of Plant Breeders and subsequently pay royalties to the rights holder to support further investment and innovation.

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<sup>69</sup> Plant Breeders' Rights (Information Notices) Regulations 1998, SI 1998/1024; Plant Breeders' Rights (Farm Saved Seed) (Specification of Species and Groups) Order 1998, SI 1998/1025; Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998, SI 1998/1026; Plant Breeders' Rights Regulations 1998, SI 1998/1027; Plant Varieties Act 1997 (Commencement) Order 1998, SI 1998/1028; Plant Breeders' Rights (Naming and Fees) Regulations 2006, SI 2006/648; Plant Breeders' Rights (Discontinuation of Prior Use Exemption) (Wales) Order 2006, SI 2006/1261. The assimilated law is the Patents and Plant Variety Rights (Compulsory Licensing) Regulations 2002, SI 2002/247.

<sup>70</sup> Plant Varieties Act 1997, s 4(2).

<sup>71</sup> Plant Varieties Act 1997, s 11, holds that rights in relation to potatoes, trees and vines will have effect for 30 years from the date of the grant. In all other cases, s 12 of the Plant Varieties Act 1997 states that the rights will have effect for 25 years from the date of the grant.

<sup>72</sup> Plant Varieties Act 1997, s 8.

<sup>73</sup> Plant Varieties Act 1997, s 9.

- 8.62 The Plant Varieties and Seeds Tribunal, first established under the Plant Varieties and Seeds Act 1964, makes decisions about plant breeders' rights and the listing of new varieties of plants where an individual wishes to appeal against decisions of the Controller of the Plant Variety Rights Office.

#### Plant breeders' rights law: criteria for inclusion

- 8.63 The law on plant breeders' rights aims to incentivise "investment in plant breeding".<sup>74</sup> The (then) Minister of State for Agriculture, Fisheries and Food, in discussing the Plant Varieties Bill in 1997, acknowledged that a "vibrant and successful plant breeding industry... is vital to the success of UK agriculture and of the nursery trade".<sup>75</sup> A similar sentiment was echoed in debates about the Plant Varieties and Seeds Bill in 1964. "Better varieties mean higher yields, easier cultivation, lower costs and a higher-quality product", meaning that the legal framework will "be of considerable benefit to the agricultural and horticultural industries".<sup>76</sup>
- 8.64 We therefore consider that the legal framework governing plant varieties is concerned with agriculture. Parliamentary debates preceding the two Acts governing this area of the law (the Plant Varieties and Seeds Act 1964 and the Plant Varieties Act 1997) reflect the relationship between plant breeding and the agricultural sector. Through encouraging plant breeding, the law on plant breeders' rights facilitates the quality and efficiency of the agricultural industry.
- 8.65 However, the law on plant varieties may be concerned with other objectives too. Plant breeders' rights also serve to stimulate scientific research more broadly.
- 8.66 Our assessment is that plant breeders' rights law will apply to the agricultural sector, but it may also apply beyond this. In Wales, the main organisation undertaking plant breeding research is the Institute of Biological, Environmental and Rural Sciences at Aberystwyth University.
- 8.67 In addition, at paragraph 8.29 we concluded that forestry is generally regarded as a separate sector to agriculture. However, trees are capable of protection under the plant breeders' rights regime. This means that the law on plant varieties will apply to the forestry sector. Another example is that plant breeders' rights exclude any other person from importing, exporting or marketing that variety for sale. Our understanding of the agricultural food chain, which is explained further in Chapter 10, is that the international trade of agricultural products falls outside of core agricultural activity. This therefore represents another instance where the legislation applies beyond the agricultural sector. That said, marketing is considered an ancillary activity to agriculture.<sup>77</sup>
- 8.68 Notwithstanding the points above at paragraph 8.67, we consider that the law on plant varieties has a scope which is likely primarily concerned with agriculture. The law applies to plant breeders, who may not necessarily form part of our core

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<sup>74</sup> *Hansard* (HC), 24 June 1997, vol 296, col 690.

<sup>75</sup> *Hansard* (HC), 24 June 1997, vol 296, col 690.

<sup>76</sup> *Hansard* (HC), 21 January 1964, vol 864, col 926.

<sup>77</sup> Agriculture (Wales) Act 2023 (asc 4), s 52.

understanding of agriculture. But plant breeders' rights were introduced in the 1997 Act to improve the yield, resilience and quality of crops in the agricultural sector. Given the rationale which underpins the incentive to offer plant breeders' rights, it is difficult to think of another sector in which these rights would play such a central role.

- 8.69 For the reasons explained above, we conclude that the law governing plant breeders' rights is suitable for inclusion in the prospective Code.<sup>78</sup>

### **Registration, certification and marketing law**

- 8.70 Seeds are understood as propagating material which is subsequently used to grow plants (whether these be ornamental or fruit plants) as well as cereal and vegetable crops. Much of the legal framework that applies to seeds and varieties is concerned with their certification and marketing. Although we explain in Chapter 10 that we have sought to focus our research on on-farm activities, thereby excluding later stages in the agricultural supply chain such as marketing, we consider it important to look at those marketing laws for seeds.

- 8.71 There are two reasons for this. Firstly, marketing law for seeds and plant propagating material is intrinsically linked to registration: varieties are only registered so that they can subsequently be marketed. Secondly, we consider that the agricultural sector is one of the main consumers of any seeds or plant propagating material that is marketed. On that basis, it seems relevant to consider those laws that govern the marketing of material that is subsequently used by the agricultural sector. The laws in question are quite extensive.

- (1) Plant Varieties and Seeds Act 1964 (sections 16 to 19, 24 to 31 and 33 to 41).
- (2) Vegetable Seeds Regulations 1993.
- (3) Marketing of Vegetable Plant Material Regulations 1995.
- (4) Marketing of Ornamental Plant Propagating Materials Regulations 1999.
- (5) Seeds (National Lists of Varieties) Regulations 2001.
- (6) Seed Marketing (Wales) Regulations 2012.
- (7) Seed Potatoes (Wales) Regulations 2016.
- (8) Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017.<sup>79</sup>

- 8.72 Varieties of specific agricultural and horticultural species must be listed before the seeds can be marketed in the UK. The Seeds (National Lists of Varieties) Regulations 2001 is assimilated law which gives effect to various EU Council Directives through creating a Great Britain ("GB") variety list. The GB variety list and plant breeders' rights serve distinct yet complementary purposes in the regulation of plant varieties.

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<sup>78</sup> Although intellectual property is a reserved matter under the Government of Wales Act 2006, Sch 7B, the subject matter of plant varieties and seeds is an exception.

<sup>79</sup> SI 1993/2008; SI 1995/2652; SI 1999/1801; SI 2001/3510; SI 2012/245 (W 39); SI 2016/106 (W 52); SI 2017/691 (W 163).



They are separate processes, although it is possible to apply for both GB variety listing and plant breeders' rights simultaneously for agricultural and vegetable crops to streamline the process.

- 8.73 The Seeds (National Lists of Varieties) Regulations 2001 provide a GB-wide approach, meaning that the same list of varieties exists for the whole of GB. Applications for varieties in Wales are made to the Welsh Ministers, who are empowered to accept varieties onto the list. However, we understand that in practice, the Animal and Plant Health Agency administer all applications for listing on behalf of the Welsh Ministers, Scottish Ministers and the Secretary of State. As part of the process, the seed or plant material will undergo testing to confirm that it is distinct, uniform and stable. It is then the duty of the Secretary of State to prepare and publish the GB variety list in the plant varieties and seeds gazette. The national list is subject to frequent change, which is tracked by the gazette. In March 2025 for example, 21 varieties were accepted onto the GB variety list and 28 were deleted from the list.
- 8.74 Certification assures quality and identity of seeds and plant propagating. This process is carried out in several forms: inspection, testing and labelling. The process may differ depending on the material. For example, the list above at paragraph 8.71 demonstrates that separate legislation is in place for potatoes, vegetable seeds and fruit plant material.
- 8.75 Once seeds and plant propagating material have been certified and listed, there are further legislative marketing standards in place to regulate the quality of goods on the market.<sup>80</sup> Similarly to certification, marketing legislation may vary depending on the type of crop. Among other things, suppliers must comply with requirements for packaging, sealing and labelling to ensure that quality standards are met.

#### Registration, certification and marketing law: criteria for inclusion

- 8.76 The requirements for listing, certification and marketing specific agricultural and vegetable crops helps protect farmers and their consumers. It provides quality assurance because of the tests and rigorous measures that seeds must pass before being approved for inclusion on the list. In that sense, these laws are concerned with agriculture because they regulate the material that farmers may use to grow their produce.
- 8.77 Despite this, we are conscious that many of the companies that specialise in developing seeds and plant propagating material sit across a variety of sectors such as chemicals, biotechnology and pharmaceuticals.<sup>81</sup> Therefore, these companies likely represent a portion of those which will need to comply with the requirements. Given the companies' broad focus, it is difficult to categorise them as a core part of the agricultural sector. Then again, this law is narrowly focused on listing, certifying and marketing agricultural and vegetable crops.
- 8.78 In our assessment, we consider that these laws are primarily concerned with agriculture. Notwithstanding the broad areas in which some companies may specialise, the scope of the legislation is designed to apply to the agricultural sector by

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<sup>80</sup> See the list at para 8.71 for an indication of those marketing laws for seeds and plant propagating material.

<sup>81</sup> Examples of such companies include Bayer UK, Corteva Agriscience and BASF UK.

providing a GB variety list of certified seed for farmers. We therefore consider that those laws identified at paragraph 8.71 may be suitable for inclusion in the prospective Code. We acknowledge that a significant portion of the law governing plant varieties and seeds is focused on its marketing. In that sense, suggesting those laws be included in the prospective Code differs from our general position in Chapter 11 with respect to marketing laws applicable to the supply chain for livestock produce. As stated at paragraph 8.71, we consider there are strong reasons for keeping all laws within the plant varieties and seed regime together.

## **HEDGEROWS LAW**

8.79 The law on hedgerows is primarily contained in the Hedgerows Regulations 1997, made under the Environment Act 1995.<sup>82</sup> However, we appreciate that trees forming part of hedgerows may, in theory, need to comply with felling licence requirements from the Forestry Act 1967 and tree preservation orders in the Town and Country Planning Act 1990. The Forestry Act 1967 has been considered above between paragraphs 8.15 to 8.34 and we consider that the Town and Country Planning Act 1990 falls outside of the scope of this report.<sup>83</sup> We note that the Town and Country Planning Act 1990 is expected to be consolidated into a new Planning Act for Wales that would form part of the code of Welsh law relating to planning. Hedgerows are also habitats for various species. For this reason, the Conservation of Habitats and Species Regulations 2017 may also be relevant. These Regulations were considered earlier in Chapter 6. Paragraphs 8.80 to 8.88 provide an overview of the Hedgerows Regulations 1997 and consider whether it may be suited for inclusion in the prospective code of agricultural law for Wales.

### **Hedgerows Regulations 1997**

8.80 The Hedgerows Regulations 1997 (“the 1997 Regulations”) impose restrictions on the removal of certain hedgerows. A hedgerow is not defined in the 1997 Regulations. However, a hedgerow for the purposes of the Regulations is one which is growing in, or adjacent to, any common land, protected land, land used for agriculture, forestry or the keeping or breeding of horses, ponies or donkeys.<sup>84</sup> Certain hedgerows are excluded from the scope of the regulations.<sup>85</sup>

8.81 Furthermore, a hedgerow will only fall within the scope of the 1997 Regulations if:

- (1) it has a continuous length of 20 metres or more; or
- (2) each end of the hedgerow meets, whether by intersection or injunction, another hedgerow.

The 1997 Regulations will also apply to a stretch of hedgerow which forms part of a hedgerow falling with the above two categories.

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<sup>82</sup> SI 1997/1160.

<sup>83</sup> Aspects of the Town and Country Planning Act 1990 are however briefly considered in Ch 9.

<sup>84</sup> Hedgerows Regulations 1997, SI 1997/1160, reg 3.

<sup>85</sup> Hedgerows within the curtilage or marking the boundary of the curtilage of a dwelling-house are outside of the scope of the regulations; Hedgerows Regulations 1997, SI 1997/1160, reg 3(3).



- 8.82 Any proposal to remove a hedgerow subject to the 1997 Regulations must be notified to the local planning authority by way of a “hedgerow removal notice”. Removal is only permitted where the local planning authority provides authorisation.<sup>86</sup> There are some exceptions to the prohibition on removal, for example, where removal is necessary for preventing the spread of any plant or tree pest.<sup>87</sup>
- 8.83 It is possible for a local planning authority to refuse permission, through issuing a hedgerow retention notice, if it considers that the hedgerow is important applying criteria set out in regulation 4 of, and Schedule 1 to, the 1997 Regulations. Among other matters, a hedgerow may be considered important if it is at least 30 years old.<sup>88</sup> It is an offence intentionally or recklessly to remove a hedgerow where an exception does not apply or if a retention notice has been issued. In addition, the local planning authority may require the owner to plant another hedgerow.

#### Hedgerows Regulations 1997: criteria for inclusion

- 8.84 In response to “an ongoing loss of hedgerows”, the 1997 Regulations aim to control their removal through introducing a notification system.<sup>89</sup> In doing so, the UK Government proposed provisions which sought to strike “the right balance between effective environmental benefits and minimising the impact on farmers”.<sup>90</sup> Hedgerows offer many benefits, as listed below.

The conservation and sustainable management of hedgerows is essential in maintaining Wales’ biodiversity, protecting vital ecosystems, and combating climate change. ... In Wales, hedgerows are an important part of our cultural and landscape heritage and make a vital contribution to a locality’s sense of place.<sup>91</sup>

- 8.85 In particular, hedgerows are significant to agriculture. The Interim Environmental Protection Assessor for Wales explains:

They are long-established agricultural features in Wales where they function as agroforestry systems and enhance the relationship between agriculture and woodland management. Hedgerows can provide considerable benefits for animal health and welfare. They provide shelter for livestock and crops, in winter reducing

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<sup>86</sup> Hedgerows Regulations 1997, SI 1997/1160, reg 5.

<sup>87</sup> Hedgerows Regulations 1997, SI 1997/1160, regs 5 and 6.

<sup>88</sup> Hedgerows Regulations 1997, SI 1997/1160, reg 4.

<sup>89</sup> House of Commons Library, “Debate on legal protection for hedgerows” (January 2024) <https://researchbriefings.files.parliament.uk/documents/CDP-2024-0012/CDP-2024-0012.pdf>, 2. See also Department of the Environment, Transport and the Regions, *The Hedgerows Regulations 1997: a guide to the law and good practice* (1997) [https://assets.publishing.service.gov.uk/media/5a817aee40f0b6230269788e/hedgerow\\_\\_guide\\_part\\_1.pdf](https://assets.publishing.service.gov.uk/media/5a817aee40f0b6230269788e/hedgerow__guide_part_1.pdf).

<sup>90</sup> *Hansard* (HC), 26 February 1997, vol 291, col 308.

<sup>91</sup> Interim Environmental Protection Assessor for Wales, *The Protection of Hedgerows in Wales* (July 2025) pp 7 to 8.

wind chill and in summer reducing heat stress. ...Hedgerows can prevent soil erosion, maintain soil health and improve water quality.<sup>92</sup>

8.86 Therefore, we are satisfied that the 1997 Regulations concern agriculture but also other subject matters. For example, the Explanatory Memorandum to the Planning (Wales) Bill and the Planning (Consequential Provisions) (Wales) Bill has highlighted the connection between the 1997 Regulations and planning law, countryside management, the environment and the historic environment.<sup>93</sup>

8.87 The 1997 Regulations apply to agriculture in practice because the Regulations apply to certain hedgerows growing on agricultural land. However, hedgerows growing in forestry or on common or protected land are also protected under the 1997 Regulations. Since we concluded at paragraph 8.29 that forestry is generally regarded as a separate sector, the application of this law to land used for forestry extends beyond the agricultural sector. Similarly, while common land is often used for agricultural purposes (such as livestock grazing) it also has wider uses such as providing open space for recreation. We equally consider an important point identified in the Interim Environmental Protection Assessor for Wales' report on hedgerows:

while the Regulations expressly exclude garden hedgerows they are silent on other areas of land including parkland, cemeteries and industrial estates and any privately owned land that is not within the curtilage of a dwelling. Any of these might have hedgerow boundaries.<sup>94</sup>

8.88 We have not been able to identify any statistics to confirm the proportion of hedgerows subject to the 1997 Regulations which are either growing in or adjacent to agricultural land. Consequently, it is difficult to conclude that the Regulations have a practical application that is primarily concerned with agriculture. In our view, the 1997 Regulations do not clearly satisfy our guiding criteria for inclusion in the prospective Code and are therefore unsuitable for inclusion in the prospective Code.

#### Other issues for consideration

8.89 Making proposals or recommendations for substantive law reform falls outside of the scope of our work for this report. However, we think it important to acknowledge recent calls for reform to the law protecting hedgerows. The Interim Environmental Protection Assessor for Wales published *The Protection of Hedgerows in Wales* in July 2025 in response to concerns expressed about the efficacy of the 1997 Regulations. Principally, the report recommends that the Senedd should legislate to “provide legal protection of hedgerows in Wales that reflects their status as priority habitats”.<sup>95</sup> This new protection should extend to “all hedgerows and other woody

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<sup>92</sup> Interim Environmental Protection Assessor for Wales, *The Protection of Hedgerows in Wales* (July 2025) p 20.

<sup>93</sup> Explanatory Memorandum to the Planning (Wales) Bill and the Planning (Consequential Provisions) (Wales) Bill, para 45.

<sup>94</sup> Interim Environmental Protection Assessor for Wales, *The Protection of Hedgerows in Wales* (July 2025) p 33.

<sup>95</sup> Interim Environmental Protection Assessor for Wales, *The Protection of Hedgerows in Wales* (July 2025) p 13.

linear features” unless their removal is authorised.<sup>96</sup> Many of the recommendations have either been accepted or accepted in principle by the Welsh Government.

- 8.90 If the law on hedgerows is to form a part of the prospective code of agricultural law for Wales, the Welsh Government may wish to consider this wider context as part of its sequencing of codification work. As we discuss in Chapter 11, there is good reason to consider undertaking imminent substantive reform before codifying the law in this area.
- 8.91 Similarly, it is worth noting that the direction of travel for the 1997 Regulations is currently uncertain. The Welsh Government accepted in principle the Interim Environmental Protection Assessor for Wales’ recommendation that legal protection extend to all hedgerows including those in urban settings. The future scope of the 1997 Regulations may therefore be relevant to any assessment as to their suitability for inclusion in the prospective code of agricultural law for Wales.

## **SCOPE OF THE PROSPECTIVE CODE**

- 8.92 In this chapter, we have concluded that the law on forestry does not satisfy our guiding criteria for inclusion in the prospective Code. These laws do not appear to us to have a practical application which is limited to, or primarily concerned with, agriculture because forestry is generally regarded as a separate sector. A related conclusion is drawn in relation to the two SIs made under the Plant Health Act 1967 because they all make provision for controlling diseases that affect trees. However, for those laws on plant health more broadly, the assessment made against the guiding criteria for inclusion is more finely balanced.
- 8.93 While we conclude that plant health law is concerned with agriculture, we have equally identified other areas in which this legal framework plays an important role. To that end, it has been challenging to determine whether these laws have a practical application which is primarily concerned with agriculture. For example, we have heard from stakeholders that plant health law supports wider efforts to ensure biosecurity within Wales, and more broadly the UK. Because of this, it is difficult to conclude that plant health is more closely concerned with agriculture than it is with forestry. Similarly, plant health’s contribution to biosecurity supports social, economic, medicinal and environmental benefits – none of which are necessarily agricultural.
- 8.94 Taking this into account, we believe that there are two options which offer solutions to these finely balanced assessments. Our view is that the second option is most favourable for reasons that are outlined below at paragraph 8.106.

### **Option one: signpost out to forestry, plant health and hedgerows law**

- 8.95 Under this first option, only those laws which satisfy our guiding criteria for inclusion would be included in the prospective Code. This would include the law on plant varieties and seeds, as identified in paragraphs 8.59 to 8.78. Any other laws considered in this chapter, such as those governing forestry, plant health and

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<sup>96</sup> Interim Environmental Protection Assessor for Wales, *The Protection of Hedgerows in Wales* (July 2025) p 13.

hedgerows, would be excluded from the prospective code of agricultural law for Wales.

- 8.96 Nevertheless, we consider that farmers and other workers in the agricultural sector will need to comply with some of the requirements set out in the laws on forestry, plant health and hedgerows. Since the prospective code of agricultural law for Wales is intended to provide a comprehensive statement of the law on agriculture, this model risks omitting laws that users of the law may expect to form part of the prospective Code. Furthermore, this approach may incorrectly signal that forestry and plant health laws do not apply in an agricultural context. For this reason, if the laws on forestry, plant health and hedgerows are excluded from the prospective code of agricultural law for Wales, we consider that it would be important to signpost to them. By signposting, we mean the wider webpage of the prospective Code referring readers to those laws which are relevant to the agricultural sector.
- 8.97 If there is signposting, option one has the advantage of avoiding the scope of the prospective Code expanding more widely than may be helpful. By excluding forestry and plant health laws which are difficult to identify as primarily concerned with agriculture, the prospective Code only captures those core laws which are more clearly connected to the sector.
- 8.98 Despite this, there are some aspects to this first option which may remain unsatisfactory. In this model, the law on plant varieties and seeds would be separated from plant health and forestry. Codification presents an opportunity to consolidate the law by subject matter, offering a solution to the fragmentation and complexity of the current legal landscape. This first option would fragment the law governing plants, arguably contradicting the aim of codification.

#### **Option two: include some plant health laws in the prospective Code**

- 8.99 The model under this second option would include plant varieties laws and those plant health laws which apply in an agricultural context, and which are not so obviously applicable to the forestry sector. By this, we mean the Plant Health Act 1967 and the assimilated law concerned with phytosanitary conditions, discussed above at paragraph 8.51. Under this proposed approach, forestry and hedgerow laws as well as the plant health subordinate legislation are concerned with trees would be excluded from the prospective Code.
- 8.100 This second option proposes including laws which do not clearly satisfy our guiding criteria for inclusion, but which are nonetheless highly relevant to the agricultural sector. The risk engaged by option two therefore is that readers of the prospective Code may incorrectly assume that plant health laws apply only to agriculture. We think, however, this risk could be mitigated if a webpage that may publish the prospective Code were to signal that plant health legislation has a wider relevance extending beyond agriculture.
- 8.101 The main advantage of this option is that it would avoid fragmenting those laws governing plants which clearly apply in an agricultural context. Bringing together the key plant health legislation would group together the law on plant varieties, seeds and plant health. In our assessment, this helps deliver the aims of codification through consolidating the law on a particular subject matter. There is also considerable

overlap between the law on seeds and plant health because the ability to market this produce is dependent on those seeds being recognised as healthy. Option two may be more helpful to users of the law given that it encompasses a wider spread of laws that are relevant to the agricultural sector than option one above.

- 8.102 In addition, we believe that there are benefits to bringing animal health and welfare law together with plant health law. As well as their centrality to the agricultural sector, this model has the potential to offer a cohesive framework to control and manage biosecurity that is otherwise harmful to the agricultural sector and beyond.
- 8.103 We recognise that expanding the scope of the prospective Code to include plant health law would separate that body of law from forestry. This gives rise to a similar risk identified at paragraph 8.96 in respect of agriculture and plant health; users of the law may infer that plant health law only applies in an agricultural context. In our view, this risk is not significant. Our project contributes to a wider programme of Welsh Government work to classify, consolidate and codify the law as it applies in Wales.<sup>97</sup> Therefore, our understanding is that areas of law not included in one prospective Code, may form part of an alternative code of law in the future. If this is the case, then the prospective code of agricultural law for Wales law could signpost to any possible, future code of Welsh encompassing forestry.
- 8.104 Similarly, this proposed option would exclude the two SIs enacted under the Plant Health Act 1967 that apply to trees. This risks fragmenting the secondary legislation from its enabling power, which we consider could pose some disadvantages in relation to clarity and subsequent amendments (see Chapter 4). However, by doing so, this option offers a scope which focuses more closely on agriculture.
- 8.105 The main disadvantage to the model proposed under option two is that the prospective Code would likely be voluminous. Increasing the volume of law encompassed in the prospective Code may detract from some of the benefits offered by codification. In particular, we are aware that the accessibility of the law could be undermined by a code of significant volume. Then again, we acknowledge that there are developing technologies, including artificial intelligence (“AI”), that complement and facilitate the delivery of accessible law applicable in Wales.

### **Our preferred option: option two**

- 8.106 In our assessment, option two is the most favourable solution. Having considered the various ways in which the prospective Code could be modelled to include or exclude the laws outlined in this chapter, option two offers a middle ground which attempts to balance finely the needs of different stakeholders and sectors. While option one offers a model which includes only those laws which are clearly concerned with agriculture, it risks fragmenting plant health and plant varieties law. Option two offers a model which encompasses the key plant health laws that apply in an agricultural context.
- 8.107 Option two could, in theory, be expanded in scope to a code of law for agriculture, animals and plants. We recognise that option two currently risks fragmenting the Plant

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<sup>97</sup> Welsh Government, *The future of Welsh law: revised accessibility programme 2021 to 2026* (2024) <https://www.gov.wales/sites/default/files/pdf-versions/2024/1/2/1706019586/future-welsh-law-revised-accessibility-programme-2021-2026.pdf>.

Health Act 1967, as a primary enabling power, from the two SIs enacted under it. One way to mitigate this is to consider expanding the scope of the prospective Code in the future, to encompass the three SIs considered at paragraphs 8.47 to 8.50 and to signify that the plant health law included is not limited to agriculture. We consider that this possible expansion of the prospective Code should be read alongside a similar suggestion offered in Chapter 7 in respect of animal health and welfare law.<sup>98</sup>

## COMMON FRAMEWORKS, STRATEGIES AND AGREEMENTS

8.108 Chapter 2 provides a brief explanation about the relevance of common frameworks to our work in this project. They offer a mechanism to ensure consistency across the four nations, where powers which were previously held at an EU-level have returned to a domestic level and intersect with devolved competence.

8.109 The Welsh Government, UK Government, Scottish Government and Northern Ireland Executive have agreed to two provisional common frameworks which relate to the policy areas captured by this chapter. These are:

- (1) the plant health provisional common framework; and
- (2) the plant varieties and seeds provisional common framework.

8.110 While the UK was a member of the EU, it adopted common rules to protect plant health across the UK. Therefore, the “purpose of the UK Plant Health Framework is to maintain common rules to protect plant health across the [four nations]”.<sup>99</sup> The relevant legislation which underpins this provisional framework includes:

- (1) the Plant Health Act 1967;
- (2) UK Regulation (EU) 2016/2031;
- (3) UK Implementing Regulation (EU) 2019/2072;
- (4) UK Regulation (EU) 2017/62; and
- (5) the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020.<sup>100</sup>

8.111 The plant health provisional common framework intends to govern the process for changing the plant health rules in one of the four UK nations. We are therefore conscious that decisions including plant health law in the prospective Code will need to consider the commitments made within this provisional framework.

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<sup>98</sup> Although it does not represent the Welsh Government’s settled policy on the taxonomy of prospective codes of law, we note that the Office of the Legislative Counsel’s “Draft Taxonomy of Code” proposes a possible code of law for agriculture, animals and plants.

<sup>99</sup> Provisional UK Common Framework on Plant Health (2022) CP 612  
<https://assets.publishing.service.gov.uk/media/61fa81928fa8f5388f444ec5/plant-health-provisional-common-framework.pdf>, p 5.

<sup>100</sup> For our discussions about these laws, please see paras 8.40 to 8.58 above.

8.112 The plant varieties and seeds provisional common framework spans the policy governing plant breeders' rights, plant variety registration, marketing standards and certification of seeds. There is much more legislation underpinning this framework than that for plant health. Annex 1 to the plant varieties and seeds framework lists 46 pieces of legislation – a mix of primary, secondary and assimilated EU law.<sup>101</sup> There are multiple policy objectives, including:

- (1) maintaining a single regime that governs plant breeders' rights;
- (2) an internal UK market for seed marketing; and
- (3) adopting measures which are consistent with the UK's international obligations.

8.113 We are conscious that decisions to restate legislation – perhaps with legislative amendments – may require the Welsh Government to do so in line with the provisional common frameworks considered. Furthermore, there are linkages between the two provisional common frameworks because the policy areas are highly related.

8.114 In addition to the two provision common frameworks, there is a plant biosecurity strategy in place for Wales, England and Scotland. In recognition of the fact that “pests and diseases do not respect national boundaries”,<sup>102</sup> the three governments have committed to coordinating their approach to plant biosecurity. The vision which drives decision-making under this strategy is to “protect Great Britain's plants through a strong partnership of government, industry and the public”.<sup>103</sup> We acknowledge the role that this strategy may play alongside the provisional common framework. It is possible that this strategy may further influence the way that plant health and plant varieties law is incorporated in the prospective Code.

8.115 The UK Government and the EU announced their intention in May 2025 to agree a Sanitary and Phytosanitary Agreement. Shortly after, the European Commission “published a recommendation authorising the opening of negotiations between the United Kingdom ... and the European Union”.<sup>104</sup> It is anticipated that this agreement will cover:

sanitary, phytosanitary, food safety and general consumer protection rules applicable to the production, distribution and consumption of agrifood products, the

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<sup>101</sup> Provisional UK Common Framework on Plant Varieties and Seeds (2022) CP 591 <https://assets.publishing.service.gov.uk/media/61fa81338fa8f5388df28bef/plant-varieties-seeds-provisional-common-framework.pdf>, Annex 1.

<sup>102</sup> Department for Environment, Food and Rural Affairs, *Plant biosecurity strategy for Great Britain (2023 to 2028)* (2023) <https://www.gov.uk/government/publications/plant-biosecurity-strategy-for-great-britain-2023-to-2028/plant-biosecurity-strategy-for-great-britain-2023-to-2028>.

<sup>103</sup> Department for Environment, Food and Rural Affairs, *Plant biosecurity strategy for Great Britain (2023 to 2028)* (2023) <https://www.gov.uk/government/publications/plant-biosecurity-strategy-for-great-britain-2023-to-2028/plant-biosecurity-strategy-for-great-britain-2023-to-2028>, para 2.1.

<sup>104</sup> Cabinet Office, “Explanatory Memorandum on the negotiation of SPS and ETS agreements between the UK and EU” (August 2025).



regulation of live animals, animal products, plants and plant products and pesticides.<sup>105</sup>

8.116 We understand that this agreement could result in some legislative change, especially if the agreement has the effect of eliminating the need for plant health certificates.

## CONCLUSION

8.117 The laws relating to forestry, plant health and plant varieties raise difficult issues regarding the scope of the prospective code of agricultural law for Wales. There are competing arguments as to whether forestry is, or is not, considered to be part of agriculture. The laws relating to forestry, plant health and plant varieties regulate matters that are highly relevant to agriculture, but which also have a scope broader than agriculture.

8.118 The prospective code of agricultural law for Wales aims to make the law clearer and more accessible, enabling those working in and regulating agriculture to easily find agricultural law. Rather than having to search through multiple sources of the law, the relevant legal provisions can be found in one, clearly labelled code of Welsh law. However, in these overlapping areas, to place these provisions in the prospective code of agricultural law for Wales may give rise to different problems of fragmentation. For example, if the prospective code of agricultural law for Wales was to include only those plant health laws that relate to agriculture then this would cause fragmentation of the wider legal framework relating to plant health. However, accessibility of the law may be undermined if all of the laws relating to plant health were included in the prospective Code, without it being made clear that the prospective Code was also a code of agriculture and plants. In that instance, those who need to access the law on plant health, but who do not work in the agricultural sector, may find it harder to locate the law.

8.119 We have explored various models as to the breadth and volume of laws which could be included. One option is to include only those laws which satisfied our guiding criteria. Another is to include those laws which did not, but are nonetheless concerned with, and highly related to, agriculture. Our preference is based on an assessment of how best to consolidate and codify the law without causing further fragmentation. We have also taken account of the extent to which any webpage that may publish the prospective code of agricultural law for Wales could signpost to other laws which may be relevant to the agricultural sector, but which are not included in the prospective Code (such as forestry legislation and the law on hedgerows). We recognise that the final determination as to the scope of the prospective code of agricultural law for Wales will depend on choices made by the Welsh Government.

8.120 Those laws which satisfied our guiding criteria for inclusion are the plant varieties and seeds laws. A full list of these laws can be found above at paragraphs 8.59 and 8.71. We discuss that there are credible arguments for and against including plant health law, which are finely balanced. On balance, we consider that the following plant health laws are suitable to form part of the prospective Code. These include:

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<sup>105</sup> Cabinet Office, “Explanatory Memorandum on the negotiation of SPS and ETS agreements between the UK and EU” (August 2025).



- (1) the Plant Health Act 1967; and
- (2) assimilated plant health law concerned with phytosanitary conditions.

# Chapter 9: Agricultural tenancies, housing and land management

## INTRODUCTION

9.1 In this chapter we consider whether the laws concerning the matters listed below are suitable for inclusion in the prospective code of agricultural law for Wales (“the prospective Code”).

- (1) Agricultural tenancies and agricultural holdings.
- (2) The statutory smallholdings regime.
- (3) The provision of housing for agricultural workers as a condition of their employment.
- (4) Laws governing share farming arrangements.
- (5) Planning restrictions applicable to developments on agricultural land.
- (6) Rights of access applicable to agricultural land.
- (7) The registration of common land.

9.2 We also evaluate whether bringing the legislation described above within the scope of the prospective Code may engage issues which require further analysis or consideration. For example, we highlight where there are calls for substantive reform of the legislation falling within the scope of this chapter. Lastly, we evaluate whether there are any technical issues with the legislation examined in this chapter which may benefit from or require amendments aimed at simplifying, modernising or streamlining the law.

## AGRICULTURAL TENANCIES AND AGRICULTURAL HOLDINGS

9.3 The law on agricultural tenancy is a complex and specialist area of law. This chapter examines, to the extent necessary, the law in this area to guide a decision as to whether it is suitable for inclusion in the prospective Code.

9.4 The current law on agricultural tenancies, as applicable in England and Wales, is primarily contained in two Acts of the UK Parliament:

- (1) the Agricultural Holdings Act 1986 (“the AHA 1986”); and
- (2) the Agricultural Tenancies Act 1995 (“the ATA 1995”).

Both the above laws regulate the rights and obligations of tenant and landlords in respect of tenanted agricultural land.

## AHA 1986

- 9.5 The AHA 1986 applies only to agricultural holdings created by agreements which commenced before 1 September 1995. That is unless any of the limited circumstances provided for under section 4 of the ATA 1995 apply. These tenancies are commonly referred to as agricultural holdings, full agricultural tenancies or AHA tenancies. In this chapter, we will use the term AHA tenancies.
- 9.6 The definition of an AHA tenancy is set out in exhaustive terms in the AHA 1986. Broadly speaking an AHA tenancy is a tenancy for land which is let, under a contract for tenancy,<sup>1</sup> for use as agricultural land for the purposes of a trade or business.<sup>2</sup> Furthermore, for the AHA 1986 to apply, the whole of the land comprised in the contract must be let for use as agricultural land. Exceptions to this rule are permitted for any use of the land which does not substantially affect the agricultural character of the tenancy.<sup>3</sup> Certain arrangements are also excluded from the scope of the AHA 1986.<sup>4</sup>
- 9.7 An AHA tenancy subject to the AHA 1986 benefits from various protections including those outlined below.
- (1) Security of tenure: the circumstances in which a landlord can terminate an AHA tenancy are restricted. For example, a landlord must provide the tenant with at least 12 months' notice of an intention to terminate the tenancy. Such notices are known as notices to quit and can take two forms: a special case notice to quit or a general notice to quit.<sup>5</sup>
  - (2) Succession rights: rights of succession also apply to AHA tenancies granted before 12 July 1984, subject to certain exceptions. Rights of succession allow a specified close relative of a deceased or retiring tenant ("the tenant") to apply to succeed a tenancy on death or retirement of the tenant.
  - (3) Statutory rent review: the parties can request that a statutory rent review process takes place every three years. An independent arbitrator, or a third party, will determine the new rent payable by applying a statutory formula.

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<sup>1</sup> A contract of tenancy means a letting of land, or an agreement for letting land, for a term of years or from year to year: Agricultural Holdings Act 1986, s 1. Leases of agricultural land for an interest less than a tenancy from year to year and license to occupy land for use as agricultural land will, however, be converted into AHA tenancies: Agricultural Holdings Act 1986, s 2.

<sup>2</sup> To be classified as an AHA tenancy, a tenancy must also not be one where the land is let to the tenant during their continuance in any office, appointment or employment held under the landlord: Agricultural Holdings Act 1988, s 1.

<sup>3</sup> Agricultural Holdings Act 1986, s 1.

<sup>4</sup> See Agricultural Holdings Act 1986, s 2(3).

<sup>5</sup> The 12 months' notice runs from the end of the year of the tenancy during which the notice to quit is served. See Agricultural Holdings Act 1986, ss 25 and 26 and Sch 3 for further detail relating to notices to quit.

## ATA 1995

- 9.8 The ATA 1995 applies only to agricultural tenancies, known as farm business tenancies, created on or after 1 September 1995, subject to certain exceptions.<sup>6</sup> An agricultural tenancy must satisfy certain conditions to be classified as a farm business tenancy and therefore to benefit from the protection of the ATA 1995.<sup>7</sup> Detailed consideration of those conditions falls outside of the scope of this chapter. Broadly speaking, a farm business tenancy is a contract for a tenancy granted in respect of land which is used for agriculture for the purposes of a trade or business.<sup>8</sup> A farm business tenancy must be granted for a term of years or from year to year.
- 9.9 The ATA 1995 allows for greater freedom of contract than is permitted under the AHA 1986. This means that parties to farm business tenancies are free to negotiate their own tenancy terms in respect of a wider range of matters than parties to AHA tenancies.

### Farm business tenancies: key features

- 9.10 Farm business tenancies under the ATA 1995 differ from AHA 1986 tenancies in a number of ways, including the following.
- (1) Rights of succession do not apply to farm business tenancies.
  - (2) A tenant of a farm business tenancy does not have security of tenure. Farm business tenancies of two years or under will expire automatically on the expiry date. A notice of at least 12 months is required to terminate a tenancy of two years or longer. If no notice is given at the end of the term, then the tenancy will continue as a yearly periodic tenancy until a notice to terminate is served.<sup>9</sup>
  - (3) Parties are free to negotiate a break clause. For tenancies with a term of two years or more, a break clause is subject to a minimum 12-month period of notice.

### Secondary legislation relevant to AHA tenancies and farm business tenancies

- 9.11 We set out below an overview of the secondary legislation in force which concerns agricultural tenancies and applies in Wales.
- (1) The Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019 (“the 2019 Regulations”) impose into AHA tenancies model contract clauses.<sup>10</sup> The model contract clauses govern the respective responsibilities of landlords and tenants in respect of the repair, maintenance and insurance of fixed equipment.

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<sup>6</sup> For the relevant exceptions see Agricultural Holdings Act 1986, s 4.

<sup>7</sup> The relevant conditions – the business condition and either the agriculture condition or the notice condition – are set out under the Agricultural Tenancies Act 1995, s 1.

<sup>8</sup> Agricultural Tenancies Act 1995, s 1.

<sup>9</sup> Agricultural Tenancies Act 1995, s 5(1).

<sup>10</sup> SI 2019/12709 (W 223).

- (2) The Agricultural Holdings (Requests for Landlord's Consent or Variation of Terms and the Suitability Test) (Wales) Regulations 2024 stipulate the suitability criteria applicable to succession applications.<sup>11</sup> These Regulations also provide for a route to dispute resolution in specified circumstances, for example, where a landlord to an AHA tenancy has refused a tenant's request to vary the tenancy terms.
- (3) The Agricultural Holdings (Fees) Regulations 2022 set the fee that must be paid when making an application to a professional authority to appoint an independent arbitrator to resolve a dispute concerning an AHA tenancy.<sup>12</sup>
- (4) The Agricultural Tenancies (Requests for Landlord's Consent or Variation of Terms) (Wales) Regulations 2024 provide tenants of farm business tenancies with a route to dispute resolution in specified circumstances.<sup>13</sup>

### AHA 1986 and ATA 1995: criteria for inclusion

- 9.12 Approximately one third of agricultural land in Wales is tenanted.<sup>14</sup> The Welsh Government has previously described the agricultural tenancy sector as "crucial to the Welsh rural economy".<sup>15</sup> The tenanted sector offers an avenue for new entrants into the farming industry, including individuals without family connections to agricultural land or the capital to purchase such land. New entrants to the sector can also bring "the skills and entrepreneurial drive to implement new ideas in the sector".<sup>16</sup>
- 9.13 In addition, the agricultural tenancy regime offers landowners who may not want to farm all or part of their land, the flexibility to let out agricultural land while retaining an income from the land. The flexibility afforded by the agricultural tenancy regime is recognised as being critical to the agricultural sector's resilience and capacity to adapt to changing circumstances.<sup>17</sup> The tenanted sector further provides those established farmers who are not agricultural landowners with opportunities to farm.
- 9.14 The AHA 1986 consolidated the law on agricultural tenancies including the Agricultural Holdings Act 1984 ("AHA 1984"). Before the outbreak of the first world war, it is reported that 90% of all agricultural land in Wales and England was tenanted.<sup>18</sup> By 1978, that figure had plummeted to approximately 43%.<sup>19</sup> The 1984 Act was primarily designed to implement a package of reforms recommended by the National Farming

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<sup>11</sup> SI 2024/798 (W 127).

<sup>12</sup> SI 2024/1356.

<sup>13</sup> SI 2024/797 (W 126).

<sup>14</sup> House of Lords Library, "Agricultural Tenancy Reform" (January 2021) <https://lordslibrary.parliament.uk/agricultural-tenancy-reform/>.

<sup>15</sup> Welsh Government, *Consultation on modernising the repair and maintenance of fixed equipment and end of tenancy compensation in relation to agricultural tenancies in Wales* (December 2016).

<sup>16</sup> Welsh Government, *Consultation on agricultural tenancy reform* (April 2019).

<sup>17</sup> Welsh Government, *Consultation on agricultural tenancy reform* (April 2019).

<sup>18</sup> House of Commons Library, "Agricultural Tenancies Bill Research Paper" (January 1995) <https://researchbriefings.files.parliament.uk/documents/RP95-15/RP95-15.pdf>.

<sup>19</sup> C Rodgers, *Agricultural Law* (4th ed 2016) para 1.12.

Union and the Country Landowners Association.<sup>20</sup> On the second reading of the Bill which became the AHA 1984, the then Minister for Agriculture, Michael Jopling MP, described the principal purpose of the Bill as being “to make more tenancies available by taking action to arrest the decline of the tenanted sector of agriculture”.<sup>21</sup>

- 9.15 The AHA 1984 was consolidated shortly after by the Agricultural Holdings Act 1986, the main provisions of which are discussed earlier in this chapter. In brief, the AHA 1984 as consolidated by the AHA 1986, ended succession rights for newly established tenancies, enhanced security of tenure and provided for statutory rent reviews.
- 9.16 Similarly to the AHA 1986, the ATA 1995 was introduced into Parliament amidst a continuing decline in the number of tenanted farms across Wales and England. By 1990, the tenanted sector represented 36% of all farmland.<sup>22</sup>
- 9.17 The ATA 1995 aimed to deregulate the agricultural tenanted sector. It did so by providing parties to a farm business tenancy with greater freedom of contract than permitted under the AHA 1986. Professor Christopher Rodgers describes the objectives of the ATA 1995 as being threefold:
- (1) to encourage landowners to let land;
  - (2) to provide a flexible framework within which farm-based businesses can diversify into other farm-based businesses whilst still remaining an agricultural tenant; and
  - (3) to provide a framework which recognises the increased importance of environmental land management by farmers, and allows for the enforcement of environmental covenants in farm tenancies.<sup>23</sup>
- 9.18 Having regard to the context in which the AHA 1986 and the ATA 1995 were introduced and to the stated aims of each Act, we consider that both Acts concern the subject of agriculture. In addition, both the ATA 1995 and AHA 1986 have a practical application which is limited to agriculture insofar as both Acts regulate tenancies granted in respect of agricultural land only. Accordingly, we consider that the subject matter of the AHA 1986, the ATA 1995 and the secondary legislation enacted under those Acts are suitable for inclusion in the prospective Code.
- 9.19 In forming the above conclusion, we are mindful that there have been recent prominent calls for reform of the law on agricultural tenancies. We consider this in further detail at paragraphs 9.83 to 9.88 below.

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<sup>20</sup> C Rodgers, *Agricultural Law* (4th ed 2016) para 1.52.

<sup>21</sup> *Hansard* (HL), 7 March 1984, vol 55, col 857.

<sup>22</sup> House of Commons Library, “Agricultural Tenancies Bill Research Paper” (January 1995) <https://researchbriefings.files.parliament.uk/documents/RP95-15/RP95-15.pdf>.

<sup>23</sup> C Rodgers, *Agricultural Law* (4th ed 2016) para 1.27.

## SECTIONS 10 AND 11 OF THE AGRICULTURE ACT 1947

- 9.20 In Chapter 5, we consider whether the Agriculture Act 1947 (“the 1947 Act”) is suitable for inclusion in the prospective code of agricultural law for Wales. Chapter 5 does not, however, address sections 10 and 11 of the 1947 Act as those provisions are primarily relevant to the leasing of agricultural land.
- 9.21 Section 10 requires an owner of agricultural land to manage that land in accordance with the rules of good estate management. The language used in section 10 is outdated and consequently the provision is difficult to understand. In general terms, the good estate management rules require a landowner to manage the agricultural land they own to a standard which enables an occupier of the land reasonably skilled in “husbandry” to maintain efficient production. Husbandry is not defined in the legislation. One dictionary describes the term as meaning “tillage or cultivation of the ground” in respect of farming, or more broadly, “the management of resources”.<sup>24</sup>
- 9.22 When determining whether the rules of good estate management are satisfied, the 1947 Act requires consideration be given to the extent to which:
- the owner is providing, improving, maintaining and repairing fixed equipment on the land in so far as is necessary to enable an occupier of the land reasonably skilled in husbandry to maintain efficient production as aforesaid.<sup>25</sup>
- 9.23 Section 11 of the 1947 Act provides for the rules of good husbandry. The language used in section 11 is also outdated and again means the provision is not easy to interpret. Broadly speaking, the rules of good husbandry require an occupier of agricultural land to farm the land they occupy in accordance with a reasonable standard of management to allow for efficient production in the present and in the future. What will be considered to amount to a reasonable standard of management will depend on the character and situation of the occupied land, the standard of management by the owner and other relevant circumstances.
- 9.24 There are certain factors that must be considered when determining whether the rules of good husbandry have been satisfied.<sup>26</sup> Those factors include, for example, whether any permanent pasture is being properly mowed, grazed and maintained.
- 9.25 When originally enacted, the 1947 Act provided for the enforcement of the rules of good estate management and the rules of good husbandry. The enforcement provisions have since been repealed. Nonetheless, compliance with the rules of good estate management may still be included as a term in an agricultural tenancy.
- 9.26 The rules of good husbandry may be relied upon where a landlord is seeking to terminate an AHA tenancy. For example, a landlord may seek to terminate an AHA tenancy on the grounds that the tenant has failed to comply with the rules of good

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<sup>24</sup> The Oxford Dictionary.

<sup>25</sup> Agriculture Act 1947, s 10(2).

<sup>26</sup> Agriculture Act 1947, s 11(2).

husbandry under the 1947 Act.<sup>27</sup> To successfully terminate on this ground, the landlord would have to apply for and obtain a certificate of bad husbandry from the Agricultural Land Tribunal for Wales.

### **Sections 10 and 11 Agriculture Act 1947: criteria for inclusion**

- 9.27 Sections 10 and 11 respectively impose obligations on landlords and tenants (or other occupiers of agricultural land) to manage agricultural land to certain standards which, in essence, ensure the land is fit for agricultural production. We consider therefore that both provisions are concerned with the subject of agriculture. Furthermore, both sections 10 and 11 of the 1947 Act only apply in practice in the agricultural context. For those reasons, we consider that sections 10 and 11 are suitable for inclusion in the prospective code of agricultural law for Wales.

### **STATUTORY SMALLHOLDINGS**

- 9.28 Part 3 of the Agriculture Act 1970 (“the 1970 Act”) provides for a statutory smallholdings’ regime.<sup>28</sup> Statutory smallholdings are farms owned by local authorities which are let out to farmers who may not have the capital to purchase agricultural land or family connections to such land. Statutory smallholdings are commonly referred to as county farms and this is the term we will adopt for the remainder of the chapter.
- 9.29 County farms provide new entrants to the agricultural sector with a place “on the first rung of the farming ladder”<sup>29</sup> As at 31 March 2024, there were 876 tenants on county farms in Wales.<sup>30</sup> Under the 1970 Act, local authorities in Wales are under a duty to “make it their general aim to provide opportunities for persons to be farmers on their own account by letting holdings to them”.<sup>31</sup>
- 9.30 The 1970 Act imposes an upper limit on the size of a county farm. The upper limit of land is set as an amount of land which, in the opinion of the Welsh Ministers, is capable:
- when farmed under reasonably skilled management, of providing full-time employment for not more than two men (including the person to whom it is let) with or without additional part-time employment for another man.<sup>32</sup>
- 9.31 A local authority may only let county farms to individuals who, in the authority’s opinion, are suitably qualified to farm the holding on their own account or who are

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<sup>27</sup> Specifically, the landlord would have to rely on a special case notice to quit known as a “Case C” notice to quit.

<sup>28</sup> The functions of the UK Ministers under the Agriculture Act 1970, except for the functions provided for under s 53, were transferred to the Welsh Ministers in respect of Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order (Wales) 1999 (SI 1999/672) and the Government of Wales Act 2006, para 30 of Sch 11.

<sup>29</sup> P Williams, *Scammell, Densham and Williams Law of Agricultural Holdings* (11th ed 2023) para 19.46.

<sup>30</sup> Welsh Government, *Annual Report on Smallholdings in Wales 1 April 2023 - 31 March 2024* (March 2025).

<sup>31</sup> Agriculture Act 1970, s 39(1).

<sup>32</sup> Agriculture Act 1970, s 39(2).



likely to become suitably qualified to do so within a reasonably short time frame.<sup>33</sup> The Smallholdings (Selection of Tenants) Regulations 1970 make provision for what the term 'suitably qualified' means for the purposes of the 1970 Act.<sup>34</sup>

9.32 Part 3 of the 1970 Act provides local authorities with broad powers to administer county farms. Examples of those powers are outlined below.

- (1) Powers to determine the rent payable by tenants occupying county farms.
- (2) Powers to provide, improve, maintain and repair fixed equipment on land held as a county farm.
- (3) Powers to acquire land for the purposes of letting as a county farm.
- (4) Powers to let land held for the purposes of the statutory smallholding regime for other purposes where that land is not for the time being required as a county farm.<sup>35</sup>

### **Statutory smallholdings regime: criteria for inclusion**

9.33 The statutory smallholdings regime provides a route of entry to the agricultural sector for individuals who may not have the capital to purchase agricultural land or who do not have family connections to such land. As discussed at paragraph 9.12, new entrants to the agricultural sector play a critical role in driving forward innovation and productivity. For that reason, we consider that the statutory smallholdings regime is concerned with agriculture. Furthermore, the sole purpose of the statutory smallholdings regime is to let agricultural land in order for the land to be farmed. Therefore, we consider that the practical application of Part 3 of the 1970 Act is limited to agriculture. For those reasons, we conclude that Part 3 of the 1970 Act is suitable for inclusion in the prospective Code. For the same reasons, we conclude that the Regulations made under Part 3 of the 1970 Act - Smallholdings (Selection of Tenants) Regulations 1970 - are also suitable for inclusion in the prospective Code.<sup>36</sup>

## **SHARE FARMING, CONTRACT FARMING AND JOINT VENTURES**

9.34 In the absence of family connections to agricultural land, farming remains a challenging industry for new entrants to break into owing to the steep capital investment required to start a farming business.

9.35 The laws considered in the preceding section of this chapter – the AHA 1986, the ATA 1995 and Part 3 of the 1970 Act – each facilitate the entry of new farmers into the agricultural sector by providing a framework for the leasing of agricultural land. However, there is a limited supply of agricultural land available to lease in Wales. Consequently, new entrants may decide to look for alternative routes into the sector.

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<sup>33</sup> Agriculture Act 1970, s 44(2).

<sup>34</sup> SI 1970/1049.

<sup>35</sup> Agriculture Act 1970 Act, ss 45, 46, 49 and 55.

<sup>36</sup> The Smallholdings (Selection of Tenants) Regulations 1970 make provision for criteria to be applied to assess the suitability of a prospective tenant for a county farm. These Regulations are considered further at paras 9.93 to 9.94 below.

Both share farming and contract farming developed in the UK during the 1980s as a response to landowners wanting to have an arrangement that did not constitute an AHA tenancy subject to the AHA 1986.<sup>37</sup> Contract farming allows for farmers to contract out certain farming operations to independent contract workers. The contractor carries out the farming operations for an agreed amount and the contracting farmer retains all farming profits and responsibilities for cost.

- 9.36 Share farming is a less common, but increasingly popular, business model by which a landowner and a farming operator run separate businesses on the same agricultural land. Typically, the landowning party will provide and maintain the agricultural land, fixed equipment and fixed machinery. The farming operator will generally undertake the day-to-day farming and provide movable machinery. Under this model, both parties will agree on a share of the gross agricultural output from the farm, with each party bearing their own costs.<sup>38</sup> Alternatively, two or more farmers may opt to enter into a joint venture in the form of a company or a partnership.<sup>39</sup>
- 9.37 In Wales, new entrants seeking opportunities of the kind described above can obtain support from Farming Connect.<sup>40</sup> “Start to Farm” - a Farming Connect initiative formerly known as Venture - is designed to help connect farming landowners “who are looking to step back from farming with new entrants looking for a way into farming”.<sup>41</sup> Through the Start to Farm initiative individuals can obtain help with the search for a potential business partner and with establishing a partnership or joint venture.<sup>42</sup>

### Share farming and other arrangements: criteria for inclusion

- 9.38 The general laws applicable to contracts, companies and partnership arrangements apply to the models of share farming, contract farming and joint ventures discussed above. Those laws do not make specific provision for the agricultural context. Consequently, those laws apply in practice in the same way as they do to business and contractual arrangements entered into in other contexts. Therefore, we do not consider such laws suitable for inclusion in the prospective Code. Any webpage which publishes the prospective Code could, however, signpost readers to existing guidance and resources on share farming and similar arrangements.

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<sup>37</sup> HM Revenue and Customs, *Inheritance Tax Manual* (March 2016).

<sup>38</sup> Agriculture and Horticulture Development Board, “Knowledge Library Share Farming” <https://ahdb.org.uk/knowledge-library/share-farming>.

<sup>39</sup> Agriculture and Horticulture Development Board, “Knowledge Library Joint Ventures” <https://ahdb.org.uk/knowledge-library/joint-ventures#:~:text=What%20are%20joint%20ventures%3F,of%20their%20land%20between%20them>.

<sup>40</sup> Farming Connect is a service funded by the Welsh Government to provide farmers with advice, guidance, training and support.

<sup>41</sup> Farming Connect, “Start to Farm” <https://businesswales.gov.wales/farmingconnect/business/start-farm#:~:text=Farming%20Connect%20can%20match%20farmers%20and%20landowners%20who,steps%20required%20to%20find%20a%20potential%20business%20partner>.

<sup>42</sup> Further guidance about the various models open to farmers can be found in Farming Connect’s handbook on joint ventures: Farming Connect, “Venture Handbook: Supporting Joint Ventures in Wales” (November 2024).

## AGRICULTURAL WORKERS' HOUSING

- 9.39 The law governing the provision of housing to agricultural workers, as applicable in relation to Wales, is primarily contained in the Rent (Agriculture) Act 1976 ("the 1976 Act") and the Renting Homes (Wales) Act 2016 ("the 2016 Act").<sup>43</sup>
- 9.40 The 1976 Act applies where a qualifying agricultural worker has been granted, before 1 January 1989, exclusive occupation of a dwelling house which is in qualifying ownership. The exclusive occupation can be granted under a licence or a tenancy. A qualifying agricultural worker is a person who is employed in agriculture as defined in section 1 of the 1976 Act. Schedule 3 to the 1976 Act makes provision for the circumstances in which a person will be considered to be employed in agriculture for the purposes of the Act.
- 9.41 A dwelling will be in qualifying ownership if the occupier is employed in agriculture and the dwelling house is owned by the occupier's employer or the employer has made arrangements with the owner of the house for the worker to reside in it. Tenancies or licenses subject to the 1976 Act are known as protected agricultural occupancies while the tenant remains in employment of the landlord. After the employment relationship ends, the tenancy will become a statutory tenancy under the 1976 Act. Both forms of tenancy offer the tenant significant security and protections including security of tenure.<sup>44</sup>
- 9.42 Until relatively recently, tenancies or licences granted to agricultural workers, on or after 1 January 1989, as a condition of their employment would have been assured agricultural occupancies or assured tenancies subject to the Housing Act 1998 (provided certain conditions were met).
- 9.43 However, the legislative framework in this area has been reformed by the Renting Homes (Wales) Act 2016. That Act introduces a new legislative regime for residential tenancies in Wales and implements recommendations made by the Law Commission in our Renting Homes Wales report.<sup>45</sup>
- 9.44 From 1 December 2022, any new tenancies of dwelling houses granted to agricultural workers as part of their employment will be occupancy contracts regulated under the 2016 Act. In addition, any existing assured agricultural occupancies and assured shorthold tenancies, formerly subject to the Housing Act 1998, were converted on 1 December 2022 into occupation contracts subject to the 2016 Act.

### Agricultural workers' housing: criteria for inclusion

- 9.45 From 1 December 2022 onwards, the 2016 Act treats residential tenancies granted to agricultural workers in the same way as any other residential tenancies. This means that the 2016 Act does not make special provision for agricultural dwellings. We consider therefore that the 2016 Act is concerned with the subject of housing rather

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<sup>43</sup> We note that the Rent Act 1977 will also have applied to certain residential lettings occupied by agricultural workers, but not in circumstances where the housing was provided as a condition of employment. Consequently, we do not consider the Rent Act 1977 in this chapter.

<sup>44</sup> Rent (Agriculture) Act 1976, Sch 4.

<sup>45</sup> [Renting Homes in Wales](#) (2013) Law Com No 337.

than agriculture. Furthermore, the practical application of the 2016 Act is not limited to or primarily concerned with agriculture. Consequently, we consider that the 2016 Act is unsuitable for inclusion in the prospective Code.

- 9.46 The Rent (Agriculture) Act 1976 provides protection, in certain circumstances, for farming workers who occupy houses as part of their employment. Therefore, the 1976 Act can be said to be concerned with both housing and agriculture. In addition, the 1976 Act has a practical application limited to agriculture because the Act only applies to qualifying agricultural workers. On this basis, we consider that the 1976 Act is, in theory, suitable for inclusion in the prospective Code.
- 9.47 We are mindful that the 1976 Act only applies to agricultural workers' tenancies that were entered into before 15 January 1989. Since 15 January 1989, it has not been possible to create new protected occupancies subject to the 1976 Act. From a pragmatic perspective, the fact that the 1976 Act is gradually becoming redundant may be a factor for consideration when determining whether to bring the Act within the scope of the prospective Code.

## PLANNING LEGISLATION

- 9.48 In 2018, the Law Commission issued a report on Planning Law in Wales which made recommendations regarding the form and content of a code of planning law for Wales.<sup>46</sup> The majority of recommendations in our report were aimed at simplifying, modernising and consolidating existing legislation into a code of Welsh law for planning.
- 9.49 In September 2025, the Welsh Government introduced the Planning (Wales) Bill into the Senedd. The Bill is intended to consolidate planning law in Wales and to establish a code of Welsh law relating to planning. The Planning (Wales) Bill is currently progressing through the Senedd. This report therefore refers to provisions in the current law, rather than to those contained in the Bill.
- 9.50 As a general rule, planning permission is required for the carrying out of any development of land. Development means “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”.<sup>47</sup>
- 9.51 Exempted from the definition of development is “the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any buildings occupied together with land so used”.<sup>48</sup> This is generally understood to mean that it is unnecessary to obtain planning permission for a proposed change of use of land from non-agricultural purposes to a use for agricultural purposes.
- 9.52 However, a proposal to erect new buildings, or to modify or extend existing buildings on agricultural land may require planning permission. Planning permission may be

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<sup>46</sup> [Planning Law in Wales](#) (2016) Law Com No 383.

<sup>47</sup> Town and Country Planning Act 1990, s 55.

<sup>48</sup> Town and Country Planning Act 1990, s 55(2)(e).

expressly granted or granted automatically by virtue of the Town and Country Planning (General Permitted Development) Order 1995 (“the GDPO 1995”).<sup>49</sup> The GDPO 1995 applies in Wales and provides that certain classes of development are automatically granted planning permission.

### **Planning legislation: criteria for inclusion**

9.53 The Planning (Wales) Bill - which if enacted will form part of a code of Welsh relating to planning - proposes to consolidate provisions of the Town and Country Planning Act 1990 examined at paragraphs 9.50 to 9.51 above. Similarly, we understand that the GDPO 1995 is one of the pieces of secondary legislation intended to form part of the same code. Consequently, we think it is unnecessary to consider in this report whether such laws are suitable for inclusion in the prospective code of agricultural law. A webpage that may publish the prospective code of agricultural law for Wales could, however, signpost to the laws in question.

### **COUNTRYSIDE RIGHTS OF WAY ACT 2000**

9.54 The Countryside Rights of Way Act 2000 (“CROW 2000”) provides the public with rights of access to certain land known as access land. Access land means land mapped as open country (mountain, moor, heath and downland) or registered common land.<sup>50</sup>

9.55 CROW 2000 makes the provision for the matters summarised below.

- (1) Part 1 of the Act provides for public rights of access subject to certain restrictions and exclusions. It requires Natural Resources Wales, as the appropriate countryside body for Wales, to maintain maps of access land in Wales.<sup>51</sup>
- (2) Part 2 makes provision relating to access to byways, bridleways and highways.
- (3) Part 3 makes amendments to separate pieces of legislation concerning sites of special scientific interest (“SSSIs”) and introduces a new provision to the Wildlife and Countryside Act 1981 relating to the notification of Ramsar sites.<sup>52</sup>
- (4) Part 4 details the procedure for designating an area as an area of outstanding natural beauty. Chapter 7 considers areas of outstanding natural beauty.
- (5) Part 5 makes provision for miscellaneous matters.

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<sup>49</sup> SI 1995/418.

<sup>50</sup> Countryside and Rights of Way Act 2000, s 1.

<sup>51</sup> Countryside and Rights of Way Act 2000, s 4(2).

<sup>52</sup> The Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971), signed in Ramsar on 2 February 1971. Ramsar sites are wetlands designated as being of international importance under the Ramsar Convention.

## CROW 2000: criteria for inclusion

- 9.56 The explanatory notes to CROW 2000 explain that Part 1 of the Act is “intended to give greater freedom for people to explore open countryside”.<sup>53</sup> With regards Part 2, the explanatory notes state that the provisions are “designed to reform and improve rights of way in England and Wales”.<sup>54</sup> As outlined above, Parts 3 and 4 makes amendments to legislation on areas which are afforded protection for wildlife and nature conservation purposes.
- 9.57 Taken together, the explanatory notes indicate that the Act aims to enhance public access to the countryside and to provide greater protection for the environment. Therefore, it does not appear that the Act is concerned with the subject of agriculture.
- 9.58 As outlined above, approximately 90% of land in Wales is used for agriculture. This means that, in practice, a high proportion of agricultural land in Wales will be designated as access land for the purposes of CROW 2000. However, the rights of access provided for under CROW 2000 may also apply to land owned by landowners who are situated in the countryside but who do not possess agricultural land. Furthermore, the rights of access provided for under CROW 2000 are exercisable by the general public. Therefore, we conclude that CROW 2000 does not have a practical application which is limited to, or primarily concerned with, agriculture.
- 9.59 In addition, there are only a small proportion of provisions in CROW 2000 which refer to agriculture.<sup>55</sup> For those reasons we consider that CROW 2000 is unsuitable for inclusion in the prospective Code. We further consider it relevant that our report on Planning Law in Wales examined whether the CROW 2000 ought to be included in the scope of a code of planning law for Wales. In that report, we concluded that CROW 2000 may be better to fall within a potential future code of Welsh law relating to countryside rights of way and access.<sup>56</sup>

## COMMON LAND

- 9.60 A recent Senedd research briefing describes common land as “land owned by one party over which another party has certain rights, such as the right to graze cattle”.<sup>57</sup> Common land may also be owned by multiple parties. Contrary to popular belief, common land is not owned by the public. However, the public may have rights of access in respect of common land or permission to use the land. It is reported that approximately 8.5% of all land within Wales is registered as common land. This amounts to around 175,000 hectares.<sup>58</sup>

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<sup>53</sup> Explanatory Notes to the Countryside and Rights of Way Act 2000, para 5.

<sup>54</sup> Explanatory Notes to the Countryside and Rights of Way Act 2000, para 70.

<sup>55</sup> For example, see the Countryside and Rights of Way Act 2000, Sch 6.

<sup>56</sup> [Planning Law in Wales](#) (2016) Law Com No 383, paras 4.37 to 4.38.

<sup>57</sup> Senedd Research, “Research Briefing: Common Land” (July 2018) 1.

<sup>58</sup> Welsh Government, “Law Wales Common Land” <https://law.gov.wales/environment/countryside-and-access/common-land>.

9.61 The main Acts governing common land are the Commons Registration Act 1965 (“the 1965 Act”) and the Commons Act 2006 (“the 2006 Act”).

9.62 The 1965 Act has been subject to partial repeal. The effect of the main provisions, which remain in force and apply to Wales, are summarised below.

- (1) Section 1 of the Act provides in England and Wales, for the creation of a register of common land and of town and village greens. Inclusion of land on the common land register is conclusive evidence that the land is common land. If not registered, rights of common are not exercisable.
- (2) Local authorities in Wales are designated as commons registration authorities and are responsible for maintaining a register of common land, and town and village greens for their area.<sup>59</sup>
- (3) The Welsh Ministers can make regulations providing for the amendment of the registers, for example, where land ceases to be common land or a town or village green.<sup>60</sup>
- (4) Where a right of common includes a right, not limited by number, to graze animals, then it shall, for the purposes of registration, be treated as exercisable in relation to a definite number of animals.<sup>61</sup>

9.63 There are various statutory instruments enacted under the 1965 Act which remain in force and apply to Wales. They largely make provision for procedural matters concerning the register of common land and register of town and village greens.<sup>62</sup>

9.64 The 2006 Act has five parts.

- (1) Part 1 concerns the registration requirements which apply in respect of common land. Local authorities in Wales are designated as commons registration authorities and required to keep and maintain a register of common land and of town and village greens falling in their area.
- (2) Part 2 concerns the management of common land. It makes provision for the establishment of councils known as commons councils made up of commoners who can make collective majority decisions on the management of common land.<sup>63</sup> Commons councils regulate and manage the agricultural use, vegetation and rights of common in respect of common land in their area. No such commons councils have been established under the Act for any areas in Wales.

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<sup>59</sup> Commons Registration Act 1965, ss 2 and 3.

<sup>60</sup> Commons Registration Act 1965, s 13.

<sup>61</sup> Commons Registration Act 1965, s 15.

<sup>62</sup> For example: the Commons Registration (Exempted Land) Regulations 1965, SI 1965/2001; the Commons Registration (General) Regulation 1966, SI 1966/1471; the Commons Registration (New Land) Regulations 1969, SI 1969/1843.

<sup>63</sup> “Commoner” in this context means a person who has the right to use common land. See the Open Spaces Society, “Frequently Asked Questions: Commons” <https://www.oss.org.uk/frequently-asked-questions-commons/>.



- (3) Part 3 prohibits certain works being conducted on commons land without the consent of the Welsh Ministers.
- (4) Part 4 makes miscellaneous provisions. It provides local authorities with powers in respect of unclaimed land in their area. Local authorities are also provided with powers to prevent unlawful interference with common land. It also provides the Welsh Government with powers to prevent unlawful agricultural activity being undertaken on common land.<sup>64</sup>
- (5) Part 5 makes supplementary provisions.

9.65 The 2006 Act is not fully in force. This means that only select provisions of the Act are in force insofar as it applies to Wales. The Welsh Government has published a list of the provisions contained in the Commons Act 2006 which had been brought into force in Wales as of January 2018.<sup>65</sup> We have not identified any additional provisions which have been brought into force in the intervening period.

### **Common land: criteria for inclusion**

9.66 The 1965 and 2006 Acts each make provision for the registration of common land and town and village greens. The 2006 Act further makes provision for the powers and duties of local authorities in relation to maintaining such a register and in relation to registered common land or registered towns and village greens.

9.67 The main focus of each Act is the registration and management of common land and town and village greens. Furthermore, there are only a small number of provisions in the 1965 Act and the 2006 Act which make specific provision for, or refer to, agriculture. On balance, we therefore consider that the 1965 Act and 2006 Act are each concerned with the subjects of land law, rights of common and public access to land, rather than with agriculture.

9.68 It is challenging to determine whether the 1965 Act and 2006 Act have a practical application which is primarily concerned with or limited to agriculture. The National Farmers' Union Cymru ("NFU Cymru") emphasises the strong connection between farming and common land as follows.

Farming on common land is a centuries old, traditional practice often with local, geographically distinctive native breeds of livestock. Many flocks are 'hefted' to graze particular areas of the common – a knowledge of belonging that is engrained and passed down from ewe to lamb, generation after generation.<sup>66</sup>

9.69 NFU Cymru reports that in Wales almost 10% of agricultural land is registered common land.<sup>67</sup> The NFU Cymru further describes the use of such land for grazing

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<sup>64</sup> Commons Act 2006, s 46.

<sup>65</sup> Welsh Government, "Commons Act 2006 – Sections in force in Wales" (January 2018) <https://www.gov.wales/sites/default/files/publications/2021-02/commons-act-2006-sections-in-force.pdf>.

<sup>66</sup> NFU Cymru, "Shaping Welsh Farming's Future: NFU Cymru's Policy Priorities for Common Land" (September 2022).

<sup>67</sup> NFU Cymru, "Shaping Welsh Farming's Future: NFU Cymru's Policy Priorities for Common Land" (September 2022).



purposes as being “integral to the success of thousands of Welsh farming businesses”.<sup>68</sup>

9.70 Common land is, however, regarded as holding wider societal value particularly in relation to nature conservation, the historic environment and recreational use by the public. For example, approximately 40% of Welsh commons are designated as SSSIs.<sup>69</sup>

9.71 The explanatory notes to the 2006 Act highlight the broad use of commons land:

Many commons are still used for agriculture and serve the economic interest of farming communities. They are also valued for their landscape, wildlife and archaeological interests, and for public enjoyment.<sup>70</sup>

9.72 Similarly, *Halsbury’s Laws of England* underlines the diverse functions of common land in England:

The most significant aspect of rights of common in practice is now that land subject to such rights may also be accessible to the public for recreational purposes... Rights of common of pasture are also an essential part of running many hill farms and a few lowland farms which would not be viable without them.<sup>71</sup>

9.73 In the Welsh context, the Senedd Research Service explains the significance of common land as follows:

Besides playing a vital role in agriculture, common land is valued for its contribution to the natural and cultural heritage of Wales, especially nature and habitat conservation.<sup>72</sup>

Similarly, town and village greens can be used for agricultural purposes, for example, the grazing of livestock. However, such land can also be used for recreational purposes such as playing sport or walking dogs.<sup>73</sup>

9.74 It is important to acknowledge that the mountainous topography of Wales may influence the predominant usage of common land. Professor Christopher Rodgers (and others) provide insight into the use of common land located in upland areas.

It will usually consist of open land with rights of common grazing exercisable by the owners or occupiers of farms adjoining the common. Most common land in upland areas is also ‘access land’ over which the public have a statutory right to roam, and

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<sup>68</sup> NFU Cymru, “Shaping Welsh Farming’s Future: NFU Cymru’s Policy Priorities for Common Land” (September 2022).

<sup>69</sup> Senedd Research, “Research Briefing: Common Land” (July 2018) 2.

<sup>70</sup> Explanatory Notes to the Commons Act 2006, para 5.

<sup>71</sup> *Halsbury’s Laws of England: Commons* (vol 13 2021) para 3.02.

<sup>72</sup> Senedd Research, “Research Briefing: Common Land” (July 2018) 1.

<sup>73</sup> UK Government, “Common Land and Village Greens” <https://www.gov.uk/common-land-village-greens#:~:text=You%20can%20use%20town%20and,local%20parish%20or%20community%20councils>.

local communities frequently also hold additional rights over common land (e.g. a right to fish ... or to enjoy recreational access to the common).<sup>74</sup>

- 9.75 Ultimately, there are finely balanced arguments as to whether the practical application of either Act is primarily concerned with agriculture. We respect that common land is integral to Welsh farming, while acknowledging that such land holds wider societal value. Based on the resources considered at paragraphs 9.68 to 9.73 above, we tentatively anticipate that agriculture is likely to be the dominant use of common land in Wales. However, we have been unable to find any statistical information to confirm this point.
- 9.76 In any event, based on our assessment that the subject matters of the 1965 and 2006 Act are concerned with subjects other than agriculture, we conclude that the Acts do not satisfy our criteria for inclusion in the prospective code of agricultural law for Wales.
- 9.77 Furthermore, although the 2006 Act was enacted 20 years ago, the majority of the Act's provisions have not yet been brought into force in relation to Wales. Any decision to expend resources on the consolidation of the 2006 Act may therefore be influenced by whether there is any real intention to commence the relevant provisions (that are not yet in force) in the foreseeable future.
- 9.78 Notwithstanding our conclusions above, we acknowledge that common land serves a vital purpose as grazing land for many Welsh farmers. We have also heard from stakeholders that the law governing common land is considered complex and difficult to understand. Therefore, we recognise that there may be valid, pragmatic reasons for including commons legislation in the prospective Code, even if the subject matter of the 1965 Act and 2006 Act common land is not explicitly concerned with agriculture. As a minimum, we suggest it would be important for any webpage that may publish the prospective code of agricultural law for Wales to signpost to the relevant law on common land, and to any supporting guidance.

## FORM AND CONTENT OF THE PROSPECTIVE CODE

- 9.79 In this chapter we propose that the subject matter of the primary legislation and secondary legislation listed below is suitable for inclusion in the prospective code of agricultural law for Wales.
- (1) The Agricultural Holdings Act 1986.
  - (2) The Agricultural Tenancies Act 1995.
  - (3) Part 3 of the Agriculture Act 1970 and the Smallholdings (Selection of Tenants) Regulations 1970.
  - (4) The Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019.

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<sup>74</sup> C Rodgers and others, *Contested Common Land Environmental Governance Past and Present*, (1st ed 2011) p 52.

- (5) The Agricultural Holdings (Requests for Landlord's Consent or Variation of Terms and the Suitability Test) (Wales) Regulations 2024.
- (6) The Agricultural Tenancies (Requests for Landlord's Consent or Variation of Terms (Wales) Regulations 2024.
- (7) Agricultural Holdings (Fees) Regulations 2022.

## Signposting

9.80 Many farmers will have cause to comply with those laws which we examine in this chapter but conclude are unsuitable for inclusion in the prospective code of agricultural law for Wales. We highlight instances where it would be particularly beneficial for a webpage that may publish the prospective Code to signpost readers to those laws that we conclude ought to fall outside the prospective Code's scope, but which may nonetheless be relevant to its reader.

## ISSUES REQUIRING FURTHER ANALYSIS

- 9.81 We have not been asked to make proposals or recommendations for substantive reform of agricultural law. Accordingly, we do not make proposals for legislative reforms which would involve changes to the policy underpinning agricultural law; nor do we suggest changes to important legal rights or obligations.
- 9.82 However, our terms of reference ask us to highlight any issues engaged by the codification of agricultural law which may require further consideration or analysis. We consider that where there are calls for reform of an area of agricultural law then this may influence decisions on how and when that area of law is codified.
- 9.83 Accordingly, we summarise below recent calls for reform of the law governing agricultural tenancies and, separately, calls for reform relating to the statutory smallholdings regime. Furthermore, we outline recent calls for the introduction of a bespoke legislative framework to govern share farming arrangements.

### Agricultural tenancies: calls for substantive law reform

#### Welsh Government proposals for agricultural tenancy reform

9.84 In 2019, the Welsh Government consulted on options for reforming the law on AHA tenancies and farm business tenancies based on recommendations of the (since disbanded) Tenancy Reform Industry Group. The proposals presented in the consultation aimed to:

[R]emove perceived barriers which may prevent tenants' and landlords' adapting to change, improving productivity, enabling structural change and accessing future sustainable land management schemes.<sup>75</sup>

9.85 Approximately half of the proposals presented in the 2019 consultation have been implemented in Wales either through the Agriculture Act 2020 or the Agriculture (Wales) Act 2023. For example, the Agriculture Act 2020 repealed a provision in the AHA 1986 which provided that applications for succession of an AHA tenancy on

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<sup>75</sup> Welsh Government, *Consultation on agricultural tenancy reform* (April 2019).

retirement of a tenant could only be made if the retiring tenant was aged 65 or older.<sup>76</sup> It is now possible in Wales and England to apply for succession on retirement regardless of the age of the retiring tenant. In broad terms, the provisions proposed in the 2019 consultation, which have since been implemented, serve to modernise the criteria and process applicable to succession applications for AHA tenancies. The reforms also extended the circumstances in which parties to an agricultural tenancy have a right to refer a matter for dispute resolution by an independent third party.

- 9.86 A number of proposals consulted upon by the Welsh Government in 2019 have yet to be implemented but are reported to remain under consideration.<sup>77</sup>

#### Law Commission review of agricultural tenancy legislation

- 9.87 On 4 September 2025, the Law Commission announced its intention to commence a law reform project which will involve review of the legislation governing AHA tenancies and farm business tenancies. Our 14<sup>th</sup> programme report provides further context to the agricultural tenancies project.

This project will consider whether the existing law properly balances giving tenant farmers sufficient security to encourage investment and maintain viable farm businesses, opportunities for new entrants to access farming opportunities, and the interests and confidence of landlords to let land. This project will also consider whether the law impedes tenant farmers from diversifying their businesses, including to farm in more sustainable ways; whether the law supports a collaborative approach between landlords and tenants; and whether there are technical issues which cause problems in practice. Detailed consideration of reform of the law in this important area is long overdue.<sup>78</sup>

- 9.88 The timescale for commencing the project is to be confirmed. Since agriculture is a devolved area of law, the project could include consideration of the law in relation to Wales. This is a matter which will need to be discussed in due course with the Welsh Government.<sup>79</sup>
- 9.89 In Chapter 4, we identify that it may be considered undesirable to consolidate legislation where there is a real possibility that the law will be subject to reform. Subject to whether our project on agricultural tenancy law will extend to the law applicable in Wales, it may be that any resulting Law Commission report could

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<sup>76</sup> Agriculture Act 2020, s 36 and Sch 3.

<sup>77</sup> Welsh Government, *Consultation – Summary of responses, including Welsh Government Response: Agricultural Tenancy Reform* (September 2021).

<sup>78</sup> [Fourteenth Programme of Law Reform](#) (2025) Law Com No 421, p 13.

<sup>79</sup> Under our Protocol with the Welsh Ministers, the Commission may undertake a law reform project relating to Welsh devolved matters (as defined by s 3D(8) of the Wales Act 2014) either by including it in a programme of law reform adopted in accordance with the relevant provisions of s 3(1)(b) and (c) of the Law Commissions Act 1965 or by accepting the project on a reference from the Welsh Ministers under s 3(1)(ea) of the Law Commissions Act 1965:  
[https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2015/07/Law\\_Commission\\_Welsh\\_Protocol.pdf](https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2015/07/Law_Commission_Welsh_Protocol.pdf).

usefully inform decisions as to how and whether agricultural tenancy legislation is brought within the scope of the prospective Code.

### **Statutory smallholdings regime: calls for reform**

#### **Calls for reform relating to the decline of county farms**

- 9.90 The number of county farms in Wales and, also, in England is reported to be in decline. Over the last two decades various organisations have published reports examining this issue in England.<sup>80</sup> We have not identified any reports which consider this issue specifically in a Welsh context.
- 9.91 However, TFA Cymru has called for county farms to be treated as strategic national assets. In addition, both TFA Cymru and the Farmers' Union of Wales have advocated for the Welsh Government to support collaboration between local authorities in the context of county farm estate management.<sup>81</sup> We acknowledge that proposals relating to collaborative working could potentially be facilitated without legislative reform. We also acknowledge that the capacity of local authorities to implement proposals relating to collaborative working may be influenced by financial considerations.

#### **Suitability of tenants for county farms**

- 9.92 In January 2014, the Department for Environment, Food and Rural Affairs proposed that the law, as applicable in England, governing the suitability of tenants for county farms required modernisation.<sup>82</sup> At paragraph 9.32 above, we conclude that the law governing the county farm regime is suitable for inclusion in the prospective code of agricultural law for Wales. Codification may therefore present an opportunity to examine whether the law applicable in Wales governing the suitability of county farm tenants may require or benefit from modernisation.
- 9.93 A local authority may only let county farms to individuals who, in the authority's opinion, are suitably qualified to farm the holding on their own account or who are likely to become suitably qualified within a reasonably short time frame.<sup>83</sup>
- 9.94 The Smallholdings (Selection of Tenants) Regulations 1970 provide that a local authority may only let a county farm to those tenants who can demonstrate that they have been occupied in full-time practical farm work for at least five years, whether continuous or not. Time spent attending a full-time course in agriculture at a university, college or other further education establishment will count, up to a maximum of three years, towards the five-year practical farm work requirement.<sup>84</sup>

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<sup>80</sup> For example, the Sustainable Farming and Food Delivery Group, "The Importance of the County Farm Service to the Rural Economy" (November 2008).

<sup>81</sup> Farmers' Union of Wales, *A mandate for future farmers* (July 2025) p 6; Tenant Farmers Association Cymru, "Brief to Senedd members on council owned farms" (October 2024) [https://tfa.org.uk/wp-content/uploads/2024/10/24October14Smallholdings\\_in\\_Wales.pdf](https://tfa.org.uk/wp-content/uploads/2024/10/24October14Smallholdings_in_Wales.pdf).

<sup>82</sup> Department for Environment, Food and Rural Affairs, *Red Tape Challenge: Agriculture Theme Proposals* (January 2014) p 48.

<sup>83</sup> Agriculture Act 1970, s 44(2); para 9.31 above.

<sup>84</sup> The Smallholdings (Selection of Tenants) Regulations 1970 (SI 1970/1049), reg 3.

- 9.95 It is reported that 40% of the agricultural workforce in the UK works on a part-time basis.<sup>85</sup> In addition, changes in education provision mean there are more options to pursue agricultural qualifications outside of traditional full-time further or higher education courses. Therefore, if the law governing the country farms regime is included in the prospective Code, then this may present an opportunity to examine whether the suitability requirements for county farm tenancies are reflective of the modern agricultural workforce, and of modern educational provision.

### Share farming arrangements

- 9.96 As outlined above, share farming arrangements are governed by the general principles of contract law. However, we have identified a discrete number of reports which propose that the lack of a bespoke legislative framework in this area can act as a barrier to the uptake of share farming arrangements.<sup>86</sup> The reports reviewed submit that, in the absence of a bespoke legislative framework, parties to share farming arrangements may be exposed to unfair contractual terms. Comparisons are drawn with the legal framework in New Zealand under the Sharemilking Agreement Act 1937, and the supporting Order.<sup>87</sup> Share milking is the term used in New Zealand to describe share farming arrangements established in the dairy farming context. The legal framework imposes certain standard terms into share milking agreements which are designed to provide protection for both parties.
- 9.97 One stakeholder we spoke to also highlighted that disputes regarding share farming arrangements in Wales are heard by either the County Court or High Court. These are courts which specialise in hearing contractual and commercial disputes, but which may not hold specific expertise in agricultural matters. However, the legislative framework for share milking in New Zealand provides for dispute resolution: a process by which an independent conciliator works with the parties to identify the issues in dispute and helps them to reach agreement. Notably, conciliators for share milking agreements in New Zealand must be suitably qualified and experienced to resolve disputes.<sup>88</sup>
- 9.98 We do not make any proposals in this report regarding the desirability of a bespoke legislative framework for share farming in Wales. We note, however, that the codification of agricultural law may present an opportunity to consider relevant calls for reform in this area.

## TECHNICAL ISSUES

- 9.99 Consolidation can involve introducing technical changes to legislation which are aimed at clarifying the effect of the law. We have identified two examples where the law relating to county farms may benefit from clarification.

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<sup>85</sup> House of Commons Library, "Recruitment Support for Agricultural Workers" (May 2022) 2.

<sup>86</sup> S Wetherell, "Can share farming offer a route into farming for new entrants?" (July 2023) [https://media.churchillfellowship.org/documents/Wetherell\\_S\\_Report\\_2020\\_Final.pdf](https://media.churchillfellowship.org/documents/Wetherell_S_Report_2020_Final.pdf).

<sup>87</sup> Sharemilking Agreements Order 2011, SR 2011/295 (New Zealand).

<sup>88</sup> Arbitrators' and Mediators' Institute of New Zealand, <https://www.aminz.org.nz/conciliation>.

### Statutory smallholdings: the suitability exception and male widowers

- 9.100 As outlined above, an individual tenant will only be considered suitability qualified to occupy a county farm where they have been occupied in full-time practical farm work for a period of five years.
- 9.101 There is an exception to the above general rule for spouses or civil partners of a deceased tenant in circumstances where the spouse or civil partner is still residing on the county farm (“the suitability exception”). This means that where a tenant of a county farm dies then a local authority may, when re-letting that farm for the first time after the tenant’s death, choose to let to the deceased tenant’s spouse or civil partner regardless of whether that person has five-years’ experience of full-time practical farm work. The spouse or civil partner must, however, still be residing on the county farm in order for the suitability exception to apply.
- 9.102 Prior to the introduction of the Civil Partnership Act 2004, the suitability exception only applied to a (female) widow of a deceased tenant. Following the introduction of the 2004 Act, the term “widow” was replaced with the terms “spouse” and “civil partner”. However, the suitability exception still uses the pronoun “she” to refer to the spouse or civil partner of the deceased tenant:
- The foregoing paragraph shall not apply to the surviving spouse or surviving civil partner of a deceased tenant of a smallholding in relation to the first letting of that smallholding after the death of the tenant, if when that letting is under consideration by the smallholdings authority, she is residing on the smallholding.<sup>89</sup>
- 9.103 Consequently, the use of the pronoun “she” in the above extract does not accurately reflect the changes made by the Civil Partnership Act 2004. Therefore, consolidation could present an opportunity to confirm that the suitability exception is also intended to apply to widowers or male civil partners of a deceased tenant of a county farm.
- 9.104 Relatedly, if Part 3 of the 1970 Act and the 1970 Regulation are included in the prospective Code - as is proposed in this chapter - then this would present an opportunity to modernise the drafting of legislation in question so as to conform with the Welsh Government’s preference for gender neutral drafting.<sup>90</sup>

### Statutory smallholdings: principles of good estate management

- 9.105 Local authorities, having regard to the general interests of agriculture and of good estate management, are required to make it their general aim to provide opportunities to be farmers on their account by letting county farms to them.<sup>91</sup>
- 9.106 Presently, the 1970 Act does not elaborate on what is meant by the phrase “good estate management”. The *Law of Agricultural Holdings* indicates that the common law would offer no further assistance in this respect:

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<sup>89</sup> The Smallholdings (Selection of Tenants) Regulations 1970, SI 1970/1049, reg 3(2).

<sup>90</sup> Welsh Government, *Writing Laws for Wales: A guide to legislative drafting* (November 2019).

<sup>91</sup> Agriculture Act 1970, s 39.



At common law there has never been any implied obligation on a landlord to manage his estate in accordance with the rules of good estate management, or any common law equivalent.<sup>92</sup>

Therefore, we think it is unclear what matters smallholdings authorities must consider when having regard to the interests “good estate management” in the exercise of their functions under section 39 of the 1970 Act.

9.107 We note that section 10 of the Agriculture Act 1947 imposes an obligation on owners of agricultural land to comply with the rules of good estate management. The 1947 Act explains rather than defines what is meant by the rules of good estate management.<sup>93</sup> In doing so, it provides that good estate management will involve managing the land in a manner so as to enable an occupier reasonably skilled in husbandry to maintain the land to a standard which allows for efficient production.

9.108 The provisions of the 1947 Act concerning the rules of good estate management do not, however, expressly apply to the 1970 Act. In any event, we consider that perceptions of what good estate management involves are likely to have evolved in the five decades since the passage of the 1970 Act.

9.109 In light of this ambiguity, further consideration could be given to whether confirming the meaning of “good estate management” for the purposes of the 1970 Act could improve the accessibility of the law in this area.

## CONCLUSION

9.110 In this chapter, we identify legislation we consider suitable for inclusion in the prospective code of agricultural law for Wales. The legislation we identify as suitable for inclusion is concerned with leasing of agricultural land, as set out in the list presented at paragraph 9.78 above. We also summarise recent calls for reform of the legislation in question. In particular, we highlight that the Law Commission has announced its intention to undertake a project reviewing the law on agricultural tenancies. Any law reform recommendations resulting from that review may usefully inform decisions on how and whether agricultural tenancy legislation is brought within the prospective code of agricultural law for Wales.

9.111 In addition, we provide examples of technical issues which may require further consideration in order to modernise, simplify and streamline the law governing the statutory smallholdings regime into the prospective code of agricultural law for Wales.

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<sup>92</sup> P Williams, *Scammell, Densham and Williams, Law of Agricultural Holdings* (11th ed 2023), para 27.4.

<sup>93</sup> P Williams, *Scammell, Densham and Williams, Law of Agricultural Holdings* (11th ed 2023), para 27.11.



# Chapter 10: Supply chain

## INTRODUCTION

- 10.1 This chapter considers the agricultural sector's role in the wider agricultural supply chain which creates products for use in Wales, as well as for domestic and international trade. The agricultural supply chain can be described as the network of individuals and organisations which produce, process and distribute agricultural produce.
- 10.2 Agricultural activities will form part of the initial stage of the agricultural supply chain. Farmers grow and produce raw materials which subsequently undergo processing and packaging to create products which appear in many industries. There are various outputs from an agricultural supply chain; these are often referred to as the “four Fs”: food, feed, fibre and fuel.
- (1) Food may involve livestock itself as well as livestock products, such as milk and eggs. Livestock includes cattle, sheep, poultry and pigs.
  - (2) Feed refers to the food given to livestock kept on farms and can be made on-site from growing crops. Typical crops which may form part of feed include barley, corn and fodder beet.
  - (3) Fibre is an essential raw material which contributes towards textiles and packaging. Rearing sheep for wool is one way that agricultural practice produces fibre. However, crops can also be grown to produce fibre (such as hemp, nettle and flax).
  - (4) Certain crops can also be valuable for producing biofuel, such as wheat and miscanthus (a type of grass crop).<sup>1</sup>
- 10.3 Although there are many possible outputs from the agricultural sector, the sector in Wales is predominantly made up of livestock farms. 78% of all agricultural land in Wales is used for livestock grazing and livestock grazing farms account for 78% of all farm types in Wales.<sup>2</sup>
- 10.4 As well as accounting for the largest proportion of farms and land in Wales, livestock farming also generates the greatest gross output. “Gross output refers to the total value of all products or services produced by farm businesses in each country”.<sup>3</sup> In

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<sup>1</sup> Department for Environment, Food and Rural Affairs, “Bioenergy Crops in England and the UK 2008 to 2023” (June 2024); Farming Connect, “Miscanthus as an alternative crop for Welsh farmers” (November 2019) <https://businesswales.gov.wales/farmingconnect/news-and-events/technical-articles/miscanthus-alternative-crop-welsh-farmers>.

<sup>2</sup> Welsh Government, *Farm Incomes: April 2023 to March 2024* (January 2025) <https://www.gov.wales/farm-incomes-april-2023-march-2024.html#:~:text=LFA%20grazing%20livestock%20make%20up,of%20the%20land%20in%20Wales>.

<sup>3</sup> Senedd Research, “The Farming Sector in Wales: Research Briefing” (July 2022) 19.

2024, the gross agricultural output in Wales was £2.2 billion.<sup>4</sup> Livestock and livestock products represented 82.3% of this total gross output. In comparison, the other outputs of the agricultural sector - feed, biofuel and fibre - represent a far smaller proportion of the sector in Wales. As we explain in paragraph 10.2 above, these three other outputs are largely generated from crops. However, crops and horticulture represent a small fraction of the farms' gross output and agricultural land in Wales. Crops and horticulture accounted for 5% of the gross agricultural output in Wales in 2024. Similarly, of the 24,677 farm holdings which were recorded in Wales in 2020, only 2% of these were dedicated to growing crops and horticulture.<sup>5</sup> Taken together these figures indicate that the Welsh agricultural sector is largely dominated by livestock farming.

## OUR APPROACH

10.5 Our primary task for this report is to identify the legislation that is suitable for inclusion in the prospective code of agricultural law for Wales ("the prospective Code") by applying our criteria for inclusion as set out in Chapter 3.

10.6 In this chapter, we prioritise review of those laws that apply to the agricultural supply chain for meat produce. This approach reflects the fact that the agricultural sector in Wales is dominated by livestock farming. A supply chain for meat produce could involve the following stages.

- (1) Production: rearing of livestock on farm.
- (2) Slaughter: slaughter of livestock at a slaughterhouse.
- (3) Processing: processing, packaging and labelling of produce for sale.
- (4) Distribution: transport of produce for sale (e.g. to wholesalers or retailers).
- (5) Retail: sale of produce by retailers or the other business forming part of the food and drink industry.

As we discuss further at paragraphs 10.9 to 10.11 below, the above illustrative model represents just one example of a typical agricultural supply chain for meat produce.

10.7 In the first section of this chapter, we review laws that apply to the early stages of the agricultural supply chain for meat produce. Specifically, we apply our criteria for inclusion to those laws which apply to goods or services which are typically used by, or supplied to, livestock farms.

10.8 We do not, however, apply our criteria for inclusion to the stages of the supply chain for livestock meat which take place post-farm. We set out below our rationale for adopting this approach.

10.9 As outlined above, agricultural activity that takes place on-farm forms part of a wider supply chain for agricultural produce. The stages involved in the agricultural supply

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<sup>4</sup> StatsWales, *Aggregate Agricultural Output and Income* (2025).

<sup>5</sup> Senedd Research, "The Farming Sector in Wales: Research Briefing" (July 2022) 15.

chain differ according to factors including the agricultural produce, the raw materials involved, the eventual processed product and the specific farm in question. In turn, the laws that apply to the agricultural supply chain are variable, complex and vast in scope.

- 10.10 Consequently, we do not consider it practical to evaluate in this report the legislative requirements that apply to the many different supply chains for other agricultural products (including those falling within the categories of food, feed, fibre and fuel products). In our assessment, such an approach would significantly expand the scope of our review into distinct and complex areas of legislation including the laws governing food safety, consumer protection and international trade of goods. We further consider such an approach would risk unjustifiably diverting our focus from reviewing the body of agricultural law applicable in Wales.<sup>6</sup>
- 10.11 We further consider such a task to be impracticable in scope even if we were to narrow our focus to those laws that apply to the agricultural supply chain for meat produce. As outlined above, the laws that apply to the agricultural supply chain for meat produce will vary significantly according to the specific stages involved in a particular supply chain. For example, once a farmer has reared livestock on farm, there are multiple options available for onward sale or distribution. A farmer could opt to sell their livestock at a livestock market (potentially to other livestock farmers), livestock could be sent for slaughter at a slaughterhouse, or a farmer may sell directly to local retailers or consumers (for example, at a farm shop). Therefore, we consider that attempting to apply our criteria for inclusion to the laws applicable to the variable stages involved even in the agricultural supply chain for meat produce would prove too unwieldy a task.
- 10.12 Furthermore, we consider that the policy focus of the legislation applicable to the agricultural supply chain arguably shifts at the point at which agricultural produce leaves the farm and moves into the subsequent stages of the supply chain. In the context of the agricultural supply chain for meat produce, we consider that the slaughterhouse represents a natural cut-off point at which livestock becomes food produce and therefore primarily subject to distinct but related bodies of law concerning food safety, consumer protection and trade.
- 10.13 For the above reasons, we do not attempt to apply our criteria for inclusion to those laws that apply throughout the agricultural supply chain for different agricultural products. Nor do we attempt to apply our criteria to the narrower set of laws applicable to the agricultural supply chain for meat produce. Instead, we provide a non-exhaustive overview of those laws that apply to the post farm-stages of the agricultural supply chain for meat produce between paragraphs 10.77 and 10.89. We offer such an overview as we acknowledge that, in the future, it may be considered desirable to expand the scope of the prospective code of agricultural law for Wales to encompass the legislation that applies to the post-farm stages of the supply chain.

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<sup>6</sup> See Ch 3 for our approach to identifying the existing body of agricultural law in Wales.

## GENERAL LEGISLATION

10.14 Throughout the agricultural supply chain, there will be laws which apply to farmers but which would also apply to any business relationship. We do not consider that these laws are specific to the agricultural sector.

- (1) Contract law.
- (2) Employment law.
- (3) Health and safety law.

### Fair dealing contract laws specific to agriculture

10.15 There are two secondary laws, as listed below, that concern the terms which apply to contracts for sale of certain agricultural products.

- (1) The Fair Dealing Obligations (Milk) Regulations 2024.
- (2) The Fair Dealing Obligations (Pigs) Regulations 2025.<sup>7</sup>

10.16 We also note that there is industry engagement on proposals for regulations which would provide for contractual terms applicable to the sale of eggs and fresh produce.<sup>8</sup> We do not consider the laws listed at paragraph 10.15 above as they are enacted in reliance on powers conferred on the UK Ministers under the Agriculture Act 2020.<sup>9</sup>

## EARLIER INPUTS: GOODS AND SERVICES SUPPLIED TO LIVESTOCK FARMS

10.17 In the following sections we consider those laws that apply to good and services which are typically supplied or provided to livestock farms. The good and services which are the subject of such legislation are therefore highly relevant to the livestock farming sector. However, as we examine below, it does not necessarily follow that the subject matter of the legislation in question is solely concerned with agriculture.

### Pesticides law

10.18 Pesticides are defined in law as any substance, preparation or organism prepared or used for destroying any pest.<sup>10</sup> The term “pest”, in this context, means:

- (1) any organism harmful to plants, wood or other plant products;
- (2) any undesired plant; and
- (3) any harmful creature.<sup>11</sup>

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<sup>7</sup> SI 2024/537; SI 2025/610.

<sup>8</sup> Department for Environment, Food and Rural Affairs, “Advancing work on supply chain fairness” (November 2024) <https://defrafighting.blog.gov.uk/2024/11/21/advancing-work-on-supply-chain-fairness/>.

<sup>9</sup> Agriculture Act 2020, ss 29 and 50.

<sup>10</sup> Food and Environment Protection Act 1985, s 16.

<sup>11</sup> Food and Environment Protection Act 1985, s 16(15).

10.19 Pesticides use can pose risk to public health and the environment. Consequently, the production, sale and use of pesticides are strictly regulated to ensure safe and effective products are available. The Health and Safety Executive is the primary national regulator in this area.

10.20 Pesticides play an important role in the agricultural sector. By protecting crops and plants from pests, pesticides help farmers yield more produce. However, pesticides are used in wider contexts:

pesticides play an important role in protecting crops to support domestic food production, preserving natural landscapes, and maintaining vital public spaces, such as road, rail networks, and sports pitches.<sup>12</sup>

10.21 Given that farmers use pesticides as an important means of pest control, we consider it appropriate to consider, at a high-level, whether the law on pesticides is suitable for inclusion in the prospective Code. The question of whether pesticides law is more closely concerned with the production and sale of pesticides, or alternatively with their end use is particularly relevant to our assessment.

### Part 3 of the Food and Environment Protection Act 1985 and secondary legislation

10.22 Under section 16 of the Food and Environment Protection Act 1985 (“the 1985 Act”), the Welsh Ministers may provide by regulations for prohibitions and requirements relating to the importation, sale, supply, storage, use and advertisement of pesticides. Regulations made under section 16 may also make provision for the approval of certain pesticides provided they can comply with certain conditions. Section 17 empowers the Welsh Ministers to act concurrently or jointly with the Secretary of State to issue a code of practice on pesticides.<sup>13</sup>

10.23 The Control of Pesticides Regulations 1986 (“the 1986 Regulations”) are made in exercise of the powers contained in section 16 of the 1985 Act, as well as section 24(3).<sup>14</sup> The 1986 Regulations restrict any person from advertising, selling, supplying, storing or using a pesticide unless the pesticide has received approval and certain conditions are met.<sup>15</sup>

### Part 3 of the Food and Environment Protection Act 1985: criteria for inclusion

10.24 Section 16 of the 1985 Act describes the aims of the controls imposed in relation to pesticides as being to:

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<sup>12</sup> Department for Environment, Food and Rural Affairs, Welsh Government, Scottish Government and Northern Ireland Executive, *UK Pesticides National Action Plan 2025: Working for a more sustainable future* (May 2025), <https://www.gov.uk/government/publications/uk-pesticides-national-action-plan-2025/uk-pesticides-national-action-plan-2025-working-for-a-more-sustainable-future>.

<sup>13</sup> Ministerial functions provided for under ss 16 to 18 of the Food and Environment Protection Act 1985 have been transferred to the Welsh Ministers so far as exercisable in relation to Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and the Welsh Ministers (Transfer of Functions) Order 2018, SI 2018/1644.

<sup>14</sup> The 1986 Regulations were enacted by the Secretary of State and Minister of Agriculture, Fisheries and Food prior to the powers to make the regulations being devolved to Wales.

<sup>15</sup> Control of Pesticides Regulations 1986, SI 1986/1510, reg 4.

- (1) protect the health of human beings, creatures and plants;
- (2) safeguard the environment;
- (3) secure safe, efficient and humane methods of controlling pests; and
- (4) make information about pesticides available to the public.

10.25 We consider that Part 3 of the 1985 Act (namely sections 16 to 19) and the 1986 Regulations concern agriculture because those laws aim to ensure an appropriate mechanism for controlling pests, which would otherwise injure crops and plants. There are, however, many other aims underpinning these provisions, such as environmental protection and the protection of human health and animal health.

10.26 In our assessment, the practical application of Part 3 of the 1985 Act and the 1986 Regulations is not solely or primarily concerned with agriculture. Although “the main use of pesticides is in agriculture to ensure that crops remain healthy”,<sup>16</sup> the relevant provisions in the 1985 Act, and the 1986 Regulations, are more closely concerned with imposing controls upon the production and sale of pesticides. While the laws in question do impose conditions relating to the use of pesticides, they are conditions that apply throughout the supply chain for pesticides: at the stages of production, advertisement, sale and storage.

10.27 We therefore consider that Part 3 of the 1985 Act, and the 1986 Regulations apply to a wide range of stakeholders, including:

- (1) manufacturers and distributors of pesticides;
- (2) professional applicators (for example a pest control service);
- (3) agricultural and horticultural workers; and
- (4) amateur users (for example in home gardens).

10.28 Furthermore, the conditions and restrictions imposed under the 1985 Act and the 1986 Regulations on the end use of pesticides seek to:

control not only agrochemicals but all pesticides covered by the present pesticides safety precautions scheme. This means that we are concerned not only with chemicals used on farms and gardens but also with those used in food stores, factories, sewers, restaurants, kitchens and hospitals to kill pests and protect public health, as well as with those employed to preserve wood in houses and other buildings.<sup>17</sup>

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<sup>16</sup> Food Standards Agency, “Pesticide fact sheet”  
<https://acss.food.gov.uk/sites/default/files/multimedia/pdfs/publication/foodpestfactsh.pdf>.

<sup>17</sup> *Hansard* (HL), 5 March 1985, vol 74, col 798.

10.29 Other professional users include local authorities, foresters, pest controllers and market gardeners.<sup>18</sup> The code of practice issued under section 17 of the 1985 Act references agriculture, horticulture, amenity situations and forestry as relevant sectors. The amenity sector can cover transport infrastructure, sports pitches, public parks and utility areas.

10.30 For the above reasons, we consider that Part 3 of the 1985 Act and the 1986 Regulations are unsuitable for inclusion in the prospective Code.

### Plant protection laws

10.31 In the following paragraphs, we consider those laws which govern a form of pesticides known as “plant protection products”. The expression “plant protection products” is defined in extensive terms in the law.<sup>19</sup> Broadly speaking, plant protection products are a form of pesticides used to protect, preserve or influence the growth of plants, such as crops, or to destroy or control the growth of undesired plants such as weeds.<sup>20</sup>

10.32 In the following section we consider the laws listed below.

- (1) Plant Protection Products Regulations 2011.<sup>21</sup>
- (2) Plant Protection Products (Sustainable Use) Regulations 2012.<sup>22</sup>
- (3) Official Controls (Plant Protection Products) Regulations 2020.<sup>23</sup>
- (4) UK Regulation (EC) 1107/2009 on plant protection products on the market.

We will collectively refer to the above laws as the “plant protection laws”. Together, the plant protection laws provide a statutory framework for regulating plant protection products, from their manufacturing, up until their end use.

### Plant protection laws: criteria for inclusion

10.33 Plant protection products are used in the agricultural sector to protect crops, and so those laws which regulate the supply and use of such products can be said to concern agriculture. At the same time, the plant protection laws aim to balance the benefits plant protection products can offer to agricultural production against the need to protect against the potential harm that can result from the use of such products. By way of example, the purpose of UK Regulation (EC) 1107/2009 on plant protection

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<sup>18</sup> Welsh Government, *Pesticides: code of practice* (June 2010) <https://www.gov.wales/pesticides-code-practice>.

<sup>19</sup> UK Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, art 2.

<sup>20</sup> European Food Safety Authority, “Plant Protection Product” <https://www.efsa.europa.eu/en/glossary/plant-protection-product-ppp>.

<sup>21</sup> The Plant Protection Products Regulations 2011, SI 2011/2131 provide for the enforcement of UK Regulation (EC) No 1107/2009 of the European Parliament and of the Council.

<sup>22</sup> SI 2012/1657.

<sup>23</sup> SI 2020/552.

products is stated as being “to ensure a high level of protection of both human health and animal health and the environment”.<sup>24</sup>

10.34 Furthermore, the plant protection laws are broad in scope. While there are certain provisions addressing the use of plant protection products,<sup>25</sup> many provisions also cover the approval, manufacturing, distribution, marketing and supply of such products.<sup>26</sup> This means the plant protection laws apply to industries (such as manufacturers of pesticides) which would not fall within our intended meaning of agriculture as provided for under section 51 of the Agriculture (Wales) Act 2023.

10.35 Furthermore, farmers are not the only users of plant protection products subject to the plant protection laws. Plant protection products may also be used in the forestry sector, on amenity areas and on sports grounds.<sup>27</sup>

10.36 Taking this together with the fact that these laws also cover earlier stages in the production process (such as manufacturing), we consider that the legislation in question does not have a practical application that is primarily concerned with agriculture. Therefore, we consider that the plant protection laws do not satisfy our criteria for inclusion and consequently are unsuitable for inclusion in the prospective Code. Overall, we do not consider that there are overriding justifications for including the legislation governing pesticides in the prospective Code. Plant protection products, while playing a significant role in farming, ultimately play an important role in other contexts.

#### Fertiliser law

10.37 Fertiliser is a material – natural or synthetic – which aims to improve the growth of plants. Often, the soil used to grow crops does not contain enough nutrients, so fertilisers act to replace this deficit. While their physical form can vary (slurries, pellets, or powders), fertilisers can also vary in their sources.

10.38 Fertilisers play a vital role in the agricultural sector; “as of 2015, more than 50% of the global population was fed with crops grown with artificial fertilisers”.<sup>28</sup>

10.39 We therefore consider it important to assess the laws governing fertilisers to determine whether the legislation in question may be suitable for inclusion in the prospective Code. As with the law on pesticides, central to our assessment is the

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<sup>24</sup> UK Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, art 1.

<sup>25</sup> See for example, reg 12 of the Plant Protection Products Regulations 2011, SI 2011/2131 and regs 8 and 10 of the Plant Protection Products (Sustainable Use) Regulations 2012, SI 2012/1657.

<sup>26</sup> See for example, the requirements imposed under regs 16 and 17 of the Plant Products Regulations 2011, SI 2011/2131, and UK Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, arts 65 and 66.

<sup>27</sup> Health and Safety Executive and others, *Pesticides Code of practice for using plant protection products* (2006) p 18.

<sup>28</sup> UK Parliamentary Office of Science and Technology, “The future of fertiliser use” (January 2024) <https://researchbriefings.files.parliament.uk/documents/POST-PN-0710/POST-PN-0710.pdf>, 3.



question of whether the law primarily governs the manufacturing and production of fertilisers as opposed to their end use.

10.40 There are several laws which govern fertilisers, from their composition to their use. In summary:

- (1) Part 4 of Agriculture Act 1970.
- (2) Fertilisers Regulations 1991.<sup>29</sup>
- (3) Fertilisers (Sampling and Analysis) Regulations 1996.<sup>30</sup>
- (4) Ammonium Nitrate Material (High Nitrogen Content) Safety Regulations 2003.<sup>31</sup>
- (5) EC Fertilisers (England and Wales) Regulations 2006.<sup>32</sup>
- (6) Fertilising Products Regulations 2020.<sup>33</sup>
- (7) Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021.<sup>34</sup>
- (8) UK Regulation (EU) 2019/1009 on the marketing of EU fertilising products.

10.41 We do not intend to assess the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 in this chapter as we consider them in Chapter 7.

10.42 For the remainder of the laws listed, we intend to assess them against the criteria for inclusion in two groups. The first is Part 4 of the Agriculture Act 1970 and its subordinate legislation.

#### Part 4 of the Agriculture Act 1970 and subordinate legislation

10.43 Part 4 of the Agriculture Act 1970 (“the 1970 Act”) makes provision for fertilisers and feeding stuffs. The Welsh Ministers may make regulations imposing controls on the composition, content, function, labelling and packaging of both fertilisers and feeding material where doing so would be in the public interest.<sup>35</sup> Part 4 of the 1970 Act also imposes obligations on sellers of fertilisers and feeding stuff. It further makes provision for the sampling and analysis of fertilisers.

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<sup>29</sup> SI 1991/2197.

<sup>30</sup> SI 1996/1342.

<sup>31</sup> SI 2003/1082.

<sup>32</sup> SI 2006/2486.

<sup>33</sup> The Fertilising Products Regulations 2020, SI 2020/887 implements in Great Britain UK Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers.

<sup>34</sup> SI 2021/77 (W 20).

<sup>35</sup> Agriculture Act 1970, s 74A. The ministerial functions conferred under s 74A of the Agriculture Act 1970 have been transferred, so far as exercisable in relation to Wales, to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

10.44 Both the Fertilisers Regulations 1991 and the Fertilisers (Sampling and Analysis) Regulations 1996 were enacted under the 1970 Act. Among other matters, they regulate the labelling, packaging and sampling of fertilisers manufactured in the UK. The analysis of samples taken under the Fertilisers (Sampling and Analysis) Regulations 1996 is to be carried out by an agricultural analyst.

#### Part 4 of the Agriculture Act 1970 and subordinate legislation: criteria for inclusion

10.45 Fertilisers are considered an important part of the agricultural sector. High quality fertilisers help improve crop yields.<sup>36</sup> Furthermore, as acknowledged in the debate of the Agriculture Bill in 1970, the provisions on fertilisers ensure that “purchasers of fertilisers and feeding stuffs [are provided] with accurate information”.<sup>37</sup> But Part 4 of the 1970 Act delivers upon other aims, such as protecting public health and the environment. It was also foreseen that Part 4 of the 1970 Act would “substantially increase consumer protection in respect of these two important [farming] commodities”.<sup>38</sup>

10.46 Farmers are “consumers of fertilisers”.<sup>39</sup> To our understanding, farmers do not, however, commonly play a role in the manufacturing, packaging and distribution of fertilisers. As consumers of fertilisers, there are some legislative provisions with which farmers must comply. These may include regulations 2 to 4 of the Fertilisers (Sampling and Analysis) Regulations 1996, which set out the manner of taking and sending a sample of fertilisers.

10.47 While we have not been able to source a statistic on the percentage of farmers who use fertilisers in Wales, we are guided by the fact that fertilisers are used in most types of farming. They are not used for crop farming only, but also on grass that feeds livestock. Our understanding is that fertiliser use is therefore common across farms in Wales, notwithstanding that livestock farming is the more prevalent kind of farming.<sup>40</sup>

10.48 As discussed above in relation to pesticides, there are a wider range of stakeholders – besides farmers – who will need to comply with this area of law. These may include chemical companies, fertiliser manufacturers and companies responsible for packaging and distribution. Against this, it is difficult to conclude that fertiliser laws have a practical application or scope that is primarily concerned with agriculture. We consider that similar analysis as applied to pesticide laws may be relevant here. The laws appear to be focused on those earlier stages of producing and selling fertilisers. The industries that manufacture and distribute fertilisers do not squarely fit within our understanding of agriculture, or those ancillary activities set out in section 52 of the Agriculture (Wales) Act 2023. On this basis, we provisionally consider that these three laws do not satisfy our criteria for inclusion in the prospective code of agricultural law for Wales.

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<sup>36</sup> Parliamentary Office of Science and Technology, “The future of fertiliser use” (January 2024) <https://researchbriefings.files.parliament.uk/documents/POST-PN-0710/POST-PN-0710.pdf>, 3.

<sup>37</sup> *Hansard* (HL) 21 April 1970, vol 309, col 626.

<sup>38</sup> *Hansard* (HL) 21 April 1970, vol 309, col 626.

<sup>39</sup> *Hansard* (HL) 21 April 1970, vol 309, col 619.

<sup>40</sup> See Ch 1 for a more detailed discussion about farming in Wales.

## Other fertiliser law

10.49 Similar to the two laws considered above, the remainder of fertiliser laws listed at paragraph 10.39 above, regulate all aspects of fertilisers, from its packaging to the enforcement of law by the Welsh Ministers.

## Other fertiliser law: criteria for inclusion

10.50 Fertiliser law is concerned with agriculture to an extent, because it seeks to ensure that the legal framework delivers safe and efficient fertilisers which can improve the yield of agricultural produce. However, as noted above in relation to the Fertilisers Regulations 1991 and the Fertilisers (Sampling and Analysis) Regulations 1996, human health and environmental protection also feature as key objectives.

10.51 There are many stakeholders who may need to comply with these laws. Farmers are users of fertiliser, yet the legislation makes provision for the manufacture, packaging, labelling and marketing of fertilisers.

10.52 It seems unlikely that those companies manufacturing and distributing fertilisers can be said to form part of the agricultural sector, especially when considered in the context of the definition of agriculture as provided for under section 51 of the Agriculture (Wales) Act 2023. It is equally difficult to categorise fertilisers as an ancillary activity to agriculture. Section 52 of the Agriculture (Wales) Act 2023 defines an ancillary activity as activity taken on land used for agriculture or selling, marketing, preparing, packaging, processing or distributing products deriving from agriculture. Therefore, it may be more accurate to view the fertiliser industry as one which is complementary to agriculture, and which serves to support the sector.

10.53 The fertiliser laws do not appear to satisfy our criteria for inclusion, and we have not identified any overriding justifications for nonetheless including these laws in the prospective Code. Although we consider in Chapter 6 that the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 is suitable for inclusion in the prospective Code, our assessment is that this legislation is of a vastly different nature to those laws considered in this section. It is possible to split the legislation on fertilisers into two categories: “there is legislation covering artificial fertiliser composition, labelling and sampling and analysis procedures” and legislation which is “aimed at reducing the impact of fertilisers on the environment”.<sup>41</sup> The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 fall into this second category whereas those fertiliser laws that we consider in this chapter better fall within the first category. Given the varying nature of these two categories of laws, excluding these fertiliser laws is unlikely to unduly fragment the law in this area.

## Fertiliser law conclusion

10.54 In this section we have tentatively concluded that fertiliser law is unsuitable for inclusion in the prospective code of agricultural law for Wales. We have drawn this conclusion primarily because fertiliser law appears predominantly concerned with imposing controls on the production and labelling of fertilisers and to a lesser extent with the use of fertilisers. Our conclusion that the law on pesticides is unsuitable for

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<sup>41</sup> Parliamentary Office of Science and Technology, “The future of fertiliser use” (January 2024) <https://researchbriefings.files.parliament.uk/documents/POST-PN-0710/POST-PN-0710.pdf>, 8.

inclusion in the prospective Code is reinforced by the fact that pesticides are used widely outside of the agricultural context. Therefore, the legislative requirements relating to the end-use of pesticides will be relevant to sectors including, but extending beyond, agriculture.

10.55 We have been unable to locate information or statistics that indicate how widely fertilisers are used outside of the agricultural context. If fertilisers are subject to widespread use outside of the agricultural context, then we consider this would reinforce our conclusion that the law on fertilisers are unsuitable for inclusion in the prospective code of agricultural law for Wales. Conversely, if evidence indicates that fertilisers are used predominantly in the agricultural context, then this may support a different conclusion.

## Feed law

### Introduction

10.56 In the following section we will use the term “feed” to describe the food provided to animals including livestock. Feed law is the law that applies to the production and use of animal feed. There are certain feed laws that apply only to feed provided to food-producing animals (such as livestock).<sup>42</sup> Other laws apply to feed given to a broader category of animals including both food-producing animals and non-food producing animals such as pets.<sup>43</sup> Feed law is primarily concerned with regulating safety of feed and ensuring that consumers are provided with sufficient and accurate information to inform their purchase of feed products.

10.57 Most feed law will apply throughout the supply chain, from primary production of feed through to use of the feed. Feed law comprises assimilated law: law which originated from the EU, and which has been incorporated into domestic law. It also comprises domestic secondary legislation that in many cases implemented legislation originating from the EU. Below is a table of key feed legislation applicable in Wales.

Table 1: key feed legislation applicable in Wales

LEGISLATION	SUMMARY
<b>Assimilated legislation</b>	
<b>UK Regulation (EC) No 178/2002 on principles of food and feed law</b>	Lays down the general principles and requirements of food law. It makes provision for food safety and the protection of consumers’ interests. In relation to animal feed, the regulation provides that feed intended to food-producing animals shall not be placed on the market or fed to any food-producing animal if it unsafe. It obliges feed business operators to ensure that feeds satisfy the requirements of food safety law. It also makes provision

<sup>42</sup> UK Regulation (EC) No 183/2005 of the European Parliament and of the Council laying down requirements for feed hygiene.

<sup>43</sup> UK Regulation (EC) No 767/2009 of the European Parliament and of the Council on harmonising the conditions for placing feed on the market and its use.

	for marketing and presentation requirements and traceability requirements.
<b>UK Regulation (EC) No 183/2005 laying down requirements for feed hygiene</b>	Lays down general rules on feed hygiene, imposes requirements relating to the traceability of feed, imposes registration requirements for feed businesses and imposes obligations on farmers when feeding food-producing animals (see article 4(2)). It applies only to feed provided to food-producing animals (see article 2).
<b>UK Regulation (EC) No 767/2009 on harmonising the conditions for marketing and using feed</b>	The regulation provides that feed may only be placed on the market if it is safe and does not have a direct adverse effect on the environment or animal welfare (article 4). Consequently, it sets out requirements relating to the marketing, labelling and composition of feed. It applies to feed provided to food-producing animals and non-food producing animals including wild animals (see article 2).
<b>UK Regulation (EC) No 1831/2003 on additives for use in animal nutrition</b>	The regulation imposes restrictions relating to the composition of feed: specifically in relation to the use of additives. It imposes authorisation requirements for the use of additives in feeds and requirements relating to labelling and packaging.
<b>UK Regulation (EC) No 1829/2003 on genetically modified food and feed</b>	It establishes procedure for the authorisation of genetically modified organisms and genetically modified food and feed. It applies to feed intended for food-producing animals and other animals not kept for food production purposes (see paragraph 8 to the preamble).
<b>UK Regulation (EU) No 2020/354 establishing a list of intended uses of feed</b>	Provides for marketing requirements that apply to feed which is intended for particular nutritional purposes.
<b>National legislation</b>	
<b>Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016 (“the Animal Feed Regulations 2016”)<sup>44</sup></b>	The Animal Feed Regulations 2016 make provision for the enforcement of assimilated feed law including UK Regulation (EC) No 178/2002, UK Regulation (EC) No 1829/2003, UK Regulation (EC) No 1831/2003 and UK Regulation (EC) No 767/2009. The Animal Feed Regulations 2016 make it an offence to fail to comply with certain feed requirements as imposed by the aforementioned UK Regulations. They also implement Directive 2002/32/EC by making it an offence to place on the market or use any feed which contains specified undesirable substances.

<sup>44</sup> SI 2016/386 (W 120).

<b>Animal Feed (Hygiene, Sampling etc and Enforcement) (Wales) Regulations 2016 (“the 2016 Regulations”)<sup>45</sup></b>	The 2016 Regulations provide for the enforcement and implementation of certain EU Regulations on feed law which now form part of our domestic legislation as assimilated law: UK Regulation (EC) No 183/2005, UK Commission Regulation (EC) No 152/2009 and UK Regulation (EC) No 882/2004.
<b>Animal Feed (Wales) Regulations 2010<sup>46</sup></b>	Primarily repealed apart from amendments to the Agriculture Act 1970.
<b>Animal Feed (Basic Safety Standards) (Wales) Regulations 2018<sup>47</sup></b>	These regulations impose restrictions to prevent the addition of radioactive substances to animal feed. Provides that no person may intentionally add radioactive substances to animal feed and restrict the importation of animal feed to which a radioactive substance has been added during production.
<b>Feeding Stuffs Regulations 2000, regulations 11 and 12<sup>48</sup></b>	These regulations make provision relating to applications for authorisations for additives.
<b>Feeding Stuffs (Wales) Regulations 2001<sup>49</sup></b>	Repealed almost entirely.
<b>Part 4 of the Agriculture Act 1970</b>	Imposes duties on sellers of feed to provide a statutory statement containing certain particulars including those relating to the substance, quality or nature of the feed. Also makes provisions for the sampling and analysis of feeding stuffs.

#### Feed law: criteria for inclusion

10.58 Owing to the volume of law engaged, it has not been possible to apply our criteria for inclusion to each piece of feed safety legislation listed in the table above. Instead, we propose to take a high-level approach applying our criteria against the broad principles and requirements provided for under the feed laws applicable in Wales.

10.59 The feed safety legislation listed in table 1 collectively provides for feed safety matters including those outlined below.

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<sup>45</sup> SI 2016/387 (W 121).

<sup>46</sup> SI 2010/2652 (W 220).

<sup>47</sup> SI 2018/40 (W 12).

<sup>48</sup> SI 2000/2481.

<sup>49</sup> SI 2001/343 (W 15).

- (1) Hygiene and safety standards applicable to the production, storage and transport of feed.
- (2) Standards and requirements applicable to the marketing, labelling and composition of feed.
- (3) Standards and restrictions relating to the composition of feed generally and to certain categories of feed (for example, organic feed).
- (4) Registration requirements applicable to businesses involved in the production and processing of feed products.

10.60 Taken together these legislative requirements serve to ensure feed is safe thereby protecting human health, animal health and the environment.<sup>50</sup> Feed law also serves to protect consumers' interests: ensuring those purchasing feed are provided with sufficient information to inform their purchase.

10.61 Feed law can be said to be concerned with agriculture to the extent that safe feed helps to protect the health of livestock and healthy livestock are essential to the productivity and reputation of the agricultural sector. Feed law also serves to protect the consumer interests of farmers as purchasers of feed products. We consider therefore that feed law is concerned with agriculture but also with wider subject matters including protecting animal health, human health and the environment.

10.62 Feed laws impose requirements that apply on farms. For example, feed law requirements will apply to those farms that produce feed for their own use and to those farms that produce feed for sale on the market. In addition, certain feed law requirements will apply to farmers who purchase rather than produce feed. For example, article 4(2) of UK Regulation 183/2005 on feed hygiene requires farmers, when feeding livestock, to take measures and adopt procedures to reduce the risk of feed being contaminated.

10.63 Feed law requirements also apply to those businesses that operate through the feed supply chain: for example, manufacturers, processors, packaging and labelling businesses and retailers etc. Furthermore, certain feed laws also apply to feed provided to non-food producing animals such as pets;<sup>51</sup> although the standards which apply to livestock feed are typically more stringent than those applicable to pet feed.

10.64 Feed law does not fully satisfy our criteria for inclusion in the prospective code of agricultural law for Wales. Accordingly, we tentatively consider that feed law is unsuitable for inclusion in the prospective Code. We acknowledge that a more in-depth assessment of the individual pieces of feed legislation could result in a more nuanced position.

10.65 In any event we recognise that the arguments for including feed law within the prospective Code are finely balanced. Feed law serves to regulate produce which is used for the nourishment of livestock. The raw materials from which feed is produced

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<sup>50</sup> Some additives used in animal feed can pose risks to the environment.

<sup>51</sup> See the examples presented in the table at para 10.57 of this chapter.



are primarily produced on farm. There are also farms which produce feed for sale or for their own use. Furthermore, certain feed laws impose legislative requirements relating to feed safety which farmers must comply with when feeding livestock on farm.

- 10.66 On the other hand, there are competing arguments for concluding that feed safety law is more closely related to the legal framework governing the safety of food for human consumption. In particular, some of the feed law considered has a remit which extends to food safety. For example, UK Regulation (EC) No 178/2002 on principles of food and feed law makes provision for the safety of food for human consumption and the safety of feed. In addition, the same public authority – the Food Standards Agency – holds responsibility in Wales for developing policy relating to both food and feed safety and hygiene, and for enforcing the law relating to both matters.<sup>52</sup>

### **Breeding and artificial insemination law**

#### **Agriculture (Artificial Insemination) Act 1946**

- 10.67 The Agriculture (Artificial Insemination) Act 1946 (“the 1946 Act”) provides the Welsh Ministers with powers to fund research and experiments into the artificial insemination of livestock.<sup>53</sup>

#### **Agriculture (Artificial Insemination) Act 1946: criteria for inclusion**

- 10.68 The artificial insemination of livestock can help livestock farmers to control breeding, improve genetic traits, and prevent disease transmissions that could occur through natural mating.<sup>54</sup> We therefore consider that the Welsh Ministers’ powers to fund research or experiments into livestock artificial insemination are concerned with agriculture. Furthermore, the scope of the powers under section 1 of the 1946 Act are limited to the funding of research or experiments concerning artificial insemination in the agricultural context. We therefore consider that practical application of the powers is limited to agriculture. Provided that the powers remain of practical use, we consider that section 1 of the 1946 Act is suitable for inclusion in the prospective code of agricultural law for Wales.

#### **Regulation of artificial insemination of livestock: Animal Health and Welfare Act 1984 and related secondary legislation**

- 10.69 Section 10 of the Animal Health and Welfare Act 1984 provides the Welsh Ministers with powers to issue regulations for controlling the practice of artificial breeding of livestock.<sup>55</sup> The main secondary legislation enacted under section 10 of the Animal Health and Welfare Act 1984 is listed in the table below (table 2).

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<sup>52</sup> Policy responsibility for nutritional health standards and labelling however rests with the Welsh Government.

<sup>53</sup> National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.

<sup>54</sup> MarNat StudySpace, “Artificial insemination in livestock production: a complete guide” (2025) <https://mnathall.com/artificial-insemination-in-livestock-production-a-complete-guide/>.

<sup>55</sup> The functions in question were transferred to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and para 30 of Sch 11 to the Government of Wales Act 2006.



Table 2: secondary legislation applicable to the artificial insemination of livestock

ARTIFICIAL INSEMINATION SECONDARY LEGISLATION	SUMMARY
<b>Artificial Insemination of Pigs (EEC) Regulations 1992<sup>56</sup></b>	Provides that no person shall collect, process, store or transport for the purpose of export to a member state any porcine semen unless it complies with certain animal health requirements imposed under Council Directive 90/429/EEC.
<b>Bovine Semen (Wales) Regulations 2008<sup>57</sup></b>	Makes provision for a licensing regime for bovine semen centres, the approval of bovines from which semen may be collected and for requirements relating to the collection, transport and storage of bovine semen. While the UK was a member of EU the regulations made provision for the implementation of Council Directive 2003/43/EC.
<b>Bovine Embryo (Collection, Production and Transfer) Regulations 1995<sup>58</sup></b>	Makes provision for an approval system for bovine embryo collection, production and transfer and imposes requirements relating to those activities.

### Criteria for inclusion

10.70 As outlined above, artificial insemination of livestock is reported to help livestock farmers control breeding, improve genetic traits, and prevent disease transmissions that could occur through natural mating.<sup>59</sup> Furthermore, the controls and requirements imposed under the laws in question serve to reduce the risks of animal disease which can be associated with artificial insemination practices.<sup>60</sup> Laws that support or facilitate artificial insemination, or regulate safe practices, can therefore be said to be concerned with agriculture, but also with a wider set of subjects including the safeguarding of animal health and human health.

10.71 Artificial insemination of livestock can be undertaken by farmers or by vets. Such insemination can also be undertaken at external facilities. We understand, however, that the artificial insemination of livestock is primarily undertaken in service of the livestock farming industry. We therefore consider that the law on artificial insemination has a practical application which is primarily concerned with agriculture.

10.72 Our assessment is that the arguments for including the law on artificial insemination of livestock within the prospective code of agricultural law for Wales are finely balanced.

<sup>56</sup> SI 1992/3161.

<sup>57</sup> SI 2008/1040 (W 110).

<sup>58</sup> SI 1995/2478.

<sup>59</sup> MarNat StudySpace, "Artificial insemination in livestock production: a complete guide" (2025) <https://mnathall.com/artificial-insemination-in-livestock-production-a-complete-guide/>.

<sup>60</sup> Explanatory Memorandum to the Bovine Semen (Wales) Regulations 2008, SI 2008/1040 (W 110).

However, we consider that the law on the artificial insemination of livestock is - at its core – concerned with safeguarding animal health and preventing the spread of animal disease. In Chapter 7, we conclude that the law on animal health is suitable for inclusion in the prospective Code. Therefore, in line with our position on animal health law generally, we consider that the law on the artificial insemination of livestock – as listed at paragraph 10.69 above – is suitable for inclusion in the prospective Code.

## Zootechnical laws

10.73 Zootechnical laws govern the breeding and trade of purebred species of certain animals and their germinal products (for example, semen and embryos). Under zootechnical laws, organisations can apply to be an officially recognised breed society or organisation which allows them to trade internationally on preferable terms. The legislation applies to purebred equines, cattle, goats, sheep and pigs. The main zootechnical laws applicable to livestock in Wales are listed below.

- (1) UK Regulation (EU) 2016/1012 on zootechnical and genealogical conditions for the breeding and trade of purebred breeding animals (“the Animal Breeding Regulation”).<sup>61</sup> The Animal Breeding Regulation provides for a voluntary zootechnical regime that facilitates trade in purebred animals of certain species and their germinal products.<sup>62</sup>
- (2) Zootechnical Standards (Wales) Regulations 2018.<sup>63</sup> The Zootechnical 2018 Regulations make provision for the enforcement of the Animal Breeding Regulation. It provides that the Welsh Ministers are the competent authority responsible for enforcement.

We will collectively refer to the laws listed above as the “zootechnical laws”.

## Criteria for inclusion

10.74 The recital to the Animal Breeding Regulation states that:

Member states have consistently endeavoured to promote the production of livestock with particular genetic characteristics. ... Through selection and breeding significant progress has been achieved in the development of traits related to the productivity of farmed animals, leading to reduced production costs at farm level.

10.75 We consider that the zootechnical laws are concerned with agriculture to the extent that they facilitate breeding of purebred livestock with traits that are considered favourable in an agricultural context. The zootechnical regime primarily applies to the breeding of animals which are typically kept as livestock: cattle, pigs, goats and sheep. However, the regime does also apply to the breeding of equine species (for example, horses) which are not typically kept and bred as livestock. The Welsh

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<sup>61</sup> Art 64(3) of UK Regulation (EU) 2016/1012 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof was revoked by the Retained EU Law (Revocation and Reform) Act 2023, s 1 and Sch 1.

<sup>62</sup> Welsh Government, *Zootechnical rules and standards* (January 2021) <https://www.gov.wales/zootechnical-rules-and-standards>.

<sup>63</sup> SI 2018/1152 (W 234).

Government is responsible for administering the regime for breeding programmes in Wales.

10.76 The Department for Environment, Food and Rural Affairs maintain a list of approved breeding programmes (for ovine, caprine and bovine species) and breeding organisations (for porcine species) based in the UK. Having reviewed a sample of those approved breeding programmes based in Wales, we note that the purebred animals in question are often promoted or marketed based on their suitability for use as livestock. For that reason, we conclude that the zootechnical laws have a practical application or scope that is primarily concerned with agriculture and therefore are suitable for inclusion in the prospective Code.

## **LAWS THAT APPLY POST-FARM OR THROUGHOUT THE SUPPLY CHAIN**

### **Transport**

10.77 Chapter 7 considers laws governing the welfare of animals during transport – including that of livestock. There are further laws which regulate the temperature at which meat may be transported for food safety and hygiene purposes.

### **Slaughterhouses**

10.78 The legislation applicable to slaughterhouses includes:

- (1) laws relating to the welfare of animals sent for slaughter; and
- (2) laws which provide for food safety and hygiene in the slaughterhouse context.

### **Laws relating to the welfare of animals sent for slaughter**

10.79 In Chapter 7, we consider the main laws regulating the welfare of animals at the time of killing in slaughterhouses: the Welfare of Animals at the Time of Killing (Wales) Regulations 2014 and the associated Protection of Animals at the Time of Killing Directive (Council Directive 93/119/EC). In addition, there are a small number of Acts of the UK Parliament that otherwise primarily concern the welfare of livestock at the time of slaughter.

### **Slaughterhouses Act 1974**

10.80 Insofar as the Act remains in force, the Slaughterhouses Act 1974 makes provision for:

- (1) powers of local authorities to acquire slaughterhouses by agreement and to thereafter discontinue their use;
- (2) powers of local authorities to provide and manage public slaughterhouses; and
- (3) powers of the Welsh Ministers to issue regulations for securing humane conditions at slaughterhouses.

### **Slaughter of Poultry Act 1967**

10.81 The Slaughter of Poultry Act 1967 makes provision for:

- (1) powers of the Welsh Ministers to issue regulations for the purposes of securing humane conditions and practices in connection with the slaughter of poultry;
- (2) powers of the Welsh Ministers to issue codes of practice providing practical guidance on compliance with the Act or secondary laws made under it; and
- (3) powers of entry and enforcement.

#### Laws which provide for food safety and hygiene in the slaughterhouse context

- (4) UK Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin.<sup>64</sup>
- (5) UK Regulation (EC) No 852/2004 on the hygiene of foodstuffs.

#### Marketing

10.82 There are general laws that apply to the marketing and labelling of food including agricultural products. Among other matters, these laws specify the basic information that must be provided to consumers on food labels: for example, information about ingredients and allergens. We will refer to these laws as the general food marketing laws. Examples of such laws include UK Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, UK Regulation (EU) No 1169/2011 on the provision of food information to consumers and the Food Information (Wales) Regulations 2014.<sup>65</sup> General food marketing laws form part of a wider body of food law. Consideration of such laws falls outside the scope of this report.

10.83 Alongside the general food marketing laws, there are laws that apply to the marketing and labelling of specific types of agricultural and horticultural products including:

- (1) eggs;
- (2) red meat and poultry meat;<sup>66</sup>
- (3) milk and dairy products such as butter;<sup>67</sup>
- (4) certain fruits and vegetables;<sup>68</sup> and
- (5) fruit plants for planting.<sup>69</sup>

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<sup>64</sup> Annex III, Section II, Chapter VI addresses slaughter on farm. See also Annex III, Section I, Chapter VI which addresses emergency slaughter.

<sup>65</sup> SI 2014/2303 (W 227).

<sup>66</sup> See, for example, the Country of Origin of Certain Meats (Wales) Regulations 2015, SI 2015/1519 (W 177).

<sup>67</sup> See, for example, the Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Wales) Regulations 2008, SI 2008/1341 (W 141).

<sup>68</sup> See, for example, the Marketing of Fresh Horticultural Produce (Wales) Regulations 2009, SI 2009/1551 (W 151).

<sup>69</sup> This is an illustrative rather than comprehensive list of the types of products for which there are specific marketing laws.

10.84 The marketing laws applicable to the agricultural products outlined above make provision for the following matters.

- (1) Marketing and labelling requirements specifying the information that must be provided to consumers.
- (2) Grading systems to prescribe the quality of produce.
- (3) Compositional and production standards that respectively may impose requirements relating to the composition of products or the methods of production for products.

10.85 The majority of legislative requirements imposed under marketing laws for specific agricultural products will apply at the post-farm stages of the agricultural supply chain: namely the processing, packaging and retail stages of the chain. There are, however, certain requirements that apply on farm.

10.86 Marketing laws that apply to specific agricultural products, genetically modified products and organic products primarily impose requirements that must be complied with at the processing, packaging and retail stages of the agricultural supply chain. However, there are certain legislative requirements that may need to be complied with on farm. For example, article 20 of UK Regulation (EC) No 589/2008 requires farmers to keep a record of farming methods used for laying hens.

10.87 The scope of our report focuses on those laws that primarily apply to on-farm activity. Accordingly, we do not offer a view on whether marketing laws applicable to agricultural product belong within the prospective code of agricultural law for Wales. We consider, however, that where the laws impose requirements that apply on farm then a webpage that may publish the prospective Code will, as a minimum, need to signpost to such laws.

## Official controls

10.88 “Official controls” involve checks and monitoring and enforcement activity aimed at ensuring compliance with legislative requirements which apply throughout the agricultural food chain. The aim of the law on official controls is described below.

The EU Official Controls Regulation (“OCR”) was established to provide an integrated and uniform approach to official controls across all aspects of the agri-food supply chain. This includes food and feed safety, animal health and welfare and plant health. It also covers animals and goods entering the UK.<sup>70</sup>

10.89 Although UK Regulation (EU) No 2017/625 is the main official control regulation, there are other laws which address related, but more specific areas. Examples include:

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<sup>70</sup> Department of Environment, Food and Rural Affairs, “The Official Controls (Plant Protection Products) Regulations 2020: policy statement” (last updated 2024) <https://www.gov.uk/government/publications/the-official-controls-plant-protection-products-regulations-2020-policy-statement/the-official-controls-plant-protection-products-regulations-2020-policy-statement>.

- (1) Official Controls (Animals, Feed and Food, Plant Health Fees etc) (Wales) Regulations 2020;
- (2) Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020; and
- (3) Official Controls (Plant Protection Products) Regulations 2020.<sup>71</sup>

## OVERARCHING ISSUES

### Audiences of the prospective Code

10.90 One of the challenges that we encounter in this chapter is the disconnect between the use of products on farms and the content of the law regulating those products. For example, fertilisers are widely used in farming in Wales. However, our high-level review of fertiliser laws reveals that they are more concerned with regulating the composition, labelling and marketing of fertilisers. This disconnect feeds into an overarching issue which we identify earlier in Chapter 4: audiences of the prospective Code.

10.91 On the one hand, we conclude that such laws should be excluded from the prospective Code because they do not have a practical application primarily concerned with agriculture. However, we appreciate that these products create sectors which are core to the functioning of the agricultural sector and that fertilisers are commonly recognised as key products used by farmers. From this perspective, it can be argued that the law on fertilisers should be included in the prospective Code on the grounds that fertilisers are commonly associated with the sector.

10.92 It is a difficult tension to resolve but we hope that our work will flag matters for further consideration.

### Application of laws throughout the agricultural supply chain

10.93 There are various laws examined in this chapter that apply throughout the agricultural supply chain. For example, certain laws relating to feed apply at the point that such products are produced and processed but also on farm when feed is provided to livestock.

10.94 In some cases, we have proposed that laws that apply throughout the supply chain are excluded from the scope of the prospective Code despite the fact that the laws impose requirements that apply on farm. In such instances, we consider that a webpage that may publish the prospective Code could signpost to the laws in question to ensure that farmers are made aware of their relevance to the agricultural sector.

### Common frameworks

10.95 Chapter 2 provides an overview of the relevance of common frameworks to our work in relation to codification in Wales. They are a mechanism to ensure consistency across Wales, England, Scotland and Northern Ireland where powers that were held

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<sup>71</sup> SI 2020/44 (W 5); SI 2020/206 (W 48); SI 2020/552.

at an EU-level have returned to a domestic level, and such powers intersect with devolved competency.

10.96 The Welsh Government, UK Government, Scottish Government and Northern Ireland Executive have agreed to two provisional common frameworks which relate to the policy areas captured by this chapter. These are:

- (1) the chemicals and pesticides provisional common framework; and
- (2) the fertilisers provisional common framework.

10.97 The scope of the chemicals and pesticides provisional common framework is broad, and the terminology subsumes pesticides within “chemicals”. Before the UK left the EU, chemicals were regulated under EU law, but policy responsibility for chemicals in Wales now rests with the Welsh Government. The purpose of this common framework is “to support the effective regulation and administration of chemicals and pesticides across the UK, following its departure from the European Union”.<sup>72</sup>

10.98 The situation in respect of fertilisers is quite different. While the UK was a member of the EU, there was partial harmonisation of domestic rules and requirements with EU regulations. While the EU was building its own regulatory framework for fertilisers, Member states were able to continue to develop regimes. What this meant is that there “were both EU and domestic legislative regimes that operated parallel”.<sup>73</sup> Therefore, one aim of this provisional framework is to produce a harmonised approach among the four nations.

## ISSUES THAT MAY MERIT FURTHER ANALYSIS

10.99 Our terms of reference ask us to highlight any issues engaged by the codification of agricultural legislation which may require further consideration or analysis. We consider that where there are calls for reform of an area of agricultural law then this may influence decisions on how and when that area of law is codified. There are calls for reform of the certain laws we consider in this chapter.

- (1) The provisional common framework for fertilisers, as discussed at paragraph 10.97 above, highlights that the law governing fertilisers is generally accepted to be in need of modernisation.<sup>74</sup>
- (2) Separately, we note there are calls within the agricultural sector for a review of the regulatory framework for slaughterhouses.<sup>75</sup> The call for such a review is reported to stem from concerns regarding the diminishing number of slaughterhouses in Wales.

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<sup>72</sup> Chemicals and Pesticides Provisional Common Framework (2022) CP 614, p 27.

<sup>73</sup> Chemicals and Pesticides Provisional Common Framework (2022) CP 614, pp 1 to 2.

<sup>74</sup> Chemicals and Pesticides Provisional Common Framework (2022) CP 614, p 8.

<sup>75</sup> Farmers' Union of Wales, “Concerns over Wales’ diminishing abattoir infrastructure highlighted” (June 2025).

## CONCLUSION

10.100 In this chapter, we have prioritised examination of those laws which apply to the earlier stages of the agricultural supply chain for meat produce. Namely those laws which apply to goods and services that are typically provided to livestock farms. Within that category of legislation, we propose that a modest number of laws are suitable for inclusion in the prospective code of agricultural law for Wales, namely:

- (1) laws governing the artificial insemination of livestock as listed at paragraph 10.69; and
- (2) the zootechnical laws as listed at paragraph 10.73 above.

10.101 We conclude it is impracticable within the confines of this report to evaluate whether the laws that apply throughout the later stages of the agricultural supply chain are suitable for inclusion in the prospective Code. However, we acknowledge there may be grounds for expanding the scope of the prospective Code to encompass legislation that applies to the later stages of the agricultural supply chain. To assist such consideration, we provide an outline of those fundamental laws which apply to the post-farm stages of the supply chain for meat produce.



# Chapter 11: Form, content and sequencing of the prospective code of agricultural law for Wales

## INTRODUCTION

- 11.1 Our primary task for this report has been to identify those laws which are suitable for inclusion in the prospective code of agricultural law for Wales (“the prospective Code”). As outlined in Chapter 3, we consider the prospective Code should include those laws that:
- (1) are concerned with agriculture; and
  - (2) have a practical application that is limited to or primarily concerned with agriculture.
- 11.2 Having applied our criteria for inclusion throughout this report, this chapter presents a list of the legislation that we conclude is suitable for inclusion in the prospective code of agricultural law for Wales, as well as presenting options for the sequencing of the codification process.
- 11.3 The volume of legislation we identify as being suitable for inclusion in the prospective Code is substantial. To ensure that the task at hand is manageable, we suggest that the work involved could be paced across sequential stages. The exact number of Acts of the Senedd which would form part of the prospective Code may be influenced by matters that are outside of the scope of this report, such as decisions as to whether the primary legislation presented in this chapter is suitable for consolidation or requires substantive reform. However, broadly speaking, we envisage the prospective Code comprising multiple Acts of the Senedd.
- (1) An initial consolidation Act bringing together the primary legislative provisions listed in table 1.
  - (2) An Act of the Senedd which consolidates or substantively reforms the primary legislation on agricultural tenancies as set out in table 3.
  - (3) An Act of the Senedd which consolidates or substantively reforms the primary law concerning animal health as set out in table 4.
  - (4) An Act of the Senedd which consolidates or substantively reforms the primary law concerning plant health and plant varieties as set out in table 5.
- 11.4 As discussed in Chapter 1, a code of Welsh law is intended to be a comprehensive statement of the primary legislation, secondary legislation and, where relevant, guidance on a subject. Accordingly, we also present in this chapter the secondary legislation we consider suitable for inclusion in the prospective Code (tables 2 to 5).

11.5 After presenting our list of legislation we consider suitable for inclusion in the prospective code of agricultural law for Wales, we provide an assessment of the benefits and limitations associated with our proposed model of the prospective Code.

## CONTENT AND SEQUENCING OF THE PROSPECTIVE CODE OF AGRICULTURAL LAW FOR WALES: MULTIPLE ACTS OF THE SENEDD

### Stage one: primary legislative provisions suitable for inclusion in an initial consolidation Act forming part of the prospective Code

11.6 Applying our criteria for inclusion, we set out in table 1 the primary legislation we conclude is suitable for inclusion in an initial consolidation Act forming part of the prospective Code.<sup>1</sup> These are Acts which primarily provide the Welsh Ministers with powers to support or regulate agriculture in Wales.

Table 1: primary legislation suitable for inclusion in an initial consolidation Act forming part of the prospective Code and secondary legislation suitable for inclusion in the prospective Code

ACT	PROVISION/S	SUMMARY OF PROVISION, PART OR ACT	CORRESPONDING CHAPTER OF REPORT
<b>Hill Farming Act 1946</b>	Sections 20 and 21	Provide the Welsh Ministers with powers to issue regulations restricting the burning of heather and other specified types of vegetation.	Chapter 5 (paragraphs 5.21 to 5.24)
<b>Agriculture Act 1947<sup>2</sup></b>	Section 98	Provides the Welsh Ministers with powers to issue notices relating to the control, removal or destruction of certain pests and separately to issue notices relating to the control of rabbits.	Chapter 5 (paragraphs 5.63 to 5.75)

<sup>1</sup> By way of example, s 1 of the Planning (Wales) Bill states that the consolidation Bill (if enacted) is to form part of a code of Welsh law relating to planning.

<sup>2</sup> Although we consider ss 98 and 99 suitable for inclusion in the prospective code of agricultural law for Wales, we acknowledge that there are competing arguments for inclusion of these laws in an exercise to consolidate or codify wildlife legislation. A detailed analysis is presented in Ch 5.

	Section 99	Provides the Welsh Ministers with powers to issue notices relating to the control of captive animals.	As above
<b>Agriculture Act 1970</b>	Part 3	Provides for a statutory smallholdings regime.	Chapter 5 (paragraph 5.31) and Chapter 9 (paragraphs 9.28 to 9.33)
<b>Agricultural Statistics Act 1979</b>	Whole Act	The Act provides the Welsh Ministers with powers to collect agricultural information for statistical purposes.	Chapter 5 (paragraphs 5.37 to 5.38)
<b>Agricultural Sector (Wales) Act 2014</b>	Whole Act	The 2014 Act makes provision for the setting of the agricultural minimum wage and other terms of employment available to agricultural workers.	Chapter 5 (paragraphs 5.39 to 5.42)
<b>Agriculture (Wales) Act 2023</b>	(Part 1, Chapters 1 to 3 of Part 2, Chapters 1 and 3 of Part 3 and Part 6)	Among other matters, the 2023 Act provides the framework for agricultural policy and decision making in Wales.	Chapter 5 (paragraphs 5.43 to 5.55)
<b>Environmental Protection Act 1990</b>	Section 152	Section 152 provides the Welsh Ministers with powers to regulate the burning of crop residues on agricultural land.	Chapter 6 (paragraphs 6.119 to 6.121)

<b>Water Resources Act 1991</b>	Section 97	Section 97 provides the Welsh Ministers with powers to issue a code of good agricultural practice.	Chapter 6 (paragraphs 6.27 to 6.30)
<b>Rent (Agriculture) Act 1976<sup>3</sup></b>	Whole Act	The Act provides for the rights of agricultural workers in relation to rented accommodation..	Chapter 9 (paragraphs 9.46 to 9.47)

11.7 In addition to the legislation listed in table 1 above, we have identified legislative provisions spread across an additional five Acts of the UK Parliament which we consider are, in principle, suitable for inclusion in the prospective Code provided that those provisions remain of practical use, effect or value.<sup>4</sup> In the main, the legislative provisions in question are those which confer functions on the Welsh Ministers to support or regulate agriculture in Wales. The relevant provisions from these Acts are considered further in Chapter 5.

11.8 In Chapter 5, we also tentatively conclude that the Red Meat Industry (Wales) Measure 2010 is suitable for inclusion in the prospective Code. However, we acknowledge that our stakeholder engagement for the purposes of this report has not extended to engagement with organisations involved in or representing the post-farm stages of the agricultural supply chain.<sup>5</sup> Any final decision on whether to include the 2010 Measure in the prospective Code may therefore be best informed by wider engagement with relevant stakeholders.

### **Secondary legislation made under the Agriculture Acts and related laws**

11.9 In our assessment, the secondary legislation listed in table 2 below is suitable for inclusion in the prospective Code. The first three statutory instruments presented in the table are those which are made under powers provided for under the Acts and legislative provisions listed in table 1. The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 are enacted under powers contained in legislative provisions which we have identified as being unsuitable for inclusion in the

<sup>3</sup> Although we have concluded that the Rent (Agriculture) Act 1976 satisfies our criteria for inclusion in the prospective Code, we highlight in Ch 9 that the 1976 Act will gradually become redundant.

<sup>4</sup> The five Acts in questions are the Board of Agriculture Act 1889, the Agriculture Act 1967, the Agriculture (Miscellaneous Provisions) Act 1976, the Agriculture Act 1986, and the Farm Land and Rural Development Act 1988.

<sup>5</sup> By agricultural supply chain we mean a network which includes all the raw materials that are processed to make products for distribution and sale by manufacturers.

prospective Code.<sup>6</sup> We discuss the issue of fragmenting secondary legislation from the corresponding primary enabling powers further in Chapters 4 and 6.<sup>7</sup>

11.10 For the avoidance of doubt, we are not proposing that the secondary legislation we identify as suitable for inclusion in the prospective Code in this chapter must be remade or restated in an Act of the Senedd.<sup>8</sup> Instead, we envisage that the secondary laws in question would be amended or remade to include a statement that they form part of the prospective code of agricultural law for Wales. For example, five of the sets of regulations made under the Historic Environment (Wales) Act 2023, each contain provisions stating that they form part of a code of law relating to the historic environment of Wales.

Table 2: secondary legislation that is suitable for inclusion in the prospective code of agricultural law for Wales

LAW	PRIMARY ENABLING POWERS	SUMMARY
<b>Laws applicable to agricultural workers</b>		
Agricultural Wages (Wales) Order 2025 <sup>9</sup>	Sections 3, 4(1) and 17 of Agricultural Sector (Wales) Act 2014	The order makes provision for the agricultural minimum wage. <sup>10</sup>
<b>Laws applicable to agricultural context and which concern the protection of environment and wildlife</b>		
Crop Residues (Burning) Regulations 1993	Section 152 of the Environmental Protection Act 1990	The regulations set rules for the burning of certain crop residues on agricultural land.
Heather and Grass (etc.) Burning (Wales) Regulations 2008	Sections 20 and 21 of the Hill Farming Act 1946	The regulations set rules for the burning of heather, grass, bracken, gorse and vaccinium.

<sup>6</sup> Water Resources Control of Pollution (Oil Storage) (Wales) Regulations 2016, SI 2016/359 (W 112).

<sup>7</sup> See paras 4.33 and 4.56 in Ch 4 and paras 6.130 and 6.132 in Ch 6.

<sup>8</sup> We acknowledge, however, that through the process of codification, legislative drafters may identify provisions contained in secondary legislation which they consider more suitable to be restated in primary legislation and vice versa. An assessment of the balance struck between primary and secondary legislation in the existing agricultural legislative framework has not generally formed part of our review for the purposes of this report.

<sup>9</sup> We note that, each year, a new Wages Order is issued under the Act. We are proposing that it is the current Order during each year that should be in the prospective Code.

<sup>10</sup> It further makes provision for certain employment terms and conditions which must be offered to agricultural workers within the meaning of the Agricultural Sector (Wales) Act 2014 (anaw 6). A new order is enacted under the 2014 Act each year and, therefore, we propose that any current order setting the agricultural minimum wage would form part of the prospective Code.

The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021	Section 92 of the Water Resources Act 1991 <sup>11</sup>	The Regulations aim to prevent or reduce the risk of agricultural pollution.
<b>Laws applicable to carcass identification</b>		
Sheep Carcass (Classification and Price Reporting) (Wales) Regulations 2025	Section 35 of the Agriculture (Wales) Act 2023	The Regulations provide for mandatory classification and price reporting of sheep carcasses by larger approved slaughterhouses.

## Stage two: agricultural tenancy law

11.11 We consider the next stage of establishing the prospective Code could encompass work to consolidate or subsequently reform, in a further Act of the Senedd forming part of the prospective Code, the subject matter of the primary legislation concerning agricultural tenancies.<sup>12</sup> The primary legislation in question is listed in the table presented below (table 3). We have further listed in table 3 those secondary laws that:

- (1) we consider suitable for inclusion in the prospective code of agricultural law for Wales; and
- (2) are made under primary enabling powers provided for under the Agricultural Holdings Act 1986 ("1986 Act") or the Agricultural Tenancies Act 1995 ("1995 Act").

11.12 As explained in Chapter 9, we consider, however, that any work to codify agricultural tenancy legislation may first benefit from consideration of any law reform recommendations which may arise from our recently announced review into this area of law.<sup>13</sup>

Table 3: primary and secondary legislation concerning agricultural tenancies which we consider is, in principle, suitable for inclusion in the prospective code of agricultural law for Wales

PRIMARY LEGISLATION	SECONDARY LEGISLATION	SUMMARY OF SECONDARY LEGISLATION AND CHAPTER REFERENCE
<b>Subject matter of the Agricultural</b>	Agriculture (Model Clauses for Fixed Equipment)	The regulations govern the responsibilities for repair,

<sup>11</sup> S 92 of the Water Resources Act 1991 is not one those legal provisions which we identify as being suitable for inclusion in the prospective code of agricultural law for Wales. In Chs 6 and 8, we consider further the implications of including secondary legislation in the prospective Code while excluding the primary legislative provision which contains the enabling power under which the secondary law is enacted.

<sup>12</sup> A code of Welsh law can comprise of consolidation Acts of the Senedd, Acts of the Senedd which deliver wholesale reform or a combination of both.

<sup>13</sup> [Fourteenth Programme of Law Reform](#) (2025) Law Com No 421, p 13.

<b>Holdings Act 1986<sup>14</sup></b>	(Wales) Regulations 2019 <sup>15</sup>	<p>maintenance and insurance of fixed equipment for tenancies of agricultural holdings.</p> <p>(Chapter 9, paragraph 9.11)</p>
	Agricultural Holdings (Requests for Landlord's Consent or Variation of Terms and the Suitability Test) (Wales) Regulations 2024	<p>The Regulations stipulate the suitability criteria an individual must satisfy when applying to succeed a tenancy governed by the AHA 1986. The Regulations also provide tenants with a route to dispute resolution (in specified circumstances) where a landlord refuses a request for variation of the tenancy terms.</p> <p>(Chapter 9, paragraph 9.11)</p>
<b>Subject matter of the Agricultural Tenancies Act 1995<sup>16</sup></b>	Agricultural Tenancies (Requests for Landlord's Consent or Variation of Terms (Wales) Regulations 2024	<p>The Regulations provide tenants of farm business tenancies with a route to dispute resolution (in specified circumstances) where a landlord refuses a request for variation of the tenancy terms.</p> <p>(Chapter 9, paragraph 9.11)</p>
<b>Subject matter of sections 10, 11 and 109 of the Agriculture Act 1947<sup>17</sup></b>	N/A	<p>Sections 10 and 11 respectively impose rules of good husbandry and good estate management which are of relevance to agricultural tenancy law. Section 109 provides for a statutory definition of "agriculture" which is applied in the context of agricultural tenancy legislation.<sup>18</sup></p>

<sup>14</sup> See Ch 9, paras 9.5 to 9.7.

<sup>15</sup> As enacted under the Agricultural Holdings Act 1986, ss 7(1) and (2).

<sup>16</sup> See Ch 9, paras 9.8 to 9.10.

<sup>17</sup> See Ch 9, paras 9.20 to 9.26.

<sup>18</sup> Both the Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1995 Act contain provisions which state that "agriculture" has the meaning provided for under s 109(3) of the Agriculture Act 1947 (subject to limited variations).

### Stage three: animal health and livestock welfare

11.13 The next stage of codification could encompass work to consolidate or substantively reform the subject matter of the primary legislation concerning animal health in an Act of the Senedd which forms part of the prospective Code.

11.14 Our assessment is that the primary legislation listed in table 4 has a subject matter which is suitable for inclusion in an Act of the Senedd forming part of the prospective Code, namely animal health and livestock welfare. We have further listed in table 4 those secondary laws that:

- (1) concern animal health (and apply to livestock); and
- (2) concern animal welfare and apply primarily or solely to livestock.

Our assessment is that these secondary laws are also suitable for inclusion in the prospective Code.

11.15 The secondary laws listed in table 4 are laws which are made under primary enabling powers provided for under the Animal Health Act 1981 and the Animal Welfare Act 2006. The list of secondary legislation presented also includes assimilated laws relating to the health and welfare of livestock. Owing to the volume of law engaged, we present select examples of such laws and provide a more comprehensive list in Appendix 5.

11.16 The list of legislation presented in table 4 does not include laws relating to the welfare of animals during transport or at the time of slaughter. This is because, as a general principle, our report does not involve examination of laws which apply to the stages of the agricultural supply chain which take place post-farm.<sup>19</sup>

Table 4: animal health and livestock welfare primary and secondary laws which we consider are, in principle, suitable for inclusion in the prospective code of agricultural law for Wales

PRIMARY LEGISLATION	SECONDARY LEGISLATION	EXAMPLES OF SECONDARY LEGISLATION
Animal Health Act 1981 <sup>20</sup>	Orders made under the 1981 Act which are aimed at preventing or controlling the spread of specific diseases known to primarily or commonly affect livestock.	Foot-and-mouth Disease (Wales) Order 2006  Control of Salmonella in Broiler Flocks (Wales) Order 2009
	Orders made under the 1981 Act which provide for biosecurity measures aimed at preventing the spread of animal disease affecting livestock.	The Disease Control (Wales) Order 2003

<sup>19</sup> See Ch 10.

<sup>20</sup> See Ch 7, paras 7.75 to 7.82.



	Welfare of Animals at Market Order 1990	N/A
	Pigs (Records, Identification and Movement) (Wales) Order 2011	N/A
	Sheep and Goats (Records, Identification and Movement) (Wales) Order 2015	N/A
<b>Examples of other secondary laws relating or connected to animal health (and applicable to livestock)</b>		
Registration of Establishments (Laying Hens) (Wales) Regulations 2004		
Cattle Identification (Wales) Regulations 2007 <sup>21</sup>		
Transmissible Spongiform Encephalopathies (Wales) Regulations 2018		
Laws relating to specific diseases affecting livestock including, for example, Disease of Poultry (Wales) Order 2003, the Avian Influenza Preventative Measures (Wales) Regulations 2006 and the Bluetongue (Wales) Regulations 2008.		
Laws governing the artificial insemination of livestock including the Artificial Insemination of Pigs (EEC) Regulations 1992, the Bovine Embryo (Collection, Production and Transfer) Regulations 1995 and the Bovine Semen (Wales) Regulations 2008		
Zootechnical laws including UK Regulation (EU) No 2016/1012 and Zootechnical Standards (Wales) Regulations 2018		
<b>Laws solely or primarily concerned with livestock welfare</b>		
Welfare of Farmed Animals (Wales) Regulations 2007		

#### Stage four: plant health, varieties and seeds law

11.17 The potential fourth stage of codification could encompass work to restate or reform the primary legislation concerning the subject matter of plant health and plant varieties law in an Act of the Senedd (or Acts of the Senedd) that form part of the prospective Code.

11.18 Our assessment is that the primary legislation listed in table 5 has a subject matter which is suitable for inclusion in an Act of the Senedd forming part of the prospective Code. Table 5 also presents a list of secondary legislation relating to plant health and plant varieties which we consider suitable for inclusion in the prospective code of

<sup>21</sup> As enacted in exercise of powers formerly provided under the European Communities Act 1972, s 2(2). These Regulations remain in force, following the UK's withdrawal from the EU, because they have been incorporated into our domestic law as a result of the European Union Withdrawal Act 2018 ("EUWA 2018") and the Retained EU Law (Revocation and Reform) Act 2023 ("REULA 2023").

agricultural law for Wales. That secondary legislation comprises legislation made under the Plant Varieties Act 1997 and also assimilated laws.

Table 5: primary and secondary laws on plant health and plant varieties which we consider are, in principle, suitable for inclusion in the prospective Code

PRIMARY LEGISLATION	SECONDARY LEGISLATION ENACTED UNDER PRIMARY ENABLING POWERS
Plant Varieties and Seeds Act 1964 (sections 16 to 19, 24 to 31 and 33 to 41)	Vegetable Seeds Regulations 1993 Seed Marketing (Wales) Regulations 2012 Seed Potatoes (Wales) Regulations 2016
Plant Health Act 1967	N/A
Plant Varieties Act 1997	Plant Breeders' Rights (Information Notices) Regulations 1998  Plant Breeders' Rights (Farm Saved Seed) (Specification of Species and Groups) Order 1998  Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998  Plant Breeders' Rights Regulations 1998  Plant Breeders' Rights (Naming and Fees) Regulations 2006  Plant Breeders' Rights (Discontinuation of Prior Use Exemption) (Wales) Order 2006
<b>Other secondary and assimilated laws</b>	
Marketing of Vegetable Plant Material Regulations 1995	
Marketing of Ornamental Plant Propagating Materials Regulations 1999	
Seeds (National Lists of Varieties) Regulations 2001	
Patents and Plant Variety Rights (Compulsory Licensing) Regulations 2002	
UK Regulation (EU) 2016/2031 on protective measures against pests of plants	
Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017	
UK Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 as regards protective measures against pests of plants	
Plant Health etc (Fees) (Wales) Regulations 2018	

## RELEVANT FACTORS INFORMING FORM, CONTENT AND SEQUENCING

11.19 As outlined above, we have applied set criteria to inform our consideration of the legislation we consider suitable for inclusion in the prospective code of agricultural law for Wales.

11.20 Beyond our criteria for inclusion, there are additional factors which may inform any decisions as to the form, content and sequencing of the prospective Code. These include the matters outlined below.

- (1) The resourcing implications associated with establishing the prospective code of agricultural law for Wales and thereafter maintaining the prospective Code.
- (2) Political priorities that may inform which areas of law are prioritised for codification.
- (3) Calls for substantive reform which similarly may influence which areas of agricultural law are prioritised for codification and whether the laws in question are codified in a consolidation Act of the Senedd or an Act of the Senedd delivering wholesale reform.
- (4) The Welsh Government's wider political commitments, for example, as set out in relevant common frameworks.
- (5) The parameters of the Senedd's legislative competence.<sup>22</sup>

11.21 Consideration of some of the factors listed above falls outside the scope of this report. For example, it is not our role to comment on the political priorities of the Welsh Government, or on the allocation of government resources. Furthermore, our work for this report does not involve making recommendations relating to substantive reform of the law. However, throughout this report we highlight examples where areas of agricultural law are the subject of calls for legislative reform.<sup>23</sup>

11.22 In addition, the commitments made under common frameworks may have a bearing on any decisions as to the form and content of the prospective Code. As discussed in Chapter 2, common frameworks are agreements intended to facilitate common approaches between the four UK nations on subjects which formerly fell within EU competence. They are jointly agreed between the UK Government and the devolved governments.

11.23 There are several common frameworks which are relevant to the agricultural sector.

- (1) Agricultural support: provisional common framework.

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<sup>22</sup> It is outside of the scope of this report to comment on the boundaries of the Senedd's legislative competence.

<sup>23</sup> See the summary of calls for substantive reform in Ch 12.

- (2) Animal health and welfare: provisional common framework.
- (3) Plant health: provisional common framework.
- (4) Plant varieties and seeds: provisional common framework.

11.24 Decisions to restate or remake legislation in an Act of the Senedd may need to account for any commitments set out in the provisional common frameworks listed above.

## **THE PROSPECTIVE CODE OF AGRICULTURAL LAW FOR WALES: THE BENEFITS AND LIMITATIONS**

11.25 In this section, we assess the benefits and limitations associated with our proposed model of the prospective Code.

### **The benefits**

#### **Tackling fragmentation of agricultural law**

11.26 One of the core benefits of establishing a code of Welsh law is that it serves to improve the accessibility of the law. A body of law that is fragmented and voluminous is inherently difficult to navigate and understand. Our proposed model for the prospective code of agricultural law for Wales proposes that, as a minimum, legislative provisions from nine different Acts could be restated in an initial consolidation Act of the Senedd that forms part of the prospective Code.<sup>24</sup> We have further identified legislative provisions spread across a further five Acts and one Assembly Measure which we consider could, in principle, be suitable for inclusion in such a consolidation Act.<sup>25</sup>

11.27 Consolidating and codifying legislative provisions which are currently spread between nine to 16 pieces of primary legislation would clearly assist in terms of reducing the fragmentation of the existing body of agricultural law as applicable in Wales.

11.28 The establishment of a code of Welsh law on a subject will also typically involve a process of rationalising secondary legislation. It is conceivable that the process of rationalisation may involve revoking separate statutory instruments which concern the same or related subject matters and bringing those laws together in a single Welsh statutory instrument (or in a smaller number of Welsh statutory instruments). For example, in Chapter 7, we suggest that the existing secondary laws on identification of different livestock species could be brought together under a single Welsh statutory instrument.

11.29 Establishing the prospective code of agricultural law for Wales therefore presents an important opportunity to reduce the fragmentation and volume of secondary

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<sup>24</sup> Furthermore, this number does not explicitly include the primary legislation on agricultural tenancies which we consider is in principle suitable for inclusion in the prospective code of agricultural law for Wales.

<sup>25</sup> The Board of Agriculture Act 1889, the Agriculture Act 1967, the Agriculture (Miscellaneous Provisions) Act 1976, the Agriculture Act 1986, the Farm Land and Rural Development Act 1988 and the Red Meat Industry (Wales) Measure 2010.

legislation. We consider that those working in the agricultural sector would in particular benefit from work which involves rationalising the secondary legislation applicable to agriculture. This is because many of the procedural requirements that apply to farming activity in Wales, which farmers must comply with on a day-to-day basis, are contained in secondary legislation rather than in primary law.

### Modernisation and simplification

11.30 For the purposes of this report, we have been asked to consider whether there are areas of agricultural law which may require or benefit from changes or adjustments aimed at simplification, modernisation or streamlining.

11.31 The Welsh Government has recently introduced before the Senedd the Planning (Wales) Bill which (if enacted) will form part of a code of law relating to planning. In line with the aim of codification, the Bill proposes to consolidate a wide range of existing planning legislation applicable in Wales. The draft explanatory notes to the Planning (Wales) Bill explain, however, that the Bill's sections look very different to the original text of the legislation being consolidated:

it is important to remember that a consolidation Bill may result in proposed legislation which looks very different to the original text – that is the case with this Bill in particular. In order to present the existing law that applies in Wales in a modern and accessible form, the Senedd permits significant presentational changes that do not change the effect of that law.<sup>26</sup>

11.32 Chapter 12 of this report presents a list of provisional technical issues which may benefit from or require changes to existing agricultural legislation. The establishment of the prospective Code presents an opportunity to make such changes to the law, and therefore to modernise, simplify and streamline the existing body of agricultural legislation as applicable in Wales.

### Modern legislative drafting practice

11.33 *Writing Law for Wales* sets out the main principles and techniques that the Welsh Government applies to its legislative drafting of Government Bills and Welsh statutory instruments. Some of the legislative provisions we have identified as being suitable for inclusion in the prospective code of agricultural law for Wales are currently contained in Acts of the UK Parliament. Bringing those legislative provisions together under a consolidation Act of the Senedd presents an opportunity to restate the relevant laws in a manner that aligns with modern legislative drafting practice in Wales.<sup>27</sup>

11.34 For example, *Writing Laws for Wales* expresses a preference for secondary legislation-making powers to be expressed as powers to make regulations. Currently, the Welsh Ministers have a number of secondary legislation-making powers applicable in the agricultural context which are expressed as powers to make orders. Examples include the powers to make orders under the Animal Health Act 1981 providing for the identification of livestock and powers under the Agricultural Sector

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<sup>26</sup> Draft Planning (Wales) Bill and Explanatory Notes to the Planning (Wales) Bill (June 2025).

<sup>27</sup> As would repealing provisions contained in an Act of the UK Parliament in so far as they apply to Wales and replacing them with provisions in an Act of the Senedd delivering wholesale reform.

(Wales) Act 2014 to approve and make orders setting the agricultural minimum wage. Consolidation presents an opportunity to restate those powers in an Act of the Senedd as powers to make regulations.

### Accountability

11.35 Agriculture is devolved to Wales, but certain intersecting policy areas remain reserved to the UK Government: for example, taxation, immigration policy and international trade.<sup>28</sup> Some stakeholders have told us that it is not always clear, or consistently well understood, whether certain policy decisions affecting agriculture in Wales rest with the Welsh Government or the UK Government. This issue is not necessarily unique to agriculture. A recent independent review of the constitutional set-up for Wales reported that:

people in Wales (and in the wider UK) generally have a low level of understanding of how they are governed. The generally low levels of knowledge and understanding, even among those who are politically engaged, is striking. It is not unique to Wales, but it is a problem that undermines confidence in democratic institutions at each level of government. ... Citizens are uncertain about who is making decisions on their behalf even on subjects of great importance to them, like health services.<sup>29</sup>

11.36 The establishment of the prospective Code has the potential to make clearer on the face of the law where executive responsibility and power lies in the agricultural context. At least seven of the Acts we have identified as being suitable for inclusion in an initial consolidation Act of the Senedd (which would form part of the prospective Code) are Acts of the UK Parliament. All those Acts pre-date the existing reserved model of Welsh devolution. Many of those Acts confer functions on UK Ministers to regulate or support the agricultural sector. The functions in question were transferred first to the National Assembly for Wales and subsequently to the Welsh Ministers by virtue of subordinate legislation - known as transfer of functions orders - and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

11.37 However, the text of legislative provisions conferring the statutory functions has not been updated to reflect that the functions have been transferred. Instead, the legislative provisions in question must be read alongside other legislation to understand that the functions are now exercisable by the Welsh Ministers in relation to Wales.

11.38 Restating the provisions in question in an Act of the Senedd would therefore make the division of executive responsibility between UK Ministers and the Welsh Ministers explicitly clear on the face of the law.

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<sup>28</sup> Relatedly, in March 2025 the UK Parliament's Welsh Affairs Committee launched an inquiry into farming in Wales which examined, among other matters, what support the UK Government is providing to the Welsh farming sector and what support from the UK Government the Welsh farming sector requires: <https://committees.parliament.uk/work/8990/farming-in-wales-in-2025-challenges-and-opportunities/>.

<sup>29</sup> Independent Commission on the Constitutional Future of Wales, *Final Report* (January 2024) <https://www.gov.wales/sites/default/files/publications/2024-07/independent-commission-on-the-constitutional-future-of-wales-final-report.pdf>.

## Clarifying the scope of the sustainable land management duty

11.39 Section 2 of the Agriculture (Wales) Act 2023 imposes a duty on the Welsh Ministers to require them to exercise specified agricultural functions in a way which best contributes to the sustainable land management objectives. This duty is referred to in the 2023 Act as the sustainable land management duty. The sustainable land management objectives are discussed further in Chapter 5. In short, the objectives provide the framework for agricultural support and regulation within Wales.<sup>30</sup>

11.40 The functions to which the sustainable land management duty applies are:

- (1) functions under the Agriculture (Wales) Act 2023; and
- (2) functions under any other enactment that require or allow the Welsh Ministers to support or regulate—
  - (a) agriculture, or other activities carried out on land used for agriculture, or
  - (b) ancillary activities such as the processing, marketing or sale of agricultural produce.<sup>31</sup>

11.41 Many of the legislative provisions which we identify as being suitable for inclusion in the prospective Code are provisions which empower the Welsh Ministers to regulate or support agriculture. Consequently, when exercising those functions, the Welsh Ministers will be subject to the sustainable land management duty imposed under section 2 of the Agriculture (Wales) Act 2023. Consolidation and codification would, therefore, make it easier to identify the scope of the sustainable land management duty.

## Bilingual legislation

11.42 As outlined above, many of the Acts recommended for inclusion in our proposed model of the prospective Code are Acts of the UK Parliament. Those Acts are currently available only in English. By contrast, the Senedd's procedures, as set out in its standing orders, require that a Bill before the Senedd must be introduced and enacted in both Welsh and English, unless limited exceptions apply.<sup>32</sup>

11.43 Bringing agricultural legislation within the scope of the prospective code of agricultural law for Wales means that the law in question will be made in both Welsh and English. Making agricultural legislation available bilingually will clearly contribute to the accessibility of those laws for Welsh speakers. It will also further the Welsh Government's ambitions to increase the use of Welsh as a language of the law and in

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<sup>30</sup> Welsh Government, "The Agriculture (Wales) Act 2023: Introducing the Sustainable Land Management Framework" (November 2023) <https://www.gov.wales/sites/default/files/publications/2023-11/agriculture-wales-act-2023-introducing-sustainable-land-management-framework.pdf>.

<sup>31</sup> Ancillary activities are defined in the Agriculture (Wales) Act (asc 4), s 52.

<sup>32</sup> Senedd Business, *Standing Orders of the Senedd Cymru* (January 2026) [https://senedd.wales/media/n33df5ry/english\\_digital.pdf](https://senedd.wales/media/n33df5ry/english_digital.pdf), SO 26.5 and 26C.8.



public administration.<sup>33</sup> We further consider that enacting agricultural legislation in both Welsh and English will benefit the agricultural sector in Wales, with 43.1% of those working in the agricultural, forestry and fishing sectors being Welsh speakers.<sup>34</sup>

### Supporting agile, lawful policy making

11.44 Many of the Acts we have identified as being suitable for inclusion in the prospective Code make provision for the Welsh Ministers' powers to regulate or support the agricultural sector in Wales. Presently, these powers are spread across a patchwork of legislation, enacted by different legislatures and which date back, in some instances, to the nineteenth century. This means it can be challenging to identify the full suite of statutory functions available to the Welsh Ministers to support or regulate agriculture in Wales. Accordingly, we consider that the consolidation and codification of agricultural law can support lawful, agile policy making in the agricultural context.

### Limitations of our proposed model

11.45 Alongside highlighting the benefits associated with our proposed model of the prospective Code, we also think it important to identify potential limitations.

11.46 Firstly, the legislation we have identified as suitable for inclusion in the prospective Code does not encompass all of the laws that regulate, or otherwise apply to, agriculture in Wales. As outlined in Chapter 1, "the process of codification can only apply to matters that fall within the legislative competence of the Senedd".<sup>35</sup> This means the prospective Code cannot include those agricultural laws that relate to reserved matters. Relevant examples include those laws regulating the veterinary profession and also laws governing the inheritance tax rules applicable to agricultural property relief. As highlighted in our report on the form and accessibility of the law applicable in Wales:

any system of limited devolved legislative competence, whatever the limits of that competence, is likely to place limits on the comprehensiveness of a possible codification.<sup>36</sup>

11.47 This means there will be instances where users of the prospective Code will need to refer to agricultural legislation relating to reserved matters that fall outside of the

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<sup>33</sup> Explanatory Notes to the Legislation (Wales) Act 2019 (anaw 4); Welsh Government, *Cymraeg 2050 A: million Welsh speakers* (2017); Welsh Government, *The Future of Welsh law: revised accessibility programme 2021 to 2026* (January 2024) <https://www.gov.wales/future-welsh-law-revised-accessibility-programme-2021-2026-html#:~:text=The%20government%27s%20first%20programme%20to,be%20laid%20before%20the%20Senedd>.

<sup>34</sup> Welsh Government, *Agriculture in Wales* (2019) <https://www.gov.wales/sites/default/files/publications/2021-03/agriculture-in-wales-evidence.pdf>; and Welsh Government, "Welsh language data from the Annual Population Survey: 2024" (April 2025) <https://www.gov.wales/sites/default/files/pdf-versions/2025/4/3/1744792229/welsh-language-data-annual-population-survey-2024.pdf>.

<sup>35</sup> Welsh Government, *The Future of Welsh law: revised accessibility programme 2021 to 2026* (January 2024) <https://www.gov.wales/future-welsh-law-revised-accessibility-programme-2021-2026-html#:~:text=The%20government%27s%20first%20programme%20to,be%20laid%20before%20the%20Senedd>.

<sup>36</sup> [Form and Accessibility of the Law Applicable in Wales](#) (2016) Law Com No 366, para 2.74.



Code. While this will lead to a degree of fragmentation, any webpage which publishes the prospective Code could signpost to those laws that relate to reserved matters.

- 11.48 We also explain in Chapter 3 why, in our assessment, encompassing all laws applicable to the agricultural sector into the prospective code of agricultural for Wales would likely be too onerous a task. In addition, we also think that such a broad prospective Code would become too disparate and unwieldy in scope: detracting from the aim of improving the accessibility of the law.
- 11.49 There are some drawbacks to aiming at a more tightly drawn scope. A code of Welsh law is intended to be a comprehensive statement of the law on a particular subject. Nonetheless, there is scope to mitigate this issue by using signposting. This would involve any webpage that may publish the prospective Code signposting to those laws that fall outside of the prospective Code, but which nonetheless are relevant to agriculture. We recognise, however, that in some instances a code may need to signpost to areas or bodies of law that are fragmented or voluminous. In this respect, we think it important to acknowledge that our work for this report is set against a wider, long-term programme of work led by the Welsh Government to codify the law on devolved subjects.<sup>37</sup>
- 11.50 Secondly, some of the areas of agricultural legislation which we conclude should be included in the prospective Code might also be areas that stakeholders consider are ripe for reform. It falls outside of our terms of reference for this report to make law reform recommendations which would involve changes to underlying agricultural policy or to significant legal rights or obligations. However, we have sought to identify in this scoping report any prominent calls for reform of an area of agricultural law which is included in our proposed model for the prospective Code.<sup>38</sup> It is a matter for the Welsh Government and the Senedd to determine agricultural policy and to make reforms.
- 11.51 Thirdly, our engagement with stakeholders has indicated that in practice farmers primarily refer to guidance, professional advisors, representative organisations (such as the farming Unions), others working in the sector, or advisory services (such as the Farming Liaison Service) in order to understand their legal obligations. Our stakeholder engagement has indicated that farmers may be less inclined to refer directly to legislation itself. This may prove equally true in the case of any eventual prospective code of agricultural law for Wales; even if such a code means that the law is made more accessible and is published together. However, alongside primary and secondary legislation, a code of Welsh law can include relevant Welsh Government guidance.<sup>39</sup> In practice this means that any webpage that may bring together and publish the legislation falling within the prospective Code could also collate or provide links to any guidance supporting that legislation.

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<sup>37</sup> Legislation (Wales) Act 2019 (anaw 4), s 2.

<sup>38</sup> We acknowledge that there may be proposals or calls for legislative reform that we have either not referenced or identified.

<sup>39</sup> See Ch 1, para 1.18.

## CONCLUSIONS

11.52 While we have tried to engage stakeholders as fully as possible, we have not formally consulted on our conclusions above. By mentioning some of the policy assessments that affect the scope and stages of codifying agricultural laws, we do not mean to exclude the many further considerations that are properly for the Welsh Government to consider when it determines its policy. Nor do we present the legislation listed in this chapter as the only way to establish the prospective code of agricultural law. Consolidation and codification are particularly technical, drafter-led exercises, and the process, once underway, may lead to the model we have offered in this report being varied or altered.

11.53 That said, owing to the volume of legislation applicable to agriculture in Wales, we conclude that the prospective code of agricultural law for Wales should be arranged into multiple Acts of the Senedd which are each stated to form part of the prospective Code. This would ensure that the scope and volume of any Act of the Senedd forming part of the prospective Code is not so large as to become unwieldy. It would also ensure that the task of establishing the prospective Code remains manageable.

11.54 In summary, our conclusions in this chapter on the scope of the prospective code of agricultural law for Wales are as follows.

- (1) We conclude that the list of legislation in table 1 sets out those agricultural laws that are suitable for inclusion in an initial consolidation Act as part of the prospective Code.
- (2) Table 2 sets out the secondary legislation which would be identified as forming part of the prospective Code alongside the initial consolidating Act.
- (3) Agricultural tenancy laws (which are listed in table 3) are in principle suitable for inclusion in the prospective Code. They could, of course, be added to the scope of the initial consolidating Act or consolidated separately. But we are mindful that there have been calls to reform agricultural tenancy law. We suggest that if meaningful reform of these laws is upcoming, it may be sensible for agricultural tenancy law to be added to the prospective Code, once reformed, at a later stage.
- (4) Finally, we think that other parts of the statute book can be brought under the prospective Code in stages, once the Welsh Government has considered the extent to which these areas require reform or consolidation.
  - (a) One stage would involve including within the prospective Code the legislation listed in table 4 concerning animal health and livestock welfare.
  - (b) Another would include in the prospective Code the legislation listed in table 5 concerning plant health and plant varieties.

# Chapter 12: Summary of technical issues and issues for further analysis

## INTRODUCTION

- 12.1 Our primary task for this report has been to identify the legislation suitable for inclusion in the prospective code of agricultural law for Wales (“the prospective Code”). Alongside that primary task, we also consider whether that legislation may require or benefit from changes or adjustments aimed at simplification, modernisation or streamlining. This chapter provides an outline of the types of technical issues which we have identified.
- 12.2 The scope of our report does not extend to making proposals for substantive reform of agricultural law. This means that we do not propose reforms to the law that would involve changes to the policy or principles underpinning agricultural legislation. However, we have been asked to identify areas that may require further analysis in order for agricultural legislation to be brought within the prospective Code. At paragraphs 12.10 to 12.13 below, we summarise the areas that we consider merit further analysis or consideration.

### What we mean by technical issues

- 12.3 In order to explain what we mean by “technical issues” in the context of codification, it is useful to look at the Senedd procedure for consolidation Bills: Standing Order 26C. This is the procedure used to enact the first Act of the Senedd which establishes a code of Welsh law, the Historic Environment (Wales) Act 2023.<sup>1</sup> The Planning (Wales) Bill is also currently progressing through the same procedure.<sup>2</sup>
- 12.4 Standing Order 26C allows for a consolidation Bill to do any of the following:
- (1) restate existing legislation with any changes of structure, language or format appropriate for the purpose of improving the presentation of the law and ensuring consistency with current drafting practice;
  - (2) clarify the application or effect of existing law;
  - (3) remove or omit provisions which are obsolete, spent or no longer of practical utility or effect;
  - (4) make minor changes to existing law for the purposes of achieving a satisfactory consolidation; and
  - (5) include appropriate transitional and savings provisions, and consequential amendments and repeals of existing legislation (including amendments to

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<sup>1</sup> Historic Environment (Wales) Act 2023, asc 3.

<sup>2</sup> If enacted the Planning (Wales) Bill will form part of a code of Welsh law relating to planning: see s 1 of the Planning (Wales) Bill.

ensure the existing legislation continues to operate correctly in relation to England).<sup>3</sup>

- 12.5 In addition, Standing Order 26C.2(v) allows for consolidation Bills to make other changes to the law which the Law Commission recommends are appropriate for inclusion within a consolidation Bill. However, as this is a scoping report, which has not involved a formal consultation stage, we do not make formal recommendations for the purposes of Standing Order 26C.2(v).
- 12.6 In this chapter, and throughout our report, we use the term “technical issues” to refer areas of the existing body of agricultural law that may benefit from improvements which are aimed at modernising, streamlining or simplifying agricultural legislation. When reviewing agricultural legislation to identify examples of such technical issues, we have been guided by the types of technical reform that are permitted under Standing Order 26C.
- 12.7 We do not expect to have identified in this report all issues or deficiencies with the existing law that may benefit from or require modernisation, simplification or streamlining. Instead, our report highlights the types of technical issues which may require changes or adjustments to agricultural law and provides illustrative examples of such issues.

## **CATEGORIES OF TECHNICAL ISSUES FOR CONSIDERATION WHEN CODIFYING AGRICULTURAL LAW**

- 12.8 The technical issues we have identified in the preceding chapters of this report can be grouped into four categories.
- (1) Updates to reflect current drafting practice for Welsh legislation.
  - (2) Modernisation, for example, where the law does not reflect established practice.
  - (3) Clarification where the terms used in the law lack clarity or provisions are inconsistent in their wording.
  - (4) Removal of provisions which are redundant or obsolete.
- 12.9 In the following table, we present a list of the technical issues which we have identified in the preceding chapters of this report. We include examples of technical issues we have identified in both primary and secondary legislation. For completeness, we also include examples of secondary legislation which we consider could be rationalised by bringing together existing laws together in a single Welsh statutory instrument.

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<sup>3</sup> Standing Order 26C also states that a consolidation Bill may make other changes to the law which the Law Commission of England and Wales recommends are appropriate for inclusion within a Consolidation Bill.

Table 1: list of technical issues identified in Chapters 5 to 11

<b>UPDATES TO REFLECT CURRENT DRAFTING PRACTICE FOR WELSH LEGISLATION</b>	
<b>CHAPTER</b>	<b>SUMMARY OF TECHNICAL ISSUE</b>
<b>Chapter 11: paragraphs 11.33 to 11.34</b>	We identify that consolidation would present an opportunity to restate the Welsh Ministers' powers to make secondary legislation in a manner which aligns with modern Welsh legislative drafting practice. For example, powers to make secondary legislation in the form of orders could be restated as powers to make regulations. We identify examples of order-making powers which we consider could be restated in an Act of the Senedd as powers to make regulations.
<b>Modernisation, for example, where the law does not reflect established practice</b>	
<b>Chapter 5: paragraphs 5.151 to 5.156</b>	We suggest that the requirements for the valid service of an agricultural statistics notice under the Agricultural Statistics Act 1979 could be modernised to expressly allow for electronic service, thereby reflecting existing practice.
<b>Chapter 7: paragraphs 7.145 to 7.146</b>	We identify that the Animal Health Act 1981 ("the 1981 Act") states that certain notifiable animal diseases must be notified to the police, whereas in modern-day practice notification must be made to the Animal Health and Plant Agency ("the APHA"). Similarly, we identify that relevant secondary legislation made under the 1981 Act could make clearer that notification must be made to APHA.
<b>Clarification where the terms used in the law lack clarity or provisions are inconsistent in their wording</b>	
<b>Chapter 7: paragraphs 7.147 to 7.153</b>	We identify that the lack of a statutory definition of the term "notifiable diseases" under the 1981 Act, and the fragmentation of the law in this area, means it is difficult to identify the full list of animal diseases which must be notified to APHA.
<b>Chapter 7: paragraphs 7.159 to 7.160</b>	We highlight that the 1981 Act and the secondary legislation made under that Act make inconsistent provisions as to the classes of individuals whom are legally required to notify the APHA about instances, or suspected instances, of notifiable diseases. We suggest that the relevant provisions would benefit from standardisation, unless there are policy reasons for varying, by disease, the classes of individuals required to notify APHA.
<b>Chapter 7: paragraphs 7.156 to 7.158</b>	We identify that the 1981 Act and the secondary legislation made under that Act make inconsistent provisions as to the point at which the duty to notify the relevant authority / APHA of a notifiable disease arises.

<b>Chapter 7: paragraphs 7.154 to 7.155</b>	We also consider whether the list of notifiable diseases - as provided for in section 88(1) of the 1981 Act - could be more easily maintained and kept up to date. For example, if the Welsh Ministers' existing powers to add diseases to the scope of section 88(1) of the 1981 Act were extended to conversely allow them to remove diseases from its scope.
<b>Chapter 9: paragraphs 9.100 to 9.104</b>	We highlight that the rules applicable to the re-letting of statutory smallholdings to spouses or civil partners of deceased tenants could be made clearer; particularly with regard to how they apply to widowers of deceased tenants.
<b>Chapter 9: paragraphs 9.105 to 9.109</b>	We identify that it is unclear what the term "good estate management" means, in the context of the statutory smallholding regime as provided for under Part 3 of the Agriculture Act 1970.
<b>Removal of provisions which appear redundant or obsolete</b>	
<b>Chapter 5: paragraphs 5.25 to 5.29</b>	We consider whether section 18 of the Hill Farming Act 1946 - which allows the Welsh Ministers to regulate for the control of rams – is suitable for repeal. We note that the power has not been exercised in over 50 years.
<b>Chapter 5: paragraphs 5.101 to 5.109</b>	We consider whether section 2 and sections 6 to 8 of the Agricultural Wages Act 1948, which make provision for the establishment and functions of agricultural wages committees, are suitable for repeal.
<b>Chapter 5: paragraphs 5.84 to 5.90</b>	We consider whether section 18 of the Agriculture Act 1986, and the 10 orders made under that Act designating certain areas in Wales as environmentally sensitive areas, are suitable for repeal.
<b>Chapter 5: paragraphs 5.111 to 5.112</b>	We consider whether section 9 of the Agriculture (Miscellaneous Provisions) Act 1954, which makes provision for powers of local authorities to collect kitchen waste or other waste for the use as animal feed for livestock, is suitable for repeal.
<b>Rationalisation of statutory instruments</b>	
<b>Chapter 7: paragraphs 7.161 to 7.164</b>	We consider whether four separate statutory instruments concerning the identification requirements applicable to different species of livestock could be restated in a single Welsh statutory instrument.
<b>Chapter 6: paragraphs 6.138 to 6.139</b>	We consider whether the subject matter of the Crop Residues (Burning) Regulations 1993 and the Heather and Grass etc Burning (Wales) Regulations 2008 could be consolidated in one Welsh statutory instrument owing to the nexus in their subject matter.

## AREAS MERITING FURTHER CONSIDERATION

12.10 Throughout the preceding chapters of this report, we identify areas of agricultural law and overarching issues that may require further analysis in the context of establishing the prospective code of agricultural law for Wales. We provide a summary below of the main issues identified. The issues in question are distinct to those discrete technical issues we summarise in table 1 (at paragraph 12.9 above). Specifically, the issues we summarise in the following section are those which may require or benefit from substantive changes to the law. Alternatively, the issues raised may involve matters of overarching significance which, for example, may apply across all areas of agricultural law or arise in the context of codifying the law on other devolved subjects.

### Calls for substantive law reform

12.11 In Chapter 4, we acknowledge that it may be considered undesirable to consolidate primary legislation where there are widespread calls for substantive reform of the law in question, or where there are plans to undertake such legislative reform.

12.12 Consequently, throughout this report we have highlighted examples of calls for substantive reform of legislation applicable to agriculture. In light of these calls for reform, we consider that the areas of agricultural law in question may require further analysis before being subsumed within the prospective code of agricultural law for Wales. We summarise in table 2 below examples of those calls for reform, as highlighted in the preceding chapters of this report.

Table 2: calls for substantive reform of key areas of legislation reviewed in this report

CHAPTER	CALLS OR PROPOSALS FOR SUBSTANTIVE REFORM
<b>Chapter 5</b>	We consider sections 98 and 99 of the Agriculture Act 1947 which concern the control of agricultural pests, rabbits and captive animals. We highlight relevant recommendations for reform of these sections as presented in our 2015 Wildlife law reform report. <sup>4</sup>
<b>Chapter 6</b>	We point to well-established calls for the consolidation of wildlife legislation. <sup>5</sup> We consider the extent to which any such work to consolidate wildlife law could benefit users of the prospective code of agricultural law for Wales.
<b>Chapter 8</b>	We examine a recent independent report recommending reform of the law on hedgerows; <sup>6</sup> discussing how the policy direction proposed in that report may influence decisions on whether the law on hedgerows is suitable for inclusion in the prospective code of agricultural law for Wales.

<sup>4</sup> [Wildlife Law Volume 1: Report](#) (2015) Law Com No 362.

<sup>5</sup> [Wildlife Law Volume 1: Report](#) (2015) Law Com No 362; ARU Law School, “Wildlife Law Reform” (February 2025).

<sup>6</sup> Interim Environmental Protection Assessor for Wales, *The Protection of Hedgerows in Wales* (July 2025) <https://www.gov.wales/sites/default/files/publications/2025-07/protection-hedgerows-wales-report.pdf>.



<b>Chapter 9</b>	We summarise calls for substantive reform of the law governing agricultural tenancies as it applies in Wales. We point to our recently announced review of agricultural tenancy legislation and consider how and whether the outcome of that review may influence decisions on how and whether agricultural tenancy legislation is brought within the prospective Code.
<b>Chapter 9</b>	We summarise calls and proposals for reform of aspects of the statutory smallholdings regime as provided for under Part 3 of the Agricultural Holdings Act 1970.
<b>Chapter 10</b>	We refer to calls for substantive reform of the law on pesticides and separately the law relating to slaughterhouses.

### Overarching and substantive issues which may merit further consideration or analysis

12.13 Throughout this report, we also raise overarching issues which may merit further consideration and analysis in the context of codifying agricultural law in Wales. In table 3 below, we present a list of the issues identified and examined in the preceding chapters of this report.

Table 3: overarching and substantive issues which may merit further consideration or analysis

CHAPTER	ISSUE
<b>Chapter 4: paragraphs 4.57 to 4.71</b>	We set out the issues engaged by codification of assimilated law. The retained EU law, assimilated law dashboard and DefraLex demonstrate that large areas of agricultural law are regulated by assimilated law. We explain that decisions on whether to revoke or revoke and replace assimilated laws will involve policy-based assessments. We refer to the Welsh Ministers' powers under the Retained EU Law (Revocation and Reform) Act 2023 to revoke or replace secondary assimilated law. We highlight that these powers are subject to a sunset clause (meaning the powers will expire by a set date). Accordingly, we discuss other options for restating, revoking or modifying assimilated law in the long term. We discuss, with reference to examples, how such work could improve the accessibility of agricultural law.
<b>Chapter 4: paragraphs 4.33 to 4.56</b>	We examine whether the inclusion of secondary legislation in the prospective code of agricultural law for Wales ought to be made contingent upon inclusion of the corresponding enabling powers in primary legislation. We conclude that a flexible approach to this issue should be adopted which allows for the inclusion of a secondary law in the prospective Code, even if the corresponding enabling powers are excluded. We acknowledge that this is an issue for consideration likely to arise in the context of developing other codes of law on different subjects.



<p><b>Chapter 4: paragraphs 4.72 to 4.74</b></p> <p><b>Chapter 5: paragraphs 5.114 to 5.146</b></p>	<p>We examine the differing statutory definitions of the term “agriculture”: identifying 13 distinct definitions of the term. We consider opportunities to streamline or modernise those statutory definitions of “agriculture” which are contained in primary legislation we consider suitable for inclusion in the prospective Code. We further examine the implications of streamlining and modernising those definitions, including the potential effect on any related legal rights and obligations.</p>
<p><b>Chapter 7: paragraphs 7.167 to 7.168</b></p>	<p>We highlight that statutory powers to enforce animal health law are fragmented. Owing to the piecemeal development of the law in this area, those legislative provisions conferring enforcement powers in the animal health context can be inconsistent in their wording. Bringing animal health law within the prospective code of agricultural law for Wales presents an opportunity to examine whether the wording of enforcement powers, as applicable in Wales, would benefit from standardisation.</p>
<p><b>Chapter 7: paragraphs 7.169 to 7.173</b></p>	<p>We identify that consolidation presents an opportunity to examine whether the maximum sanctions available for criminal offences in the agricultural context are consistent. We do not make proposals as to the appropriate maximum fines for individual offences. Instead, we point to an example where the maximum fines available in the context of livestock identification offences appear potentially inconsistent.</p>

## CONCLUSION

12.14 In this chapter we bring together the issues which we identify in preceding chapters of this report as requiring further consideration or analysis in the context of establishing the prospective code of agricultural law for Wales. Accordingly, we summarise the types of technical issues which would require changes or adjustments to the law in order to simplify, modernise and streamline agricultural legislation into the prospective Code. We further set out proposals for rationalising secondary legislation, or for otherwise amending secondary legislation for the purpose of simplifying, modernising or improving the accessibility of agricultural law.

12.15 In addition, we summarise issues, as highlighted in the preceding chapters of this report, that may require further analysis for the prospective Code to be established. These are the types of issues which may affect both the content of the prospective code of agricultural law for Wales and the sequencing of any work to establish the prospective Code. We also summarise those wider issues engaged by the process of consolidation and codification which may require or benefit from adjustments to the law that would involve changes to underlying policy. Finally, we bring together those issues which we consider are overarching or strategic in nature. These are issues which we think apply across all or numerous areas of agricultural law, or in the context of establishing other codes of Welsh law on different subjects.

12.16 Taken together, the issues summarised in this chapter are those which we conclude would require or benefit from further consideration or analysis in order to arrive at a simplified, modernised and accessible prospective code of agricultural law for Wales.

## Appendix 1: Terms of Reference

Agricultural law in Wales:

To review the law relating to agriculture in Wales with the aim of outlining the form and content of a Code of agricultural law for Wales and recommending how the law may be simplified and modernised to improve its accessibility.

The scoping phase of the review will consider and identify:

- (1) What legislation should form part of a Code of agricultural law for Wales,
- (2) What technical changes or adjustments to the law are desirable or necessary to simplify, streamline and modernise the law into the code of agricultural law, and
- (3) Potential areas which may require further analysis.

The first phase will conclude with publication of a scoping report which will be confined to codification and technical reform to simplify the law. It will not extend to policy reform or review the substance of agricultural policy in Wales.

Following a review point, the Commission and Welsh Government may agree a second phase project which will focus on identified strands of work requiring consultation and one or more further reports.

## Appendix 2: Stakeholders

We have engaged with various stakeholders spanning Unions, individual farmers, regulatory bodies, academics, and legal professionals.

Agricultural Advisory Panel for Wales

Animal and Plant Health Agency (“APHA”)

Anthony O'Regan

Country Land and Business Association (“CLA”)

Confor

Dr Christopher McNall

Dr Huw Pritchard

Dr Nerys Llewelyn Jones

Dr Richard Caddell

Dr Victoria Jenkins

Farmers' Union of Wales (“FUW”)

Gwennan Evans

Hybu Cig Cymru

Interim Environmental Protection Assessor for Wales (“IEPAW”)

Keith Bush KC (hon)

Monmouthshire County Council

Morgan Williams

National Farmers' Union Cymru (“NFU Cymru”)

National Sheep Association Cymru (“NSA Cymru”)

Natural Resources Wales (“NRW”)

Nature Friendly Farming Network Cymru (“NFFN Cymru”)

Powys County Council

Professor Ludivine Petetin

Rhys Gowen

Royal Society for the Prevention of Cruelty to Animals (“RSPCA”)

Tenant Farmers Association Cymru (“TFA Cymru”)

Trading Standards Wales - Animal Health and Welfare Panel

Trowers & Hamlins

Wales Environment Link<sup>1</sup>

Welsh Language Commissioner’s Office

UK Centre for Animal Health and Welfare (“A-LAW”)

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<sup>1</sup> Wales Environment Link is a network of environmental, countryside and heritage non-governmental organisations working across Wales. When we met with Wales Environment Link, we therefore met with some of their members, who are non-governmental organisations in Wales. This includes Afonydd Cymru and Rewilding Britain.

## Appendix 3: Definitions of “agriculture”

TABLE 1: DEFINITIONS OF AGRICULTURE CONTAINED IN PRIMARY LEGISLATION

STATUTE	DEFINITION	NON-EXHAUSTIVE EXAMPLES OF LEGAL RIGHTS AND OBLIGATIONS AFFECTED BY THE DEFINITION
<b>Definition 1</b>		
Agriculture (Wales) Act 2023, s 51	<p>Agriculture means:</p> <ul style="list-style-type: none"> <li>(a) horticulture;</li> <li>(b) farming arable crops;</li> <li>(c) dairy farming;</li> <li>(d) keeping and breeding livestock;</li> <li>(e) using land as grazing land;</li> <li>(f) using land as farm woodland or for agroforestry;</li> <li>(g) controlled environment agriculture;</li> <li>(h) otherwise growing plants for sale, or for the sale of part of a plant;</li> <li>(i) maintaining land in a state that makes it suitable for an activity listed in paragraphs (a) to (h).</li> </ul>	<p>The definition of agriculture in this Act governs the activities for which the Welsh Ministers may provide support for under s 8 of the 2023 Act. Therefore, it affects who may be eligible to receive support from the Welsh Ministers.</p>
<b>Definition 2</b>		
Agricultural Sector (Wales) Act 2014 (“the 2014 Act”), s 18	<p>Agriculture includes:</p> <ul style="list-style-type: none"> <li>(a) dairy farming;</li> <li>(b) the production of any consumable produce for the purposes of a trade or business or any other undertaking (whether carried on for profit or not);</li> <li>(c) the use of land as grazing, meadow or pasture land;</li> </ul>	<p>The definition of agriculture under s 18 of the 2014 Act determines which workers are classified as agricultural workers and, consequently, which workers are entitled to the agricultural minimum wage.</p>

	<p>(d) the use of land for orchards, osier land or woodland; or</p> <p>(e) the use of land for market gardens or nursery grounds.</p>	
<b>Definition 3</b>		
Agriculture Act 1947, s 109(3)	“Agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly.	The definition serves several purposes in this Act. For example, it affects who must comply with the rules of good estate management and good husbandry (s 10 and 11).
Agriculture Act 1957, s 35(1)	“Agriculture” has the same meaning as in the Agriculture Act, 1947.	The definition affects those who may be subject to guaranteed prices and related protection under the Act.
Agriculture Act 1967, s 75(2)	“Agriculture”, “agricultural land”, “agricultural unit” and cognate expressions and references to farming shall be construed except in relation to Scotland in accordance with section 109 of the Agriculture Act 1947.	It determines those who may be eligible for certain grants.
Agriculture Act 1970, s 28	“Agriculture” and cognate expressions shall be construed, except in relation to Scotland, in accordance with section 109 of the Agriculture Act 1947.	The definition of agriculture contributes to eligibility for farm capital grants under the Act.
Local Government (Miscellaneous Provisions) Act 1976, s 7(5)	In paragraph (e) of this subsection “agriculture” and “agricultural” have the same meanings as in the Agriculture Act 1947.	The definition defines those to whom control orders shall not apply.
Agricultural Statistics Act 1979, s 6(2)	Section 109 of the Agriculture Act 1947 (interpretation) shall have effect for the purposes of this Act as it has effect for the purposes of that Act except that the definition of “livestock” shall be omitted from subsection (3).	The definition of agriculture determines the activities for which the Welsh Ministers may exercise their power to serve notice to obtain information.
Agricultural Holdings Act 1986, s 96(1)	“Agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as	It determines whether the land is used for a purpose which qualifies for

	grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly.	protection as an agricultural holding.
Agriculture Act 1986, ss 1(6) and 17(2)	In this section— “agriculture” has the same meaning as in the Agriculture Act 1947.	It determines the type of activities that the Welsh Ministers may provide support for. It also determines the activities for which the Welsh Ministers may make provision for.
Farm Land and Rural Development Act 1988, s 1(5)	“agriculture”— in relation to England and Wales, has the same meaning as in the Agriculture Act 1947.	The definition determines what constitutes an agricultural business for the purpose of being eligible for grants.
Environmental Protection Act 1990, s 79(7D)	For the purposes of subsection (7C)— “agricultural” has the same meaning as in section 109 of the Agriculture Act 1947.	It excludes agricultural land from falling within industrial, trade or business premises, which may give rise to a statutory nuisance.
Environmental Protection Act 1990, s 152(5)	In this section—  (a) “agriculture” and “agricultural land” have, as respects England or as respects Wales, the same meaning as in the Agriculture Act 1947.	This definition is relevant to the Minister’s ability to regulate to prohibit or restrict burning crop residue.  Although our understanding is that the definition of agriculture here has the same effect as that in s 79(7D) of the Environmental Protection Act 1990, the wording of the provisions differs slightly. For that reason, we have not reproduced the section of the same Act together in one row.
Water Resources Act 1991, s 221	“agriculture” has the same meaning as in the Agriculture Act 1947 and “agricultural” shall be construed accordingly.	The definition serves a few purposes in this Act. It contributes to

		considerations in relation to minimum acceptable flows (s 21), water abstraction (s 39), issuing codes of good agricultural practice (s 97) and special drainage charges in interests of agriculture (s 137).
Agriculture Act 1993, ss 50(9), 58(9) and 60(6)	In this section— “agriculture”—  (a) in relation to England and Wales, has the same meaning as in the Agriculture Act 1947.	The definition affects the activities which fall within scope for the Minister to make provision for grants to facilitate marketing.
Agriculture Act 1993, s 58(3)	“agriculture”—  (a) in relation to England and Wales, has the same meaning as in the Agriculture Act 1947.	This definition affects the scope of the report required to be produced by the Minister.
Agriculture Act 1993, s 60(6)	In this section— “agriculture” has the same meaning as in the Agriculture Act 1947, and “agricultural” shall be construed accordingly.	This modifies s 4 of the Industrial Organisation and Development Act 1947.  Although our understanding is that the definition of agriculture here has the same effect as that in s 58(3) of the Agriculture Act 1993, the wording of the provisions differs slightly. For that reason, we have not reproduced the sections of the same Act together in one row.
Agricultural Tenancies Act 1995, s 38	“Agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly.	It determines whether the land is used for a purpose which qualifies for protection as a farm business tenancy.



Agriculture (Miscellaneous Provisions) Act 1963, s 22(a)(i)	For the purposes of agriculture (within the meaning of the Agricultural Tenancies Act 1995).	It affects whether someone may be eligible for allowances after being displaced from agricultural land.
<b>Definition 4</b>		
Town and Country Planning Act 1990, s 336	“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly.	The definition serves a few purposes in this Act. For example, in s 55, the definition exempts those activities deemed agricultural from involving development of land.
Agricultural Land (Removal of Surface Soil) Act 1952, s 5(2)	In this Act the expressions “agriculture” and “agricultural” have the same meanings as in the Town and Country Planning Act 1990.	It determines the type of land for which it becomes an offence to remove surface soil from.
<b>Definition 5</b>		
Rent (Agriculture) Act 1976, s 1(1)	<p>In this Act—</p> <p>(a) “agriculture” includes—</p> <ul style="list-style-type: none"> <li>(i) dairy-farming and livestock keeping and breeding (whether those activities involve the use of land or not);</li> <li>(ii) the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not);</li> <li>(iii) the use of land as grazing, meadow or pasture land or orchard or osier land;</li> <li>(iv) the use of land for market gardens or nursery grounds; and</li> <li>(v) forestry;</li> </ul>	The definition serves a few purposes in this Act. For example, the definition of agriculture is important for determining whether an individual is entitled to a protected occupancy (s 2).

	<p>(b) “forestry” includes—</p> <p>(i) the use of land for nursery grounds for trees, and</p> <p>(ii) the use of land for woodlands where that use is ancillary to the use of land for other agricultural purposes.</p>	
Housing Act 1988, Sch 3, para 1(1)	<p>In this Schedule—</p> <p>“the 1976 Act” means the Rent (Agriculture) Act 1976;</p> <p>“agriculture” has the same meaning as in the 1976 Act.</p>	The definition of agriculture plays a role in determining whether an individual constitutes an agricultural worker.
<b>Definition 6</b>		
Housing Act 1985, s 525	<p>“Agriculture” includes dairy-farming and poultry-farming and the use of land as grazing, meadow or pasture land, or orchard or osier land or woodland, or for market gardens or nursery grounds.</p>	The definition of agriculture contributes to delineating what is meant by an agricultural population. However, it appears that the rest of the Part (Part 15 of the Housing Act 1985) has been repealed so we have been unable to identify an example of the rights or obligations affected by this definition.
<b>Definition 7</b>		
Agricultural Wages Act 1948, s 17	<p>“Agriculture” includes dairy-farming, the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds;</p> <p>“consumable produce” means produce grown for consumption or for other use after severance from the land on which it is grown.</p>	It carries out a similar function to that in the Agricultural Sector (Wales) Act 2014. Namely, it determines which workers are classified as agricultural workers and, consequently, which workers are entitled to the agricultural minimum wage.

Rent Act 1977, Sch 15, paras 17 and 18	For the purposes of this Case “employed” and “agriculture” have the same meanings as in the Agricultural Wages Act 1948 and amalgamation has the same meaning as in Part II of the Agriculture Act 1967.	The definition used for two paragraphs of Schedule 15 to the Rent Act 1977 provides examples in which a court must order possession where a dwelling-house is subject to a regulated tenancy in an agricultural context.
<b>Definition 8</b>		
Agriculture (Miscellaneous Provisions) Act 1976, s 4(5)	In this section “agriculture” includes horticulture and forestry.	This definition affects those bodies or persons who may be eligible to receive grants in connection with proficiency tests related to agriculture.
<b>Definition 9</b>		
Agriculture (Safety, Health, Welfare Provisions) Act 1956, s 24(1)	“Agriculture” includes dairy-farming, the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds, and “agricultural” shall be construed accordingly.	It determines whether a worker is connected to agriculture and therefore whether the provisions about health and safety, sanitary and washing facilities are available.
<b>Definition 10</b>		
Allotments Act 1922, s 22	The expression “industrial purpose” shall not include use for agriculture or sport, and the expression “agriculture” includes forestry, horticulture, or the keeping and breeding of livestock.	The definition excludes agricultural activities from constituting an industrial purpose which affects tenancies of allotment gardens.
<b>Definition 11</b>		
Small Holdings Act 1892, s 20	The expression “agriculture” and “cultivation” shall include horticulture and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry or bees, and the growth of fruit, vegetables, and the like.	The definition affects a condition attached to small holdings sold by a county council under the Act.

Small Holdings and Allotments Act 1908, s 61(1)	The expressions “agriculture” and “cultivation” shall include horticulture and the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables, and the like.	The definition may affect the compulsory acquisition of land for allotments.
<b>Definition 12</b>		
Board of Agriculture Act 1889, s 12	In this Act—  The expression " agriculture " includes horticulture.	The definition affects the scope of the Board of Agriculture's duties. For example, it affects what statistics it must collect and prepare.
<b>Definition 13</b>		
Natural Environment and Rural Communities Act 2006, s 88(4)	“Agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, and the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds.	The definition of agriculture contributes to whether a body may be established under this Act.

## Appendix 4: Agriculture Acts excluded from the prospective Code

ACT	RATIONALE FOR EXCLUDING FROM THE SCOPE OF THE CODE
<b>Agricultural Credits Act 1928 (“the 1928 Act”)</b>	The 1928 Act enables a farmer to grant a charge in favour of a bank over his farming stock and any agricultural assets (other than agricultural land) as a form of security. Section 9 states that an agricultural charge must be registered with the Land Registry. The registration of agricultural charges under the 1928 Act is a reserved matter. <sup>2</sup> Consequently, we think it would be undesirable to fragment the provisions of the 1928 Act, by restating only part of those provisions in the prospective Code.
<b>Agriculture (Miscellaneous Provisions) Act 1949 (“the 1949 Act”)</b>	Section 8 of the 1949 Act empowers the UK Ministers to make provision for agricultural training courses or programmes. The majority of the 1949 Act has been repealed. These functions in section 8 do not appear to have been transferred to the Welsh Ministers. Therefore, we consider that the 1949 Act is unsuitable for inclusion in the prospective Code.
<b>Agriculture Act 1957 (“the 1957 Act”)</b>	The 1957 Act made provision for guaranteed payment schemes, guaranteeing payments to farmers for certain agricultural produce. The majority of the 1957 Act has been repealed. The sections which remain in force relate to the operation of guaranteed payment schemes (also known as premium schemes). It is unclear whether any relevant schemes remain in operation.
<b>Agriculture Act 1958 (“the 1958 Act”)</b>	The 1958 Act provides for functions of the Agricultural Land Tribunal for Wales. For the reasons set out at paragraph 5.59 of Chapter 5, we consider the 1958 Act to be unsuitable for inclusion in the prospective Code.
<b>Agriculture (Miscellaneous Provisions) Act 1963 (“the 1963 Act”)</b>	The 1963 Act provides the UK Ministers with powers to pay grants and allowances in specified circumstances. The functions have not been transferred to the Welsh Ministers. Therefore, we think it unnecessary to include the 1963 Act within the prospective Code.
<b>Agriculture Act 1993 (“the 1993 Act”)</b>	The 1993 Act provides for the revocation of milk marketing schemes and potato marketing schemes and makes related transitional provision. The 1993 Act serves a time-limited purpose. Consequently, we consider the Act unsuitable for inclusion in the prospective Code.

<sup>2</sup> Government of Wales Act 2006, Sch 7A.

## Appendix 5: Legislation suitable for inclusion in the prospective Code

- 5.1 Tables 1 to 5 of Chapter 11 present the legislation we consider suitable for inclusion in the prospective code of agricultural law for Wales (“the prospective Code”). In table 4 of Chapter 11, we provide broad descriptions and examples of secondary legislation concerning animal health which we consider suitable for inclusion in the prospective Code. The secondary legislation presented in this appendix supplements the examples we provide in table 4 of Chapter 11.
- 5.2 Taken together, the legislation listed in tables 1 to 5 of Chapter 11 and the legislation set out in this appendix, represents a comprehensive list of legislation we identify as being suitable for inclusion in the prospective code of agricultural law for Wales.

### SECONDARY LEGISLATION RELATING TO ANIMAL HEALTH WHICH IS SUITABLE FOR INCLUSION IN THE PROSPECTIVE CODE OF AGRICULTURAL LAW FOR WALES

SECONDARY LAWS RELATING TO ANIMAL HEALTH AS ENACTED UNDER THE ANIMAL HEALTH ACT 1981	
Secondary law	Summary
Aujeszký's Disease Order 1983	Aujeszký's disease affects animals such as pigs, cattle and sheep. Among other matters, this order makes provisions for the slaughter of infected animals and for declaring a place an infected area.
Zoonoses Order 1988	This order provides that bovine spongiform encephalopathy (“BSE”) is a disease which constitutes a risk to human health (see section 29 of the 1981 Act). This allows certain provisions of the 1981 Act to apply to this disease.
Zoonoses Order 1989	This order provides that certain diseases affecting animals are those which pose a risk to human health (see section 29 of the 1981 Act). This allows certain provisions of the 1981 Act to apply to those diseases.
Poultry (Seizure of Hatching Eggs) Order 1990	This order makes provision for the disposal of hatching eggs to prevent the spread of salmonella.
Anthrax Order 1991	This order extends the definition of “disease” in the 1981 Act to include anthrax. It also provides for procedures in relation to suspected instances of the disease.
Specified Diseases (Notification and Slaughter) Order 1992	This order extends the list of diseases which must be notified under the 1981 Act.

Diseases of Animals (Seizure) Order 1993	This order provides that the powers to require slaughter under section 31 of the 1981 Act apply to diseases listed in article 2 of the order.
Specified Diseases (Notification) Order 1996	This order extends the definition of disease in the 1981 Act to include diseases listed in schedule 1 to the order.
Sheep Scab Order 1997	This order makes provision relating to the removal and movement of sheep affected by sheep scab.
Avian Influenza and Newcastle Disease (England and Wales) Order 2003	This order makes provision for testing for avian influenza and Newcastle disease (diseases affecting birds such as poultry). It also provides for slaughter of vaccinated animals affected by such diseases.
Disease Control (Wales) Order 2003	This order makes provision for controlling the movement of livestock as a means of preventing and controlling the spread of animal disease.
Avian Influenza and Newcastle Disease (Contingency Planning) (Wales) Order 2005	This order provides that the requirements in section 14A of the 1981 Act (the preparation of national contingency plans for the purpose of dealing with an occurrence of disease) apply to avian influenza and Newcastle disease.
Foot-and-Mouth Disease (Ascertainment of Value) (Wales) (No. 5) Order 2001	This order sets out the requirements for the valuation of animals slaughtered or liable to be slaughtered as a result of foot-and-mouth disease.
Brucellosis (Wales) Order 2006	This order provides for testing milk for evidence of brucellosis. Brucellosis is a type of bacterial infection affecting animals such as cattle, but which can be caught by humans through the consumption of unpasteurised milk and cheese.
Enzootic Bovine Leukosis (Wales) Order 2006	This order provides for testing milk for evidence of enzootic bovine leukosis (a disease affecting cattle).
Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006	This order makes provision for measures applicable in circumstances where there is an avian influenza outbreak.
Bluetongue (Wales) (Compensation) Order 2007	This order makes provision for compensation to be paid in respect of an animal affected with bluetongue slaughtered in exercise of powers provided for under the 1981 Act.
Control of Salmonella in Poultry (Wales) Order 2008	This order makes provision for the registration of hatcheries, breeding flocks and laying flocks of birds of certain species

	including poultry, turkeys, ducks and geese, and imposes record-keeping requirements.
Tuberculosis (Testing and Powers of Entry) (Wales) Order 2008	This order provides for a regime for testing for evidence of tuberculosis (a zoonotic disease which can affect animals such as cattle).
Control of Salmonella in Turkey Flocks (Wales) Order 2010	This order makes provision for the testing of turkey flocks for salmonella.
Animal Gatherings (Wales) Order 2010	This order makes provisions for preventing or restricting the spread of animal disease in the context of animal gatherings. Animal gatherings are when animals (primarily livestock) are brought together to be sold.
Tuberculosis (Wales) Order 2010	Among other matters this order makes provision for testing for tuberculosis and for the movement and slaughter of infected animals.
Poultry Compartments (Wales) Order 2010	This order implements provisions for the recognition of poultry compartments which meet high standards of biosecurity.
Bovine Viral Diarrhoea (Wales) Order 2024	This order provides for the control and eradication of Bovine Viral Diarrhoea in Wales.
<b>OTHER SECONDARY LAWS RELATING TO ANIMAL HEALTH (ASSIMILATED LAWS)</b>	
<b>Secondary law</b>	<b>Summary</b>
Foot and Mouth Disease (Control of Vaccination) (Wales) Regulations 2006	The regulations provide for a programme of vaccination against foot and mouth disease.
Avian Influenza (Vaccination (Wales) (No 2) Regulations 2006	The regulations provide for the establishment of vaccination zones aimed at reducing the spread of avian influenza.
Diseases of Swine Regulations 2014	The regulations provide for the notification of certain diseases affecting pigs (for example, classical swine fever) and for measures aimed at preventing and controlling the spread of such diseases.
Transmissible Spongiform Encephalopathies (Wales) Regulations 2018	The regulations provide for an overarching framework for the control and eradication of transmissible spongiform encephalopathies (a group of fatal diseases affecting humans and animals such as cattle). The regulations make provision for the administration and enforcement of UK Regulation (EC) No 999/2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies.



