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Annwyl Huw,

### Food (Wales) Bill – Oral evidence to the Legislation, Justice and Constitution Committee

Thank you for your letter of 16 February setting out a number of questions on issues you were not able to raise during my evidence session with the Committee. I am grateful for the opportunity to provide information on these important points.

My response to each of the questions you have raised is set out in the attached Annex. Time permitting before the reporting deadline, I would be happy to provide additional information or clarify any points that are still unclear.

Cofion Cynnes,



Peter Fox MS for Monmouth

Member-in-Charge, Food (Wales) Bill

## Annex

1. You told us that you met with the Minister for Rural Affairs and North Wales, and Trefnydd, to discuss the Bill on three occasions. What discussions have you had with other UK administrations about the Bill?

I have had discussions with officials in the Scottish Government about the Good Food Nations Bill, but have not had any contact with officials in other UK administrations. My discussions with officials in Scotland have been in general terms about their Bill, and how they managed the process, and also more specifically in relation to costs, particularly those estimated for the proposed Food Commission.

I should add at this point that I continue to completely disagree with the Minister's assertion that what I have done is taken the Scottish Bill and try to 'shoe horn' it into the Welsh legal environment. I refer again to the more detailed reasons for this that I set out in my letter to LJC Committee of 25 January.

2. The Bill gives the Welsh Ministers the power to amend the descriptions of the secondary food goals. Why did you consider this to be necessary rather than having the certainty of the descriptions fixed on the face of the Bill? What would prevent the descriptions being amended to such an extent that they were significantly different from those that exist now, or from being removed altogether so as to render the secondary food goals meaningless?

It is reasonable to expect that the descriptions of the food goals may need to be amended over time to react to changing circumstances. The intention of the regulation making powers is therefore to allow the flexibility required for Ministers to make appropriate amendments to the descriptions without the need for further primary legislation.

Regulations to amend the food goal descriptions are to be made using the affirmative Senedd procedure, so will be brought to the Senedd's attention and subject to debate and a vote. Before making regulations under this section, the Welsh Ministers must also consult with the Welsh Food Commission. I believe these are sufficient safeguards to ensure that any amendment to the Food Goal descriptions are appropriate.

3. The Bill requires the Welsh Ministers to consult with the new Welsh Food Commission before amending the descriptions of the secondary food goals. Why are the Welsh Ministers not required to consult other appropriate bodies as in sections 5(1) and 13(2)? For example, with regard to an amendment to the environment description, did you consider whether it would be appropriate for the Welsh Ministers to consult Natural Resources Wales?

The intention through the Bill is that the Welsh Food Commission will lead on driving the food goals forward, playing a central role as the body that the Welsh Ministers look to for advice and information. That's why there is a requirement that the Welsh Ministers consult the Commission before amending any of the secondary food goal descriptions. Having that requirement does not prevent Welsh Ministers also seeking the views of other bodies and stakeholders, for example, if amending the environment secondary food goal description the Welsh Ministers may seek the

views of Natural Resources Wales as well as the Food Commission.

If there is a consensus among the Committee that there is a need to specify on the face of the Bill that other appropriate persons may or must be consulted prior to the descriptions being amended, then this is something that we could look to do through amendments at stage 2.

4. Section 4(5) obliges the Welsh Ministers to make regulations setting food targets within two years of section 4 coming into force, but section 4(4) states that the targets will only be set when such regulations come into force. This could lead to a situation where the regulations are made within two years but are drafted so that they do not come into force until sometime later. Is this the intention and how will this impact on public bodies who are required to prepare local food plans, taking into account the food targets, within the same two year period?

The normal constitutional convention is that we expect Ministers (and legislatures) to do the right thing. For example, the Environment Act 2021 provides there are obligations upon Ministers to lay draft regulations before Parliament by a certain date, but there is no obligation for them to be made or come into force.

However, we accept that a situation may arise where the Welsh Government make regulations within the 2-year timeframe setting out the targets but decide to omit commencement dates for the actual provisions. As such we are of the view that it would be prudent to mitigate this risk and specify a date for the targets coming into force.

This would be done through a stage 2 amendment to section 4(5), providing that:

“The first regulations setting one or more targets for each secondary food goal must be made and come into force within 2 years of this section coming into force.”

5. Can you explain why the Bill does not provide for any guidance to be issued by the Welsh Food Commission in relation to achieving the goals and fulfilling the duties under the Bill?

Section 10 of the Bill sets out the functions of the Welsh Food Commission. These include developing, and assisting public bodies to develop, policies in relation to food matters as well as advising, informing and assisting public bodies in relation to food matters.

In the drafting of the Bill it was not felt necessary to require the Commission to produce guidance for public bodies in relation to local food plan development as it was envisaged that the Commission will proactively be providing public bodies with information in the day to day exercise of its functions. The statutory framework set out in the Bill aims to promote ongoing cooperation between the Commission and the relevant public bodies.

In addition to this, the Bill provides other avenues for the Welsh Ministers and public bodies to interact with the Commission in the preparation of the national food strategy and local food plans, respectively:

- i. when preparing the national food strategy, section 13(1)(a) of the Bill provides that the Welsh Ministers must seek the advice of the Commission; and

- ii. when preparing the local food plans, section 18(1)(a) of the Bill provides that a public body may consult with the Commission when preparing a local food plan.

For the Welsh Ministers, there is a requirement that they seek advice from the Commission. For public bodies, consultation is an option rather than a requirement. This gives public bodies the flexibility to consult the Commission if it is considered necessary, but acknowledges that in some cases a public body may consider that it already has sufficient information to prepare a plan, without further involvement from the Commission.

6. Can you explain why there is no requirement in the Bill for the national food strategy to be approved by the Senedd, rather than just laid before the Senedd?

My understanding is that it is not normal practice for Welsh Government policies / strategies to be approved by the Senedd. Given the number of policies / strategies the Welsh Government is responsible for, I'm not sure it would be workable in practice for these to be approved by the Senedd.

The Bill itself includes provisions to ensure that the Welsh Government takes appropriate advice and consults with independent persons with relevant expertise before making the national food strategy. As set out in Section 13, this includes a requirement to take advice from the Food Commission, and an option to seek the advice of the Future Generations Commissioner for Wales on relevant aspects. I believe that this provides sufficient safeguards to ensure that the strategy includes the views of the sector(s), and that formal approval of the Senedd is not required. This does not, of course, prevent scrutiny of the national food strategy by Senedd Committees if they consider that to be appropriate.

7. Section 22 of the Bill defines the term "public bodies" and allows the Welsh Ministers to amend this definition by regulations, as long as they do not remove themselves. Why is it necessary to give the Welsh Government this power and who do you anticipate being added to or removed from the list?

The majority of respondents to the consultation who were asked whether they considered the list of public bodies in section 22 was appropriate, responded positively. 66% believed that the list as drafted to include the Welsh Ministers, a local authority and a Local Health Board, was sufficient. However, some respondents did question whether a longer list of public bodies as drafted in section 6 of the Well Being of Future Generations (Wales) Act 2015 ("the 2015 Act") would be more appropriate. Whilst others such as the Campaign for the Protection of Rural Wales suggested that the list could be widened to include "any body that received public funds".

On balance, we do not consider that additional bodies such as a National Park authority or a Welsh fire and rescue authority should be included as a "public body" for the purposes of this Bill, as seen in the 2015 Act. The list of public bodies as drafted is balanced and appropriate however the power for the Welsh Ministers to amend the definition by regulations, subject to consultation, allows them the flexibility to add others to the list in future if needed.

8. Section 22 also states that when making regulations to add bodies to the list of public bodies, the Welsh Government must consult the body to be added. Why is there no requirement to consult a body that is to be removed, or to have its name or description amended?

The drafting used in section 22 of the Bill is consistent with other Welsh legislation including section 52(4) of the Well-being of Future Generations (Wales) Act 2015. Adding a body to the list of public bodies will always require consultation, to inform that body of any additional responsibilities it will be subject to. Whereas removing a body from the list, does not impose any additional responsibilities on that body, only removing those duties, therefore they will not always need to be consulted. However, section 22(5)(c) provides when making such Regulations the Welsh Ministers must consult with any persons they consider appropriate in which will in all likelihood ensure that a body is consulted in any case if they are being removed.

9. There are numerous requirements in the Bill for the Welsh Ministers and other public bodies to publish reviews, strategies, plans etc. Where will such documents be published? Will the lack of precision in relation to the publication of these documents impair accessibility?

I don't believe it would be appropriate for precise details of where documents are to be published to be included on the face of the Bill. It should be for the public bodies to decide the most appropriate place for publication. This would, we assume, be the website of the relevant public body, but could also include publication by the Food Commission. If the Bill was to specify precise details in this respect, this could actually restrict public bodies, and impair accessibility even further by limiting options for publication.

10. Why does the Bill not provide for any consequences for failures to achieve the food goals, the food targets, or to produce the national food strategy or local food plans within the required timeframes?

Again, this is consistent with other Welsh legislation including the Well-being of Future Generations (Wales) Act 2015. Section 8 of that Act requires Welsh Ministers to publish objectives within a specified period without consequences for failure to do so.

What the Food Bill allows for through its framework is for the progress made towards achieving the various goals and targets to be reported to, and scrutinised by, the Senedd. Where appropriate those reviews need to set out the reasons for failing to meet the relevant requirements. Any such failures would be highlighted through this process and can be discussed on the floor of the Senedd.

11. If the general principles of the Bill are not agreed, or the Bill otherwise falls, do you think that some or all of its provisions could be incorporated by amendments to any existing Bills or future legislation?

The Agriculture Bill, which is currently at Stage 2, has a wide scope which includes provisions for sustainable farming. However, the aim of the Food (Wales) Bill as I have set out, is to enable the delivery of a holistic cross-portfolio approach to food – with the establishment of the Food Commission being central to that. It is therefore difficult to see how the provisions of the Food Bill would fall within the scope of the Agriculture Bill.

The Social Partnership and Public Procurement (Wales) Bill has now completed its journey through the amending stages. While there may have been limited scope to include amendments on local procurement I did not feel it appropriate to be tabling amendments on matters that I was taking forward in my own Bill, during Stage 1 of its legislative journey.

I do not believe there are any other Bills in the Government's current legislative programme that would enable the Food Bill's provisions to be incorporated by amendment. The detail of the Government's legislative programme for subsequent years is not yet known so it is not possible to predict where possible amendments could be proposed to incorporate the Bill's provisions.

12. You explained during the session that you were considering tabling amendments to the Bill, should it proceed to Stage 2. Could you set out what would you envisage to be the purpose of these proposed amendments?

There are some amendments I would consider tabling at Stage 2, some of which I have been able to explain to Committees in the evidence sessions to date. One amendment discussed in my evidence session with this Committee is the need to change the timescales for the Local Food Plans, from 2 to 3 years. This would allow public bodies responsible for making and publishing a local food plan further time, should the Welsh Ministers take a long time to publish the National Food Strategy, which must be compiled within 2 years.

As answered in Question 4 above, a minor amendment would be made to section 4(5) at Stage 2 to ensure clarity and avoid any ambiguity regarding the regulations relating to targets needing to be made and come into force.

Following further evidence received from Audit Wales in response to the Economy, Trade and Rural Affairs consultation, we would also make minor technical amendments to paragraphs 18 and 19 of the Schedule to the Bill. I am grateful to the Auditor General for Wales for his evidence. Incorporating these changes will ensure consistency with the audit provisions in the Public Services Ombudsman Act 2019.

In addition, as I have outlined during Committee scrutiny sessions on the Bill, I would be very happy to work with Members and with the Minister to identify areas where amendments could be made to the Bill, and to take these forward at Stage 2.