

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-LG-1999-20

Mike Hedges AS/MS
Chair of Climate Change, Environment and Rural Affairs Committee
Welsh Parliament
Cardiff Bay
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30 June 2020

Dear Mike

Climate Change, Environment and Rural Affairs Committee report on the Legislative Consent Memorandum in relation to the UK Fisheries Bill 2019-21.

Thank you for the Committee's consideration and report on the Legislative Consent Memorandum in relation to the UK Fisheries Bill 2019-21.

I would like to take this opportunity to update the Committee on the situation with UK Parliament and Senedd Cymru scrutiny of the Bill. The House of Lords Report stage was held on 22 and 24 June. I note a small number of amendments were made and as such, I will be laying a Supplementary Legislative Consent Memorandum. Third Reading in the House of Lords is planned for 1 July, and the Bill will then be introduced into the House of Commons.

Given the delays to the UK Parliament timetable, due to COVID-19, it has been deemed necessary to postpone the legislative consent motion debate in the Senedd, which was scheduled for 8 July. As a best estimate, as dates remain unconfirmed for all of the next stages in the House of Commons, I expect the appropriate time to hold the debate will be after summer recess – to take account of any amendments made at House of Commons Committee stage.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

As soon as is possible, I will re-instate a date for the consent motion debate and provide all the necessary information for all Members of the Senedd to adequately consider their consent decision. In the meantime, I have considered the recommendations and have provided my responses in the Annex to this letter.

Financial implications

This is a framework bill and it will be necessary to consider how we implement new functions, in the context of the wider work of the Marine and Fisheries Division. Where additional costs may arise, they will be drawn from existing programme budgets.

However, I would also draw your attention to my response on Recommendation 4 which explains officials are undertaking planning work for how new functions, including from exit related primary legislation, are to be delivered as we exit the EU transition period.

Yours sincerely

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Welsh Government Response to the Climate Change, Environment and Rural Affairs Committee Report (published 21 May 2020): The Welsh Government's Legislative Consent Memorandum in relation to the UK Fisheries Bill.

Recommendation	Welsh Government Response
<p>Recommendation 1. We recommend to the Senedd that it gives consent to the provisions in the UK Fisheries Bill 2019-21, subject to it being satisfied by the Minister's response to each of the recommendations in this report.</p>	<p>Accept</p> <p>Your recommendation the Senedd Cymru provide their consent is welcomed. Of your 23 recommendations, I have been able to accept 21 of them. Where I have not been able to accept, I have set out my reasons as clearly as possible.</p>
<p>Recommendation 2. The Minister should seek an amendment to the 2019-21 Bill to include a sunset clause in relation to the provisions that relate only to Wales.</p>	<p>Recommendation 2 - Reject Recommendation 3 - Accept</p> <p>I will respond to Recommendations 2 and 3 together.</p> <p>Sunset clauses are usually considered where there is a clear timetable for replacement of Welsh provisions. Given the uncertainty and difficulties facing our industry, the ongoing fisheries negotiations and uncertainty of our future relationship with the European Union (EU), we cannot be certain what new policy interventions will be needed as a result.</p> <p>As you rightly point out, I also cannot make any promises on the legislative programme of a future Welsh Government. No government can tie the hands of a future government in this way. It is this Government's intention to bring forward a Welsh Fisheries Bill in the next Senedd term. However, for the reasons set out above, I cannot set out a clearer timetable at this time.</p> <p>We need to ensure we have the necessary toolkit in place to manage the challenges of Brexit (and now COVID-19) on our fisheries industry, so we need to retain these powers in this UK Bill, for as long as we may need them.</p> <p>Therefore we do not want to impose a sunset clause which creates the risk of key powers for Wales being lost, by automatic function of law. We want to introduce Welsh legislation which has been developed with sufficient time to allow for proper scrutiny and consideration. I am not prepared to seek a sunset clause which will potentially disadvantage the Welsh fishing industry in comparison to the rest of the UK industry.</p> <p>I can assure you it is not my intention to have these powers in a UK Bill for any longer than is necessary and I will keep the Committee up-to-date on progress with bringing forward a Welsh Fisheries Bill.</p>
<p>Recommendation 3. If the Minister believes that a sunset clause is not necessary, the Minister should set out how she can give effect to her commitment that a future Welsh Government will bring forward a Welsh Fisheries Bill.</p>	

Recommendation	Welsh Government Response
<p>Recommendation 4. The Minister should set out the latest estimates of changes in staffing numbers and profile in her Marine and Fisheries Division and associated legal support that will be necessary as a result of the 2019-21 Bill.</p>	<p>Accept</p> <p>Staffing is a matter for the civil service. Officials are undertaking planning work for how new functions, including from exit related primary legislation, are to be delivered as we exit the EU transition period. This will include any emerging legislation. It is too early to tell, at this stage, the scope and scale of any change. A clearer picture should emerge when we understand our future relationship with the EU.</p>
<p>Recommendation 5. The Minister should explain how she will ensure that the climate change objective as set out in the 2019-21 Bill will dovetail with wider Welsh Government climate change policies.</p>	<p>Accept</p> <p>Thank you for this recommendation. I am happy to accept this. It is imperative we deliver a joined up position on our response to climate change, the policies we put in place and the actions we take.</p> <p>The Joint Fisheries Statement (JFS) will be the mechanism for where we set out our policies for delivering this objective, and all the fisheries objectives. Through the process of developing the JFS, there will be collaboration across Welsh Government, and with our stakeholders, and we will certainly dovetail our policies to provide a robust set of policies demonstrating the delivery of this objective.</p>
<p>Recommendation 6. The Minister should commit to further exploring, with the other fisheries policy authorities, how a duty on MSY can be included in the 2019-21 Bill. The Minister should write to the Committee to outline solutions that have been considered, in particular whether the wording of Article 33 of the CFP regulations could alleviate her concerns.</p>	<p>Accept</p> <p>The Welsh Government works closely with the fishing industry and scientific researchers, as well as all other interested parties, to ensure our fisheries management is based on the best available evidence and supports the sustainable use of Welsh seas.</p> <p>Our fisheries are valuable natural resources and we remain fully committed to ensuring stocks are safeguarded whilst, at the same time, the environmental, social and economic benefits they provide to coastal communities and beyond are maximised. We all want fully sustainable fisheries, and Maximum Sustainable Yield (MSY) is the international standard for assessing the health of stocks. We as a government are committed to fishing at levels below which would achieve MSY as advised by the International Council for the Exploration of the Seas (ICES), where it is appropriate.</p> <p>In acknowledgment of the concerns raised on the lack of a MSY duty on the face of the Bill, the UK Government has introduced the fisheries management plan (FMP) approach. This is in addition to the MSY commitment made within the objectives themselves. I expect the JFS and FMPs to set out our commitment to MSY and to set targets, where appropriate.</p> <p>There has been extensive discussion on this point with Defra and the other fisheries administrations, and I do not believe further dialogue, at this stage in the process, would be useful or achieve any change of approach.</p>

Recommendation	Welsh Government Response
	<p>However, I will write to Committee to outline the solutions considered and the role of Article 33.</p>
<p>Recommendation 7. The Minister should commit to explore whether a duty should be placed on Welsh Ministers in a future Welsh Fisheries Bill, to take all reasonable steps to achieve the fisheries objectives as set out in the 2019-21 Bill. The Minister should explain why this matter was not included in the Brexit and our Seas consultation document</p>	<p>Accept</p> <p>I am happy to reconfirm my intention to explore whether it is appropriate to include in a future Welsh Fisheries Bill a duty on Welsh Ministers to take all reasonable steps to achieve the fisheries objectives.</p> <p>Brexit and Our Seas was the start of an ongoing conversation with our Welsh stakeholders, which will inform the development of a future Welsh fisheries policy. It was a broad consultation and given the uncertainty regarding the future of the fishing industry at the time it was not the right time in the process to raise this particular point.</p> <p>The fisheries objectives have developed over time, in collaboration with all four fisheries administrations, and are different now to those in the previous version of the Bill. Had we consulted on them, they would not have been the same as the objectives which are in the Bill now. The appropriate time to consider this is in the context of the development of a Welsh Fisheries Bill, when we have certainty on the final objectives in the UK Bill.</p> <p>The publication of the response to the Brexit and Our Seas consultation was delayed due to the COVID-19 pandemic. I am reviewing the response in light of the pandemic and continued uncertainty regarding EU transition.</p>
<p>Recommendation 8. The Welsh Government should deliver on the commitments it made in response to our previous report in relation to the Joint Fisheries Statement. In particular, the Committee was concerned that the Joint Fisheries Statement should include milestones and ambitious targets.</p>	<p>Accept</p> <p>Thank you. I have noted the commitment made previously and I remain, as before, committed to setting milestones and specific and ambitious targets, where appropriate, and following consideration with stakeholders, in the JFS.</p>
<p>Recommendation 9. The Minister should provide an update on the development of the programme of engagement events to inform and shape the content of the Joint Fisheries Statement.</p>	<p>Accept</p> <p>An initial meeting was held in July 2019, as a starting point for stakeholder engagement events on the delivery of the JFS. Following a necessary pause due to the COVID-19 pandemic, work has begun at an inter-governmental level to re-scope the JFS development work, taking into account the changing circumstances we find ourselves in, and to make plans for the critically important stakeholder engagement elements.</p>

Recommendation	Welsh Government Response
	<p>At the time of writing we are planning for there to be a period of informal engagement, a full public consultation and of course, the scrutiny by each legislature in the United Kingdom. In terms of timings, based on the current Bill draft, the JFS is required to be published within 18 months of Royal Assent of the Bill and the plans are being considered accordingly. I hope to be able to share more detailed information soon with stakeholders.</p>
<p>Recommendation 10. The Minister should provide reassurance that, through the Joint Fisheries Statement and Fisheries Management Plans, the Welsh Government will ensure the sustainability of all stocks in Welsh waters, not just those with active Welsh fishing interests.</p>	<p>Accept</p> <p>We are committed to delivering sustainable fisheries in Welsh waters and to working with others with whom we share stocks, not just focusing on those with active Welsh fishing interests. Through the JFS, our policies for FMPs will set a long-term approach for managing our fisheries and fish stocks to secure their sustainability for future generations.</p>
<p>Recommendation 11. The Minister should provide reassurance that Fisheries Management Plans will set out actions and timescales for the recovery of stocks, where stocks are below sustainable levels.</p>	<p>Accept</p> <p>Although the detail of FMPs is still being worked up, I consider it to be entirely reasonable for FMPs to set out actions and timescales for recovery of stocks (where needed and appropriate). Sea fisheries are natural stocks with natural variability and almost all are shared across seas borders. So, it will not be a case of “one size fits all” when developing these plans.</p> <p>The fisheries policy authorities will identify the most appropriate way to cover UK stocks, taking advice from fisheries scientists, fisheries managers and fishers themselves.</p>
<p>Recommendation 12. The Minister should set out the extent to which she anticipates the Welsh Government can rely on existing bodies to provide scientific data to inform Fisheries Management Plans and whether Welsh Government will need to commission new and additional research.</p>	<p>Accept</p> <p>This will be covered in the statement regarding FMPs in the JFS. As we have yet to identify which plans will be required, it is not possible to say what new or additional research may be required.</p> <p>ICES provide a range of advice based on the science and evidence collected by a number of institutions and coastal states. The UK has been in discussion with ICES, and we expect a Memorandum of Understanding (MoU) between the UK and ICES to take effect following the end of the transition period.</p> <p>While ICES can advise on the health of a number of stocks, it does not consider the species of main interest for Welsh fishers. As a result further evidence will need to be gathered on an on-going basis if FMPs are to be extended beyond the traditional stocks of EU interest.</p>

Recommendation	Welsh Government Response
	<p>The draft Welsh Fisheries & Aquaculture Evidence Plan 2019-2021 sets out the collaborative research agenda for marine, diadromous and freshwater fisheries and aquaculture research, monitoring and analysis. We will build on this and where additional evidence is required, this will form part of the strategic approach to science and evidence within the Marine and Fisheries Division.</p>
<p>Recommendation 13. The Minister should provide an update about the timescales for introducing legislation in relation to Vessel Monitoring Systems for all British fishing vessels under 12 metres in length operating in Welsh waters.</p>	<p>Accept</p> <p>Welsh Government has let a contract for the provision of a vessel monitoring system for the Welsh under 12 metre fishing fleet. The supplier is currently building the devices but there have been some delays due to COVID-19. Installation of the devices onto Welsh fishing vessels will commence once appropriate to do so in compliance with the COVID-19 restrictions. It is currently anticipated the relevant legislation (SI) will be introduced in summer 2021.</p>
<p>Recommendation 14. The Welsh Government should assess the financial implications of making onboard CCTV a licence requirement and should publish the results of that assessment.</p>	<p>Reject</p> <p>CCTV is used by some administrations with regard to the Landing Obligation. The size of most vessels in the Welsh fleet mean this is a disproportionate measure with high costs. We have focused our effort/resource on areas we understand are of greater benefit to the management of Welsh fisheries. The application of management tools should be risk based and most of the Welsh fleet is low risk. Where the few large Welsh vessels operate in shared fisheries with the UK or other coastal states, I will consider a consistent approach with other fisheries administrations on the requirements for CCTV or other remote electronic monitoring tools.</p> <p>Vessel Monitoring System (VMS) and Electronic Reporting Systems (ERS - All EU vessels in excess of 12 metres are required to submit daily fishing logs which are accessed remotely by enforcement bodies to check for compliance. This is likely to be rolled out to the 10-12 sector within the next 18-24 months) have long been used for the over 12 metre fishing fleet and as noted in response to Recommendation 13, work is progressing on the implementation of an SI to introduce a VMS on the Welsh under 12 metre fishing fleet.</p> <p>In addition, Welsh Government is working with the UK Fisheries Authorities on a range of measures to improve fisheries compliance and monitoring. These include the Catch Recording app for under 10 metre vessels to record their catch. This was introduced earlier this year. Work is also underway on a replacement system for enforcement officers to record inspections which will streamline and improve this work.</p>
<p>Recommendation 15. The Minister should explain to the Senedd whether her concerns in relation to</p>	<p>Accept</p> <p>This remains ‘a red line’ matter because it is paramount this power is exercised in a manner which respects the devolution settlement.</p>

Recommendation	Welsh Government Response
<p>Clause 23, which constitute 'a red line' for her, have been addressed</p>	<p>I am satisfied the agreement we have reached with UK Government will deliver this outcome and strengthen the already strong and deferential inter-governmental working practices in place on fisheries management.</p> <p>The agreement being sought is about how the exercise of a reserved function (in clause 23) is carried out by the Secretary of State to ensure it does not impinge on devolved competence.</p> <p>The agreement we have reached with UK Government is to set out in the UK Fisheries Framework MoU, or an alternative route if we both agree it is more suitable, more detail on the intended use of the power within clause 23, which will include strengthened consultation processes. I provided a copy of the letter from Victoria Prentis MP which re-confirms this commitment, in my letter to the Committee on 1 May.</p>
<p>Recommendation 16. The Minister should not bring forward the motion to give consent to the provisions in the 2019-21 Bill until the Members of the Senedd have been able to consider the Memorandum of Understanding in relation to Clause 23.</p>	<p>Accept</p> <p>My officials are working with Defra and the other devolved governments to progress the development of the MoU. We are pressing for progress to be made on this matter, and it is my intention Members should have the opportunity to review the MoU, in relation to clause 23, in advance of their consent decision.</p>
<p>Recommendation 17. The Minister should provide an update on discussions held with the UK Government and the other devolved administrations in relation to a review of the fisheries Concordat.</p>	<p>Accept</p> <p>I am happy to provide an update. The Fisheries Concordat has been discussed at official level cross Administration working groups, and it will be considered in the context of our future relationship with the EU, and the UK Fisheries Framework MoU.</p> <p>I will update the Committee once discussions between the administrations have progressed.</p>
<p>Recommendation 18. The Minister should give a commitment that any proceeds from the sale of fishing rights will be used to support coastal communities and the marine environment. There should be extensive consultation to inform the development of any relevant scheme.</p>	<p>Accept</p> <p>Any proceeds from the sale of any fishing rights should be used to support coastal communities and the marine environment, as well as the fishing industry itself.</p> <p>The use of the power could potentially generate revenue which could be reinvested into the Welsh fishing industry, and the communities it supports, to help them adapt and take up these additional fishing opportunities in the future.</p> <p>I agree there should, and will, be a full and robust process of stakeholder engagement, collaboration and public consultation should we bring forward a scheme of this nature. The scheme will</p>

Recommendation	Welsh Government Response
	<p>also need to take into account any necessary financial and operational requirements at the time.</p>
<p>Recommendation 19. The Minister should give a commitment that the financial assistance schemes for Wales arising from the 2019-21 Bill will be underpinned by the fisheries objectives.</p>	<p>Accept</p> <p>Yes, I can commit to this.</p> <p>Any funding schemes arising from the financial assistance powers in the Bill would be intended to promote delivery of requirements such as the Sustainable Management of Natural Resources and Good Environmental Status, as well as supporting local economies and coastal communities. Any financial assistance scheme for Wales will also be consistent with all relevant legislation including the Fisheries Objectives and the Well-being of Future Generations (Wales) Act 2015 (WBFGA).</p> <p>The JFS will set out the policies we have in place to deliver the fisheries objectives. This will include our approach to supporting the industry going forwards.</p>
<p>Recommendation 20. The Minister should provide an update on the Welsh Government's progress in developing its financial assistance schemes, including when she expects proposals to be brought forward for consultation.</p>	<p>Accept</p> <p>I am happy to provide an update. Future financial assistance schemes are being discussed at official level across the UK administrations however there have been delays due to COVID-19.</p> <p>Any future funding scheme will have to operate in the new trade and political environment outside the EU and will be reliant on new fisheries and trade arrangements. I will update the Committee once the discussions have progressed.</p> <p>It is my intention for a consultation to be held in 2021 on proposals for a financial assistance scheme.</p> <p>It remains to be seen how the COVID-19 response will affect our budget to deliver financial support.</p>
<p>Recommendation 21. The Welsh Government should ensure that any new vessels purchased using monies from financial assistance schemes should be equipped with technologies to enhance sustainability and improve monitoring (including but not limited to CCTV and bycatch reduction devices).</p>	<p>Accept</p> <p>Currently the purchase of a vessel using public money can only take place under a very limited set of circumstances, as it is important public interventions do not lead to stocks being over exploited. In common with other UK administrations, I do not currently allow the issue of any additional vessel licences to those already existing. I expect this position will remain and it is unlikely new vessels will be purchased, in the foreseeable future.</p> <p>As a result, it is not my intention to facilitate the purchase of new vessels through financial assistance schemes. However, if circumstances were to change and this was to be case, I believe it would be entirely reasonable to attach the type of conditions suggested to any such assistance.</p>

Recommendation	Welsh Government Response
	<p>Any long term future finance scheme will need to adhere to the WBFGA and will of course be subject to full consultation, providing an opportunity for issues like this to be fully considered, and any appropriate conditions applied.</p>
<p>Recommendation 22. The Minister should clarify the purpose for which she is seeking powers to introduce charges and in what circumstances she envisages using them. Any proposals arising from these provisions should be subject to consultation and a comprehensive financial impact assessment</p>	<p>Accept</p> <p>This power brings us into line with all administrations in the Bill, providing a power for Welsh Ministers to make regulations to impose charges for carrying out certain functions.</p> <p>The power is limited to a “Relevant marine function” which means a function relating to—</p> <ul style="list-style-type: none"> (a) fishing quotas; (b) ensuring that commercial fish activities are carried out lawfully; (c) the registration of buyers and sellers of first-sale fish; (d) catch certificates for the import and export of fish. <p>I want to make very clear, currently there are no plans to introduce any charges under this power. As such, I cannot give any circumstances in which we may use this power other than the headline areas because any proposals would be worked up in collaboration with the fishing industry and wider stakeholders.</p> <p>It is important we have the ability to recover the costs to the public where industries and individuals are profiting from the use of public natural resources. However, this must be done in a fair and sustainable way, after consultation and a comprehensive financial impact. With the impact of COVID-19 and a possible no deal outcome at the end of the year, it is likely to be some time before these powers will be used.</p> <p>As a result I fully agree it is highly appropriate and necessary for any proposals arising to be subject to consultation and a comprehensive financial impact assessment.</p>
<p>Recommendation 23. The Minister should set out what opportunities will be made available for the Senedd and stakeholders to consider and scrutinise Orders created under the broad powers of sections 134A and 134B of the Maritime and Coastal Access Act 2009, as inserted by Schedule 9 of the 2019-21 Bill.</p>	<p>Accept</p> <p>Section 135 of the Marine and Coastal Access Act 2009, as amended by the UK Fisheries Bill, will make provision for all orders made under sections 134A and 134B to be published by the Welsh Ministers and as such they will be within the public domain ensuring openness and transparency.</p> <p>In addition, Orders made under section 134A and 134B, are subject to consultation requirements, unless they are considered to be urgent orders. We will continue to work closely with stakeholders when developing any new policy and will apply the Welsh Government’s consultation policy to the exercise of these powers, in the usual way. I would be happy to write to the committee before any such consultation.</p>

Recommendation	Welsh Government Response
	<p>For urgent orders, the consultation requirements do not apply. This is due to their urgent nature. However, the notice requirements remain and any Order made will be published by the Welsh Ministers in order to bring it to the attention of any person likely to be affected by it, and those persons may make representations to the Welsh Ministers.</p>