

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

Mr Mick Antoniw AS/MS
Chair of Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
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30 June 2020

Dear Mick

Legislation, Justice and Constitution 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, in addition, Welsh Government 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.

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 Legislation, Justice and Constitution Committee report (published 21 May 2020) on the Welsh Government’s Legislative Consent Memorandum on the Fisheries Bill 2019-21

Recommendation	Welsh Government Response
<p>Recommendation 1. The Minister should, as a matter of urgency and ahead of the Welsh Government tabling a legislative consent motion for the Bill, clarify and confirm which specific provisions in the Bill are necessary for the purpose of achieving the desired aim of a UK-wide legislative common framework for fisheries</p>	<p>Accept</p> <p>I am happy to clarify. The majority of the UK Fisheries Bill contains provisions which are necessary for the purpose of achieving the desired aim of a UK-wide common framework for fisheries. It creates the primary legislative elements of the UK Framework for fisheries management and support, providing a uniform set of objectives, duties and powers.</p> <p>This is a framework bill. It is being brought forward to replace the Common Fisheries Policy. There are provisions which are required for a fully functioning UK-wide legislative Common Framework for fisheries. These provisions will apply across the UK, to all fisheries administrations.</p> <p>The core elements of the common framework are:</p> <p><i>Clause 1 – 11 and Schedule 1 - Fisheries objectives, fisheries statements and fisheries management plans</i></p> <p><i>Clauses 12 – 13 , Schedule 2 & 4- Access to British fisheries and regulation of foreign fishing boats</i></p> <p><i>Clause 14 – 22 and Schedule 3 - Licensing of fishing boats</i></p> <p><i>Clause 23 – 27 and Schedule 5 - Fishing opportunities</i> including provisions on the sale of fishing opportunities to ensure we are able to exploit, what we hope will be a greater share of quota for Welsh fishers, following our exit from the European Union (EU). These powers are equivalent to powers of the Secretary of State (SoS).</p> <p>The clauses set out above provide for the four administrations of the UK to work together to develop the policies of the common framework. The Bill then goes on to provide a number executive powers or tools, which are vested in the individual administrations in order to maximise each administrations’ ability and power to manage their own fisheries. These tools will be used to implement and deliver the policies developed in the framework. These regulation making functions are more operational in nature but are necessary to ensure we can put the policies agreed within the framework into effect in Wales, but in a way which is best tailored to the needs of Wales. They are:</p> <p><i>Clause 33 and Schedule 6 – provides each of the UK administrations with powers to grant financial assistance to replicate the powers those bodies currently exercise under the European Maritime and Fisheries Fund.</i></p>

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	<p><i>Clause 34, and Schedule 7</i> enables the Welsh Ministers (with equivalent powers for the Marine Management Organisation and all fisheries administrations) to charge for services provided in connection with carrying out fisheries functions more widely than before. These are essentially administrative powers, which are not necessary for the framework but will enable better regulation and use of public monies.</p> <p><i>Clauses 36 - 42 and Schedule 8</i>, provide SI making powers to each administration to make provision on fisheries and aquaculture. These are important powers which enable us to amend retained EU legislation, without seeking primary legislation as we transition away from fisheries management under the Common Fisheries Policy towards fisheries management under the Joint Fisheries Statement (JFS) and fisheries management plans (FMPs). Of course this would allow us to deviate from the EU where we felt it was necessary, implement new international obligations, or keep pace with the EU, as it is clear fisheries legislation is continually evolving.</p> <p>This regulation making powers ensure all administrations have the tools they will need to implement the policies and targets formulated and agreed within the JFS and the FMPs. It is therefore both an important aspect of the common framework, whilst at the same time sufficiently flexible so each administration can ensure the regulations made are specific to the needs and priorities of each administration.</p> <p><i>Section 44 and Schedule 9</i> introduce significant amendments to the Marine and Coastal Access Act 2009 in relation to the regulation of the exploitation of the sea fisheries resources. The amendments provide the Welsh Ministers with new order making powers to manage the exploitation of sea fisheries resources in order to conserve marine flora and fauna or to conserve marine habitats. These powers are fundamentally important to deliver flexible fisheries management and we intend to use these as soon as possible. These powers are being given to all fisheries administrations.</p> <p>We will rely on these regulation and order making powers to introduce legislation necessary to give effect to the policies agreed in the framework and to deliver joined up approaches with the other fisheries administrations, or deliver at the same time as the other fisheries administrations e.g. introduction of a fisheries support scheme. It is therefore prudent to take these powers through this Bill also, and not risk disadvantaging Welsh interests until we can introduce further powers in a Welsh Fisheries Bill.</p>
<p>Recommendation 2. The Minister should, ahead of the Welsh Government tabling a legislative consent motion for the Bill, clarify:</p>	<p>Accept</p> <p>There are clearly a number of reasons why there has been a delay to the introduction of a Welsh Fisheries Bill. Of course, the delay to the UK Fisheries Bill has had a knock on effect on our ability to bring forward a Welsh Fisheries Bill, given the dependency of the Welsh Bill on the extension of legislative competence for the Senedd.</p>

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<ul style="list-style-type: none"> ▪ why a Welsh Fisheries Bill has been delayed to an unknown time in the future, when it was the Welsh Government's position last year that such a Bill would be introduced within the next 12 months; ▪ the time that will be needed to prepare a Welsh Fisheries Bill. 	<p>We are in a significant period of uncertainty for our fishing industry. COVID-19 has already impacted heavily on the industry and our coastal communities and Brexit impacts are yet to be realised. With the uncertainty of the ongoing fisheries negotiations and our future relationship with the EU – the situation we find ourselves in is constantly changing and we need to remain flexible and responsive to ensure we can take the right policy and legislative action at the right time.</p> <p>I absolutely agree with your assertion in your report on the need to provide some certainty around the likely timing of a Welsh fisheries policy and an appropriate Welsh Bill, to stakeholders.</p> <p>It is this Government's intention to bring forward a Welsh Fisheries Bill in the next Senedd term. The time needed to prepare a Bill will involve the usual stages of Bill development, including a white paper and this will necessarily be steered by the timings of a future Welsh fisheries policy.</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. We intend to continue the conversation. 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 3. The Minister should explain, in advance of the Welsh Government tabling a legislative consent motion for the Bill, how a future Welsh Fisheries Bill will work within a UK-wide common fisheries framework.</p>	<p>Accept</p> <p>Alongside identifying and co-ordinating a common UK-wide approach, the role of the fisheries framework is to recognise the ability of each government to develop tailored policy for their individual territories and provide the opportunity for them to come together and consider how this is managed across the UK.</p> <p>The UK Fisheries Bill will provide the core legislative provisions necessary for the UK fisheries common framework. A key element of the framework is the UK Fisheries Objectives, a common set of objectives which we need to work towards. Any future Welsh Fisheries Bill would need to consider these objectives. The JFS explicitly provides for each administration to have its own policies, tailored to its own needs, to deliver the objectives, where required.</p> <p>Consequentially I would expect the key framework provisions, such as the objectives and the JFS to remain in the UK Bill.</p> <p>A Welsh Fisheries Bill would also be subject to discussions around our forward looking fisheries policy, which we will be developing with stakeholders.</p> <p>Until we have had those conversations it is difficult to predict exactly what further powers we would require and how they will work within</p>

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	<p>the fisheries common framework. The Welsh Ministers are signed up to the common framework approach and any future Welsh Fisheries Bill will, of course, take it into account. To reiterate, it is important to remember, fisheries management is a devolved matter. It is entirely in the gift of the Welsh Ministers to exercise functions and to bring forward legislation. The framework respects devolution and enables different approaches across the UK, where appropriate, as outlined in the Joint Ministerial Committee principles.</p>
<p>Recommendation 4. The Minister should:</p> <ul style="list-style-type: none"> ▪ seek an amendment to the Bill to insert provision 'sunset' the clauses in the Bill applicable to Wales by 2024, in order to ensure there is future clarity about the application of primary legislation on fisheries in Wales; ▪ keep the Committee updated with detailed information about her discussions with the UK Government about such an amendment. 	<p>Reject</p> <p>I fully recognise the reason behind this recommendation, and agree clarity about the timings of a Welsh Fisheries Bill is desirable and agree it is essential it remains a priority for government. As I have noted above, it is this Government's intention to bring forward a Welsh Fisheries Bill in the next Senedd term.</p> <p>Sunset clauses are usually considered where there is a clear timetable for replacement of Welsh provisions and as I note above, we are in a significant period of uncertainty for our fishing industry. Pushing forward with legislation for the sake of it is not the way to deliver good policy or legislation. It is imperative we take the time to reflect and take stock on the situation as we find it.</p> <p>In the meantime, we will 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. 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>However, I can also 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 5. The Minister should clarify why it is appropriate for the Senedd to be asked for its consent to the relevant provisions in the Bill without the memorandum of understanding having been agreed.</p>	<p>Recommendation 5 - Accept Recommendation 6 - Accept</p> <p>My officials are working with Defra and the other devolved governments to progress the development of the Memorandum of Understanding (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 its consent decision.</p>

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<p>Recommendation 6. The Minister should provide the Committee with regular updates regarding progress being made in finalising the memorandum of understanding, including a dispute resolution mechanism.</p>	<p>I will provide regular updates to the Committee regarding progress being made in finalising the MoU, including a dispute resolution mechanism.</p>
<p>Recommendation 7. The Minister should provide information, in either a supplementary document or within any supplementary LCM, justifying why it is appropriate to take each of the regulation-making powers for the Welsh Ministers contained within the Bill, and the choice of procedure for each regulation-making power.</p>	<p>Accept</p> <p>I will provide the information in a supplementary document or within any Supplementary Legislative Consent Memorandum.</p>
<p>Recommendation 8. The Minister should, in advance of the Welsh Government tabling a legislative consent motion for the Bill, provide further clarity on the regulation-making powers in Schedule 3, and specifically under what circumstances the Welsh Ministers would consider it necessary and expedient to exercise these powers as a sea fish licensing authority.</p>	<p>Accept</p> <p>Licensing is a key tool of fisheries management. It enables regulators to apply controls on the level of commercial fishing activity. This is a devolved matter however, we have entered into a joined up approach, to ensure there is a clear framework for the licensing of fishing in the UK.</p> <p>The provisions and powers within clauses 14 to 17 and Schedule 3 of the Bill replace existing equivalent licensing provisions which are currently contained in both the Sea Fish (Conservation) Act 1967 and the Sea Fish Licensing Order 1992 in relation to British fishing boats. They also impose new licensing requirements upon foreign fishing boats fishing within British fishery limits, which are required in consequence of the UK's exit from the EU.</p> <p>The Bill makes consequential amendments to three existing licensing statutory instruments: the Sea Fish (Licensing) Order 1992 (which contains powers for British sea fishery officers); the Sea Fishing (Licences and Notices) Regulations 1994 (which make provision for the services of licences, and notices issued under licences); and the Sea Fish Licensing (Time at Sea) (Principles) Order 1993 (which provides for principles to be applied in determining an allocation of days which can be spent at sea within a licence). The amendments ensure these three statutory instruments will continue to function with the new licensing powers in the Bill. The regulation making power within Schedule 3 enables the Welsh</p>

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	<p>Ministers to manage the licensing system in Wales and make changes in future should it be necessary, to ensure we have in place a robust licensing system. However there is no current intention to change the provision made in the Bill and these three instruments.</p> <p>The Bill sets a framework but it is possible we may want to introduce further details in future to support the effective running of our licensing system.</p> <p>Regulations including provision described above will be subject to the approval of the Senedd. We will include the requested table providing a justification for approval process applicable to each Welsh Ministers regulation making power within the Supplementary Legislative Consent Memorandum.</p>
<p>Recommendation 9. The Minister should commit to laying a written statement giving notification of any relevant order made under sections 134A or 134B of the Marine and Coastal Access Act 2009 in order to ensure openness and transparency.</p>	<p>Reject</p> <p>Section 135 of the Marine and Coastal Access Act 2009, as amended by the Bill, will make provision for Orders made under sections 134A and 134B to be published by the Welsh Ministers and as such will be within the public domain ensuring openness and transparency. Section 135 requires the Welsh Ministers to publish the order in a way most likely to bring it the attention of those persons affected by the making of the order, which would include the Senedd. Publication would include placing it on the Welsh Government website. I therefore think this commitment is unnecessary.</p>
<p>Recommendation 10. The Minister should, in advance of the Welsh Government tabling a legislative consent motion for the Bill, write to the Committee to clarify why the Senedd's consent is not required for clause 4 of the Bill.</p>	<p>Accept</p> <p>Given the links between clause 4 and clause 23, I can understand why the Committee has raised this question. However, we don't believe Senedd consent is required.</p> <p>Clause 4 is in relation to the SoS Fisheries Statement and concerns the setting of policies by the SoS on how they will meet the UK fisheries objectives, through the exercise of their functions, which can include the UK quota functions and other reserved matters. It is not our view this specific provision therefore requires consent.</p> <p>In terms of the relationship between clause 4 and clause 23. Under clause 4 the SoS would be setting UK Government policy which will outline how the SoS exercises UK quota function under clause 23.</p> <p>In contrast under clause 23, the SoS will be exercising a function more operational in nature to determine fishing opportunities for all British fishing boats which could include a provision for a geographical area solely within Wales. We do not believe this is the intention behind clause 23, and it is why we have agreed for assurances to be set out in the MoU on the use of the power.</p>