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Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/LG/2661/20

Mike Hedges AS/MS
Chair of Climate Change, Environment and Rural Affairs Committee
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3 September 2020

Dear Mike,

Thank you for your letter of 23 July relating to the Supplementary Legislative Consent Memorandum for the UK Fisheries Bill.

Update to the Committee on the policy and devolution implications of the amendments to Clauses 1, 18, 27 and 48 by House of Lords

You have asked me to write to provide an update on the policy and devolution implications of these amendments. As you will see, the UK Government has tabled amendments for Commons Committee stage to reverse the amendments made during the Lords Report stage to clauses 1, 18, 27 and 48. Under Secretary of State Victoria Prentis MP sought my views on this approach and advised their position is they support the spirit of the amendments but the amendments themselves are legally and constitutionally unsound. My position is as follows:

Clause 1 – sustainability objective

This amendment results in legal uncertainty. In my response to Minister Prentis I recognised the concerns raised and noted there would need to be further refinement of this provision so that environmental sustainability is appropriately prioritised. The Welsh Government is committed to delivering sustainable fisheries. It is at the core of our fisheries management approach, which aligns with our duties under our flagship Welsh legislation, the Well-being of Future Generations (Wales) Act 2015 and our Environment (Wales) Act 2016, to carry out sustainable development in delivering our well-being goals, and delivering sustainable management of our natural resources. Our policies within the Joint Fisheries Statement will reflect these duties and our strong commitment to delivering sustainable development in Wales.

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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 such, I have emphasised our support for the spirit of the amendment to Minister Prentis and asked her to make this clear during Committee stage in the House of Commons.

Clause 18 – national landing requirement

As drafted this amendment does not reflect the devolution settlement and licence conditions requiring all UK vessels to establish an economic link with the UK are already in place. It is our intention to further develop Welsh policy in relation to economic link requirements as part of the holistic development of our future fisheries policy, subject to scrutiny by the Senedd. Therefore this provision for Welsh Ministers is not required in the UK Bill

Clause 48 – remote electronic monitoring

This amendment cuts across our devolution settlement and as a matter of devolved policy it is for the Welsh Ministers to determine the appropriate approach in relation to Wales. It is our intention to further develop Welsh policy in relation to electronic monitoring in a way that reflects the needs and context of the Welsh fleet, therefore this provision for Welsh Ministers is not required in the UK Bill.

Clause 27 - new quota from the English allocation for new entrants and under 10m boats

We had immediate concerns on how this provision could be interpreted, due to it having the potential to impact on the UK quota “pot”, which although we note is not the intention, could impact on our devolved competence. As such, any ring-fencing should take place only after fishing opportunities have been allocated to each administration.

I hope this explanation and the tabled amendments for Commons Committee stage, provide the clarity you are seeking.

Schedule 10 amendments

You have asked two questions on the amendments within Schedule 10 to retained direct EU legislation and changes of references to Secretary of State from fisheries administrations, you ask:

Can you explain the rationale for this, in particular, why the relevant functions are being conferred on the Secretary of State rather than the fisheries administrations within provisions relating to the observation or implementation of international obligations, which is devolved?

My officials worked closely with UK Government officials, following legal analysis of each reference in retained EU law, to establish where the roles lie, in line with the devolution settlement. Officials were very clear about the nuances of the devolution settlement in relation to international obligations and our role in implementing them. It is my view, these have been applied correctly in respect of the devolution settlement. I have provided a table at Annex 1 to explain the rationale for the amendments made via Schedule 10 of the Bill.

You refer in your letter to fishing opportunities and spawning stock biomass limits, and have asked:

Can you clarify whether this would enable fishing opportunities to be granted where the stock is below the relevant limit?

These amendments build in some flexibility to the existing Multi-annual Plans, including by making the application of the key provisions within them subject to variation where a “relevant change of circumstances” is identified (this is consistent with the approach in the Bill for the Joint Fisheries Statement and Fisheries Management Plans). For example, where a stock was below the relevant limit but was part of a mixed species fishery it would be inappropriate to deny fishing opportunity where this would effectively close the whole fishery or if allowed to continue would involve fishing mortality on the relevant stock in any

event. In such circumstances the setting of a minimal bycatch opportunity would be appropriate to avoid 'choking' the associated stock fisheries.

I hope this information provides the additional clarity you need for your response on the SLCM report, which I note is due on 24 September.

Bill timings and next stages

I wanted to end by providing an update on the Bill timings. Second Reading was held in the House of Commons on 1 September and Committee Stage is due to be held between 8 – 17 September. A number of government amendments have been tabled for Committee stage and I would draw your attention to those. My officials have been working with UK Government to agree the amendments relating to Wales, and I would like to provide early confirmation of my support for them.

The Legislative Consent Motion (LCM) debate has been scheduled for 29 September, prior to Commons Report stage, in line with our usual approach of aiming to ensure the UK Parliament has time to take account of the Senedd's consent decision before a Bill is passed. A Supplementary Legislative Consent Memorandum will be laid as soon as possible.

In addition, I want to take this opportunity to follow up to some of the recommendations in your Legislative Consent Memorandum report.

Legislative Consent Memorandum (LCM) report

Recommendation 6

In my response to your LCM report, I offered to write to you to outline the solutions considered and the role of Article 33, further to your recommendation on this matter.

We have given further consideration as to whether the wording of Article 33 of the CFP regulations, as amended by the EU Exit SIs and Fisheries Bill, could alleviate concerns around including a duty on MSY.

Article 33 provides 1) "Where stocks of common interest are also exploited by third countries, [...] the Secretary of State must make every effort to reach common arrangements for fishing of such stocks with a view to making the sustainable management possible" & 2) "endeavour to establish bilateral or multilateral agreements with third countries for the joint management of stocks"

This of course provides comfort the UK Government's negotiating position will be driven by these principles, it is bound to act responsibly whilst undertaking Coastal State negotiations on fish stocks, however, the wording does not guarantee any outcomes and indeed probably could not undertake to do so (when taking into account the multiple parties at those negotiations).

In acknowledgment of the concerns raised on MSY and to provide increased certainty on the collective UK approach to sustainably managing our domestic fisheries, whilst acknowledging the uncertainties of international fisheries negotiations, the UK Government has introduced the fisheries management plan (FMP) approach which includes elevated levels of engagement with stakeholders. This is in addition to the MSY commitment made within the fisheries objectives themselves. I expect the JFS and FMPs to set out our commitment to MSY and to set targets where appropriate.

The Welsh Government continues to work closely with the fishing industry and scientific researchers, as well as all other interested parties, including Defra and the other fisheries

administrations, to ensure our fisheries management is based on the best available evidence and supports the sustainable use of Welsh seas. This evidence-based approach is captured within the scientific evidence objective of the UK Fisheries Bill, which we fully support.

Memorandum of Understanding and clause 24 (determination of fishing opportunities)

I also said I would provide regular updates to the Committee regarding progress being made to finalise the Fisheries Framework Memorandum of Understanding (MoU) and in particular progress relating to clause 24 (formally clause 23). My officials are engaging in a regular working group which is progressing the drafting of the MoU (including the Dispute Resolution Mechanism and consideration of the Concordat).

In lieu of the MoU, which is still in development and will therefore not be ready ahead of the completion of the Bill's passage, I have written to the UK Government to seek agreement on the key issues on which I need assurance in order to recommend the Senedd gives consent to the Bill. I will share the outcome of this request with the Committee at the earliest opportunity.

I have written in similar terms to Mick Antoniw MS, Chair of Legislation, Constitution and Justice Committee.

Regards

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in black ink and is positioned centrally below the "Regards" text.

Lesley Griffiths AS/MS

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

Annex 1 Rationale for the amendments made via Schedule 10 of the Bill

EU retained law (in Schedule 10)	Rationale for change from “fisheries administration” to “Secretary of State”
Common Fisheries Policy Regulation (Regulation (EU) No 1380/2013)	
<p>Article 28, 29 and 33</p>	<p>Article 28 sets out that the objective of the external fishing policy of the United Kingdom is to ensure sustainable exploitation, management and conservation of marine biological resources and the marine environment by conducting the external relations of the United Kingdom in accordance with its international obligations and policy objectives.</p> <p>Article 29 provides that the Secretary of State should actively support and contribute to the activities of international organisations dealing with fisheries including regional fisheries management organisations.</p> <p>Article 33 provides that the Secretary of State must engage with third countries with a view to ensuring that stocks of common interest to the UK and third countries are managed sustainably.</p> <p>Under paragraph 10 (1) & (2) of Part 1 of Schedule 7A of the Government of Wales Act 2006 international relations are a reserved matter, International relations includes relations with territories outside of the UK, with the EU and its institutions and with other international organisations.</p> <p>Whilst paragraph 10(3) confirms that observing and implementing international obligations are outside of the reservation and are therefore devolved, we do not consider the subject matter of the above Articles could be described as observation of or implementation of international obligations.</p> <p>The Common Fisheries Regulation will, by operation of the European Union Withdrawal Act 2018, form part of the UK statute book as retained EU law. It was previously amended by the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/739). Regulation 3 of those 2019 Regulations established the UK fisheries administrations and their remit for the purpose of any relevant retained direct EU legislation relating to the common fisheries policy. Regulation 3 also made amendments to articles 28, 29 and 33 to transfer functions under those articles from EU institutions to a fisheries administration.</p> <p>In relation to Wales, the Welsh Ministers are the fisheries administration in so far as the obligation or power under consideration would be within the legislative competence of the Senedd, if included in an Act of the Senedd, or if it could have been imposed or conferred by a function of the Welsh Ministers exercisable immediately before exit day. If a power or obligation does not fall into either of those categories the Secretary of State is the fisheries administration for that matter in relation to Wales.</p> <p>The impact of the amendments already made to these Articles by the 2019 Regulations was such that the functions under those articles were in effect already transferred to the Secretary of State in relation to Wales, in line with the devolution settlement. Officials therefore take the view that the amendments made by Schedule 10 do not change this position, but rather clarify it.</p>
Regulation (EU) 2018/973 – North Sea Multi-Annual Plan	

<p>Article 4, 6 & 13</p>	<p>Article 4 relates to targets in respect of fishing mortality and as amended requires the Secretary of State to request data from ICES, or a similar independent scientific body recognised at international level.</p> <p>Article 6 relates to requesting conservation reference points from the ICES, or a similar independent scientific body recognised at international level.</p> <p>Article 13 provides that the Secretary of State should engage with third countries with a view to ensuring that those stocks of common interest to the UK and a third country are arranged in a sustainable manner consistent with the Basic Regulation.</p> <p>Under paragraph 10 (1) & (2) of Part 1 of Schedule 7A of the Government of Wales Act 2006 international relations are a reserved matter, International relations includes relations with territories outside of the UK, with the EU and its institutions and with other international organisations.</p> <p>Whilst paragraph 10(3) confirms that observing and implementing international obligations are outside of the reservation and are therefore devolved, we do not consider the subject matter of the above Articles could be described as observation of or implementation of international obligations.</p> <p>Articles 4, 6, and 13 of this Regulation were previously amended by regulation 25 of the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/753) to transfer functions under those articles from EU institutions to a fisheries administration.</p> <p>In relation to Wales, the Welsh Ministers are the fisheries administration in so far as the obligation or power under consideration would be within the legislative competence of the Senedd, if included in an Act of the Senedd, or if it could have been imposed or conferred by a function of the Welsh Ministers exercisable immediately before exit day. If a power or obligation does not fall into either of those categories the Secretary of State is the fisheries administration for that matter in relation to Wales.</p> <p>The impact of the amendments already made to these Articles by the 2019 Regulations was such that the functions under those articles were in effect already transferred to the Secretary of State in relation to Wales, in line with the devolution settlement. Officials therefore take the view that the amendments made by Schedule 10 do not change this position, but rather clarify it.</p>
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Regulation (EU) 2019/472 Western Waters Multi Annual Plan

<p>Article 4, 7 & 15</p>	<p>Article 4 relates to target in respect of fishing mortality and as amended requires the Secretary of State to request data from ICES, or a similar independent scientific body recognised at international level.</p> <p>Article 7 relates to requesting conservation reference points from the ICES, or a similar independent scientific body recognised at international level.</p> <p>Article 15 relates to the exploitation of stocks of common interest by third countries. It provides that the Secretary of State should engage with those third countries with a view to ensuring that those stocks are arranged in a sustainable manner consistent with the Basic Regulation.</p>
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Under paragraph 10 (1) & (2) of Part 1 of Schedule 7A of the Government of Wales Act 2006 international relations are a reserved matter, International relations includes relations with territories outside of the UK, with the EU and its institutions and with other international organisations.

Whilst paragraph 10(3) confirms that observing and implementing international obligations are outside of the reservation and are therefore devolved, we do not consider the subject matter of the above Articles could be described as observation of or implementation of international obligations.

Regulation (EU) 2019/472 will by operation of the European Union Withdrawal Act 2018, form part of the UK statute book as retained EU law. It was previously amended by the Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1312). Regulation 6 amended to articles 4, 7 and 15 to transfer functions under those articles from EU institutions to a fisheries administration.

In relation to Wales, the Welsh Ministers are the fisheries administration in so far as the obligation or power under consideration would be within the legislative competence of the Senedd, if included in an Act of the Senedd, or if it could have been imposed or conferred by a function of the Welsh Ministers exercisable immediately before exit day. If a power or obligation does not fall into either of those categories the Secretary of State is the fisheries administration for that matter in relation to Wales.

The impact of the amendments already made to these Articles by the 2019 Regulations was such that the functions under those articles were in effect already transferred to the Secretary of State in relation to Wales, in line with the devolution settlement. Officials therefore take the view the amendments made by Schedule 10 do not change this position, but rather clarify it.