

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs

31 July 2020

Dear Lesley

Supplementary Legislative Consent Memorandum (Memorandum No 2) on the Fisheries Bill

Thank you for your letter of 30 June 2020 providing your **response** to the recommendations in our **report on the Legislative Consent Memorandum on the Fisheries Bill** (report on the LCM), which was published in May. Further, the information you provided on the progress of the Fisheries Bill (the Bill) in the UK Parliament was helpful.

On 8 July 2020, you laid before the Senedd a **Supplementary Legislative Consent Memorandum** (Memorandum No 2) on the Bill. You will be aware that the Business Committee has referred the Memorandum No 2 to our Committee and to the Climate Change, Environment and Rural Affairs (CCERA) Committee, and asked that we report to the Senedd by 24 September 2020.

Given the reporting deadline in place, it is not possible to schedule time within the Committee's work programme to invite you to attend a formal evidence session. For that reason, and to assist us in our scrutiny of the Memorandum No 2, the annex to this letter sets out a number of questions which we would be grateful if you would answer by Friday 4 September.

In addition, there are a number of issues which we would like to pursue further with you relating to your response to our report on the LCM. The annex also includes some questions on this matter.



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Yours sincerely

A handwritten signature in black ink, reading "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg
We welcome correspondence in Welsh or English



Annex

Questions on Memorandum No 2

1. In paragraph 27 of the Memorandum No 2, and in relation to the amendments to clauses 1, 18, 27 and 48 of the Bill, you state that “this is a rapidly developing situation” and you still need to consider the devolution implications of each amendment in detail. Paragraph 28 of the Memorandum No 2 goes on to state:

If after detailed analysis, we are content for amendments to remain in the Bill, at the very least, we expect we would need drafting issues to be resolved, to add clarity in both policy intent and to more clearly reflect the devolution settlement.

- a. To what extent were you made aware of, and given sight of, the amendments proposed to clauses 1, 18, 27 and 48 before those amendments were agreed at the House of Lords Report Stage?
 - b. What progress have you made in terms of undertaking a full assessment of the devolution implications of the amendments made to clauses 1, 18, 27 and 48?
 - c. What are the specific drafting issues you refer to in paragraph 28 of Memorandum No 2?
 - d. If the drafting issues are not resolved to your satisfaction, will this matter become a ‘red line’ and will this impact upon any recommendation you may make to the Senedd regarding consent for the relevant provisions in the Bill?
2. Paragraph 14 of the Memorandum No 2 notes that you believe the drafting of the new clause 27 lacks clarity and results in a question around whether consent is required by the Senedd. Further, you believe that the drafting of the new clause 27 raises questions as to how the requirements of the new clause may impact on the devolved administrations fishing opportunities, while also potentially being at odds with the 2012 Fisheries Concordat.
 - a. What progress have you made with resolving these issues with the UK Government?
 - b. What action have you asked the UK Government to take as regards the clarity of the drafting of this new clause?
3. New clause 48 requires the use of remote electronic monitoring (REM) on all fishing vessels above 10 metres in length which fish in UK waters and also requires plans to be published to extend REM to all motorised vessels. Before making regulations under new clause 48, the Secretary of State is under no statutory obligation to consult the Welsh Ministers or seek the consent of the Welsh Ministers or the Senedd.
 - a. What discussions did you have with the UK Government about new clause 48 before the relevant amendment was tabled for consideration during the House of Lords Report Stage?
 - b. Do you consider that a consultation requirement, in line with that provided for in clause 18, is necessary and therefore should be placed on the face of the Bill?



- c. What are your views on whether the consent of the Welsh Ministers or the consent of the Senedd should be sought before the making of regulations under new clause 48?
4. We note that a new Schedule 10 has been inserted into the Bill which incorporates the material that was in the original Schedule 10 but with further amendments to retained EU legislation.
 - a. Several of the references to “a fisheries administration” in this Schedule have been changed to “Secretary of State”. Some of the provisions within new Schedule 10 could be considered to relate to the observation or implementation of international obligations, which is devolved. For example, the amendments proposed to articles 4 and 6 of Regulation 2018/973 (by paragraphs 6(4) and (6) of Schedule 10 to the Bill) include provisions that appear to confer functions on the Secretary of State, in place of the fisheries administrations, in relation to observing and implementing international obligations. While we acknowledge that consent is being sought in relation to Schedule 10, why are these functions being bestowed upon the Secretary of State rather than the fisheries administrations and why wasn't this highlighted in the Memorandum No 2?
 - b. With regards to the power to determine fishing opportunities and quota flexibilities, and as noted in paragraphs 19 and 20 of the Memorandum No 2, the length of time a determination of UK fishing opportunities can be made by the Secretary of State has been changed. References to “calendar year” have been deleted and there is no substitute wording. Therefore, the possible period is open ended, although we acknowledge that regulations made under the provisions could include a timeframe. This change also applies to the Welsh Ministers' powers in Schedule 5 and we note that the Memorandum No 2 suggests this was to enable “consistency”. Did you discuss the amendment to Schedule 10 with the UK Government and the consequential effect on the Welsh Minister's powers in Schedule 5, and can you confirm that the Senedd's consent should also be sought for the relevant amendments to Schedule 5?
5. Paragraphs 34 and 35 of the Memorandum No 2 state that there will be further opportunities “to seek to amend any parts of the Bill which do not currently work in the best interests of Wales”, and that it is anticipated that a further Supplementary Legislative Consent Memorandum will be laid following the House of Commons Committee Stage. Can you confirm that it is your intention to ensure that there is sufficient time for Senedd Committees to consider any further Supplementary Legislative Consent Memorandum ahead of the relevant consent motion debate in Plenary?

Questions regarding your response to the Committee's report on the Legislative Consent Memorandum on the Bill

6. During your evidence session with the Committee on the Bill on 16 March you were asked whether we would be bound by a common framework agreement in the future and if there was anything in the Bill that would inhibit our ability to legislate in



this area of devolved competence, to which you answered “No, my understanding is not” (see paragraphs 46 and 47 of the [transcript](#)). Given this exchange, recommendation 3 of the Committee’s report asked that you explain how a future Welsh Fisheries Bill will work within a UK-wide common fisheries framework. In your response to recommendation 3, you state that any future Welsh Fisheries Bill will need to consider the UK Fisheries Objectives set out in the UK Fisheries Bill and that you “expect the key framework provisions, such as the objectives and the [Joint Fisheries Statement] to remain in the UK Bill”. Given the comments you made in our 16 March meeting, can you confirm that, whilst the Bill does not prevent the Welsh Government from bringing forward a Welsh Fisheries Bill containing provisions that replace those under the UK Bill that constitute a common framework agreement, you are committed to retaining the key framework provisions in the UK Bill (once enacted) as it applies in Wales and it is not the intention of this Welsh Government to move away from the UK-wide fisheries objectives should it be the Government in place during the Sixth Senedd?

7. With regards to recommendations 5 and 6 in our report, while we welcome your intention to ensure Members have an opportunity to review the Memorandum of Understanding in relation to clause 23 in advance of the relevant consent motion debate in Plenary, can you confirm that it is also your intention to ensure that there is sufficient time for Senedd Committees to consider the Memorandum of Understanding ahead of such a Plenary debate?
8. While we acknowledge your detailed response to recommendation 8 in our report regarding the regulation-making powers in Schedule 3 of the Bill, please can you provide further information on when Welsh Ministers would consider it expedient to exercise the powers in Schedule 3 as a sea fish licensing authority?

