

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: LG/3455/20

Mick Antoniw MS
Chair of Legislation, Justice and Constitution Committee
Senedd Cymru
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30 October 2020

Dear Mick

Thank you for your letter of 5 October relating to the UK Fisheries Bill. I am pleased the Senedd was able to give its agreement to the Legislative Consent Motion (LCM) on 6 October. I covered points raised in your letter during the debate, however, I also agreed to follow up in writing.

Point 1 of your letter seeks an explanation on the need for amendments 144, 145 and 146, made to clause 39, clause 49 and schedule 8, respectively. These were made at the request of Welsh Ministers, during Commons Committee stage. The amendments relate to the scope of Welsh Ministers regulating powers under Schedule 8, the Welsh Ministers powers under Schedule 8 are defined by reference to the legislative competence of the Senedd. The previous drafting referred to legislative competence of the Senedd disregarding, and therefore placing outside of the Senedd's competence, any provision which depends upon UK Ministerial consent to be within competence. If these amendments had not been made these Bill provisions would have narrowed the scope of an important Welsh Ministers' regulation making power and widened the scope of the corresponding Secretary of State power, into a devolved policy area.

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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.

Point 2 requests more information on the amendments tabled, and now agreed to, at Report Stage. I will take each in turn:

2. a) The Legislation (Wales) Act 2019 is (broadly speaking) intended to apply to all legislation made by the devolved institutions in Wales. Without amendment, the Act would not apply to Welsh Ministers' SIs made under the Act. The Fisheries Bill amends the Legislation (Wales) Act 2019 to provide that it does apply to Welsh Ministers' SIs made under the Act. The extension of the Senedd's legislative competence to cover fisheries matters in the whole of the Welsh zone will automatically extend the application of Parts 1 and 2 of the 2019 Act to cover Acts of the Senedd made under the wider competence (because they apply to all Welsh primary legislation).

2. b) Under section 83 of the Government of Wales Act 2006 the Welsh Ministers may enter into an arrangement with a relevant authority for the functions for one of them to be exercised by the other. A relevant authority includes a Minister of the Crown and any public authority in England or Wales. Section 83 does not therefore allow the Welsh Ministers to enter into an arrangement with the Scottish Ministers or the Northern Ireland department. It is hoped this sort of arrangement could be efficient and cost saving. The amendments made at report stage enable the Welsh Ministers to enter into administrative arrangements with the Scottish Ministers, Northern Ireland department and the Marine Management Organisation (MMO) for the exercise of fisheries functions and fishery product movement functions.

We can envisage situations in future where we could want other Devolved Administrations to carry out functions on our behalf, for example, on control and enforcement, digital and science, geographically (for example joint enforcement patrols, and science trips, with Northern Irish bodies).

2. c) and d) The amendments to Schedule 3 and 8, and to Schedule 10 (relating to consultation requirements), were not tabled, as this has been superseded by work with UK Government on bringing forward an Order under section 109 of the Government of Wales Act 2006. The Secretary of State for Wales has confirmed to me in writing the concurrent functions in the Bill will be dealt with in the forthcoming Order, subject to some specific exceptions which reflect the complexities of regulating fishing vessels.

2. e) We sought these amendments at an early stage from UK Government but as I noted in my letter to you and in my opening to the LCM debate, due to delays by UK Government it was not possible to finalise some of the necessary amendments prior to this debate.

Point 3 of your letter relates to the Supplementary Legislative Consent Memorandum (No. 2).

3. a) In light of the recent exchange of letters, I am satisfied with the response from the Parliamentary Secretary of State, Victoria Prentis MP, and am confident we will be able to agree the final wording for the Memorandum of Understanding, within the parameters set out in the letters, thus providing the necessary level of consultation and engagement relating of the use of the Secretary of State's power.

I have noted the strength of feeling on this matter and Welsh Government continues to press for swift progress and resolution of the commitments made on the MoU, which is being developed now through co-production between officials from each fisheries administration.

3. b) My commitment to a biennial report to the Senedd on the implementation of the provisions in the Bill which relate only to Wales, until such time as a Welsh Fisheries Bill is introduced, was made in response to the Climate Change, Environment and Rural Affairs Committee recommendation. My position remains a sunset clause is not in the best interests of the Welsh fishing industry and I consider this to be a pragmatic way forward.

3. c) In relation to powers in Schedule 3, you have asked why I consider it necessary and appropriate to take powers which may be part of the statute book for decades in a UK Bill which is only meant to be an interim arrangement for managing fisheries in Wales?

The fisheries licensing powers are part of the framework powers and it is the non-framework powers in the Bill which we consider to be interim. They apply to the licensing of both Welsh fishing boats and foreign fishing boats fishing in Wales and the Welsh zone. The framework enables a joined up approach to licensing fishing activities across the UK in relation to UK and foreign fishing boats.

It is my view these powers are drafted appropriately for the effective functioning of our fisheries licensing system, now and in the future. The use of the Welsh Ministers' regulation making powers in Schedule 3 will be subject to Senedd scrutiny.

Further to your recommendations 6 and 7 in your report on the Supplementary Legislative Consent Memorandum (Memorandum No.2) on retained direct EU legislation, you note in your letter you remain concerned the Senedd may be losing powers. I can assure the Committee we will not be losing powers. It is my view I have given a full explanation in my letters of 3 September and 1 October, which sets out a detailed analysis of these provisions.

I will write separately to you, and to the Climate Change, Environment and Rural Affairs Committees and to all Members, to confirm the outcome of Commons Report Stage and Third Reading.

I have copied this letter to Mike Hedges MS, Chair of Climate Change, Environment and Rural Affairs Committee.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive, flowing style.

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