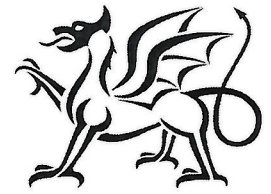


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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA(L)/LG/0076/19

Mike Hedges AM
Chair of Climate Change,
Environment and Rural Affairs
Committee

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January 2019

Dear Mike

Thank you for your letter of 11 January, regarding the Committee's consideration of the Fisheries Bill Legislative Consent Memoranda, and seeking clarification on a number of points.

I have addressed your questions in turn and look forward to discussing the Bill further with the Committee on Thursday.

Question 1. *To what extent does the UK Bill include provisions that are additional to those necessary to establish a legislative UK Framework for fisheries post EU Exit? Which of these provisions could have been included in a future Welsh fisheries Bill?*

The Bill provides a comprehensive suite of fishery management powers for the UK, including a wide range of powers for the Welsh Ministers. For example, Schedule 4 provides Welsh Ministers with the power to create financial assistance schemes in relation to Wales and Schedule 7 provides powers to Welsh Ministers via amendments to the Marine and Coastal Access Act 2009 in relation to the exploitation of sea fisheries resources.

None of these provisions could have been included in a Welsh Fisheries Bill in their current form as the provisions have elements which apply in the Welsh zone beyond Wales for which the National Assembly for Wales currently has no legislative competence. Clause 39 of the Fisheries Bill provides for an extension of the Assembly's Legislative Competence to the offshore area of the Welsh zone.

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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.

Question 2. *Which of the powers for the Welsh Ministers were included at the request of the Welsh Government?*

Schedule 4 (Financial Assistance), schedule 6 part 2 (Power to make further provisions: devolved authorities) and schedule 7 (Powers relating to the exploitation of sea fisheries resources) were included in the Bill at the request of Welsh Government.

Further, clause 39 which provides for the extension of the National Assembly for Wales competence in relation to fisheries matters in the Welsh zone beyond Wales, was included at the request of Welsh Government.

Question 3. *What is the rationale for requesting these powers, particularly if the Welsh Government intends to introduce a Welsh fisheries Bill?*

As previously stated, the Assembly does not currently have legislative competence for the area of the Welsh zone which lies beyond Wales. As such these provisions could not have been included in their current form in a Welsh Bill. We are considering bringing forward a Welsh Bill (if necessary) once the Assembly competence applies to the whole of the Welsh zone. This Bill provides important powers for managing our fish stocks and marine environment as we exit the EU. Given the extension of the Assembly's legislative competence will not be guaranteed until the Fisheries Bill becomes law, it is considered prudent to pursue all necessary powers for the Welsh Ministers in the UK Fisheries Bill.

Question 4. *What are the implications for the Welsh Government and the fisheries sector if these powers are not included in the UK Bill?*

If these powers were not included in this UK Bill, Welsh Government would have a narrower range of powers to manage our marine environment and fish stocks than the other Fisheries Administrations. We would not be able to create a modern financial assistance scheme, if desired, which responds to wider considerations than just being for the purpose of the fishing industry. The Fisheries Bill also enables the Welsh Ministers to amend existing fisheries enactments and retained EU law. Without this power, we could be in a situation where other parts of the UK are able to amend the over arching legislation giving their fleets an advantage over Welsh vessels.

Finally it would hamper our ability to effectively manage our marine environment following EU exit.

Question 5. *Schedule 6 includes broad powers for Welsh Ministers to make provision for 'conservation' and 'fish industry' purposes. Why is it necessary to include these provisions in a UK Bill, rather than a future Welsh fisheries Bill which will be subject to the full Assembly scrutiny process?*

These powers will be necessary as we leave the EU, as such it was not feasible to bring forward an Assembly Bill in the timescales available, which would have allowed full Assembly scrutiny. Any Assembly Bill brought forward at this time could also only extend to Wales. The exercise of the powers in Schedule 6 is through Statutory Instrument, both negative and affirmative procedure dependent on the scope of the regulation. As such Assembly scrutiny will be necessary in exercising those powers.

Question 6. *How do the fisheries objectives in clause 1 differ from, and improve on those set out in Article 2 of the Common Fisheries Policy Regulations?*

The provisions contained in Clause 1 of the Bill broadly replicate those in Article 2 of the common fisheries policy, in a way which is operable within a UK legislative framework.

Question 7. *What consideration was given to including milestones and/or targets for achieving the fisheries objectives in the Bill, for example in relation to Maximum Sustainable Yield (as currently included in the CFP)? Will these be included elsewhere, for example, in a JFS?*

Provisions in relation to the Joint Fisheries Statement were developed by UK Government. Discussions in relation to the contents of the Joint Fisheries Statement are on-going and will be informed by the scrutiny of the Bill. It is understood that milestones you mention will be included in the Joint Fisheries Statement.

Question 8 *How will progress towards achieving the fisheries objectives be measured and monitored in Wales? Is there any intention to develop a common approach to measuring and monitoring progress across the UK?*

Discussions around the nature of the Joint Fisheries Statement are ongoing and will be informed by the scrutiny of the Bill and depend on the final provisions of the Act.

Question 9. *Can you explain in detail how the fisheries policy authorities will “act jointly” in relation to the JFS? How will the Fisheries Management Framework Agreement, referred to in the Supplementary LCM, inform this approach?*

The Joint Fisheries Statement will be prepared by officials from across the fisheries policy authorities. Part 1 of Schedule 1 to the Fisheries Bill sets out the procedures to be applied when preparing and publishing the Joint Fisheries Statement. As previously stated, the contents of the JFS are still under discussion. The final contents of the JFS will be informed by the scrutiny of the Bill, engagement with stakeholders, and scrutiny of the relevant legislatures in line with the final provisions of the Act.

The JFS will form the key part of the Fisheries Framework setting out the shared objectives of the UK fisheries policy authorities. This will be underpinned by a range of memoranda of understanding detailing how the policy authorities will work together. These will be supported by effective joint governance mechanisms and suitable dispute resolution mechanisms.

Question 10. *Can you clarify whether the fisheries policy authorities would be expected to consult appropriate legislatures on any revisions to a draft JFS arising from scrutiny of another appropriate legislature, before the final text of a JFS is published?*

The Bill currently does not make specific provision for this. However, I would expect the legislatures to be informed of any changes after the legislatures have considered the statement and, subject to the scale of the changes, we may wish to lay an amended statement for consideration.

Question 11. *While Schedule 1 provides for scrutiny of a JFS by the appropriate legislature before it is published, a JFS will not be subject to the approval of those legislatures. What consideration was given to including such provision?*

The provisions relating to schedule 1 were drafted by Parliamentary Council following instructions from UK Government. Welsh Ministers were not consulted on the instructions. I am not aware of what consideration UK Government gave to this specific point.

Question 12. *Can you explain how and to whom a statement under clause 6(2) will be made? Why is there no formal mechanism in the Bill to this effect?*

In the unlikely circumstances clause 6(2) is engaged in Wales I would expect to issue a Written Statement to the Assembly. Clause 6(2) was drafted by Parliamentary Council following instructions from UK Government. Welsh Ministers were not consulted on the instructions. I am not aware of what consideration UK Government gave to this specific point.

Question 13. *Can you clarify the purpose and intended effect of a SSFS as it relates to Wales?*

- *What are the reserved powers that the SSFS will apply to?*
- *Do you intend to provide comparable detailed objectives that would apply to Wales? If so, when and how?*

The purpose of the SSFS is to cover specific English issues, it would not extend to Wales unless reserved functions are included, for example, the overall setting of the UK's fishing opportunities following coastal state negotiations. I do not believe there is any need for these specific policies to be detailed in a separate statement. The policies relevant to Wales are expected to be included within the JFS as they contribute to the achievement of the fisheries objectives.

Question 14. *Can you clarify whether the Bill, as drafted, provides Wales (and the other devolved administrations) with a right to fishing opportunities? If not, why not?*

The Bill does not provide such a right to the devolved administrations. However, the distribution of fishing opportunities between the UK administrations is not dealt with through legislation but is dealt with administratively.

Question 15. *In terms of fishing quota, the benefit to Wales from the UK's exit from the EU will be marginal. Do you think this is acceptable? What discussion have you had with the UK Government in this regard?*

I want Welsh Fishermen to receive their fair share of fishing opportunities within Welsh waters. The Welsh Centre for Public Policy report '*Implications of Brexit for fishing opportunities in Wales*' clearly demonstrated this is not the case at the moment. However, without a change to the way fishing opportunities are allocated within the UK, this will not change. Any rebalancing of fishing opportunities between the UK and EU following our exit from the EU should be used to redress this imbalance. Discussions regarding the distribution of future fishing opportunities have yet to begin.

Question 16. *On what basis will fishing opportunities in Wales be distributed and what mechanism will be used?*

The basis under which we distribute fishing opportunities in Wales is currently set out in the UK fisheries quota management rules. Allocation of fishing opportunities in the future will be subject to consultation as we work with stakeholders to develop the future fisheries policy referred to in *Prosperity for All*.

Question 17. *Will the Fisheries Concordat need to be reconsidered in light of the provisions in the Bill? If so, in what way?*

The concordat will need to be reviewed in light of EU exit and the creation of a fisheries framework.

Question 18. *Can you clarify whether clause 20 relates to the distribution of fishing opportunities by the Secretary of State (or the MMO) to the UK's four nations, or to the distribution of fishing opportunities by the Secretary of State (or the MMO) to English fishing boats?*

Clause 20 relates to the distribution of fishing opportunities by the Secretary of State, this could be at the UK level or and English level. In relation to the MMO, clause 20 only applies to English fishing boats.

Question 19. *Can you outline your reasons for this? What will this mean in practice?*

During discussions regarding the content of the Bill, officials from the devolved administrations voiced a number of concerns about the inclusion of this provision in the bill. This included the appropriateness of a UK Bill setting allocation criteria for devolved decisions and the risk of an overlap with existing legislation.

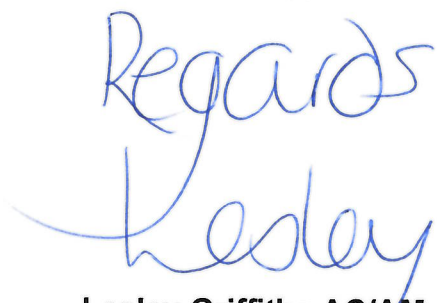
Our understanding is in practice, when allocating fishing opportunities, article 17 of the Common Fisheries Policy will not apply to Welsh Ministers. Article 17 sets a requirement to use transparent criteria for the allocation of fishing opportunities, including those of an environmental, social and economic nature. Without Article 17 of the CFP, Welsh Ministers decisions in this area will need to be guided by other legislation, including the Well-being of Future Generations Act.

Question 20. *What consideration did you give to requesting corresponding provisions for sale of fishing opportunities and discard prevention charging schemes for Wales?*

Given the nature and size of the fishing industry in Wales we do not face the same challenges with the landings obligation as other parts of the UK. However, it is my intention to bring forward a Welsh fisheries Bill, and solutions to the landings obligation will be considered appropriately as part of this process. I am still considering the provisions in relation to the sale of quota for a calendar year.

Timetable

The timetable of the Bill is a matter for Parliament and UK Government. I am not in a position to provide the Committee with a timetable for the Bill. I can confirm I will consider the representations made by both committees and, as appropriate, seek further discussions with UK Government to ensure the Bill meets Welsh needs. However, I am aware, with the prospect of the UK exiting the EU in March, the Bill is on an accelerated timetable and as a result further opportunities to influence the Bill may be scarce.



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