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



Llywodraeth Cymru
Welsh Government

Ein Cyf/Our Ref: LG/0284/19

Mr Mick Antoniw AM
Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales
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27 March 2019

Dear Mick,

**Constitutional and Legislative Affairs Committee report on the Welsh Government's
Legislative Consent Memorandum on the Fisheries Bill**

Thank you for the Committee's consideration and recent report on the Legislative Consent Memorandum ('LCM') in relation to the UK Fisheries Bill

I have carefully considered the recommendations of the Committee and I have included a response to the recommendations individually in the annex to this letter. However, I want to take this opportunity to provide more detail on the Welsh Government's position on fisheries management and on certain elements of the Bill.

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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.

The need for legislation and the approach taken

The Welsh Government fully supports the UK Fisheries Bill. It enables the establishment of a clear and robust framework at a UK level for managing our fisheries, and provides the necessary powers and management mechanisms for the Assembly and the Welsh Government to deliver for our distinct fisheries in Wales, following our exit from the EU. Importantly, the Bill makes provision for the extension of the National Assembly for Wales' legislative competence in matters relating to fishing, fisheries or fish health in the Welsh zone. This is a significant change and a welcome achievement which, as you know, was a red line for me.

Until the achievement of the wider legislative competence, it would be unwise to introduce a Welsh Fisheries Bill, which could only make provisions applying to the Welsh inshore waters, whereas our fisheries management responsibilities extend out to our offshore waters.

I appreciate concerns around using a UK Bill to make provisions for Wales, I am strongly of the view the provisions within the Bill are transitional until we are able to make Welsh primary legislation. However, it is appropriate to seek these powers now to enable us to act quickly and decisively in Wales, in an uncertain future, which enables the fullest opportunities for our immediate future fisheries policy.

Alongside the Bill, we are currently drafting a range of Memoranda of Understanding (MoU) which will cement and enhance the good inter-governmental working practices we have in this subject area, including setting out an agreed dispute resolution mechanism and ways of working.

Fisheries Objectives and Fisheries Statements

The Bill, as currently drafted sets out shared UK objectives for the management of fisheries. These objectives build on those contained with the Common Fisheries Policy, providing a level of consistency in our approach. These objectives therefore set the context for fisheries policy within Wales, the rest of the UK and beyond.

The Joint Fisheries Statement (JFS) will detail our policies for achieving the objectives. The JFS will reflect our approach to fisheries management in Wales which is framed, not just by the international legislation but also our unique legislative landscape in Wales including the Environment (Wales) Act 2016 and the Well-being of Future Generations (Wales) Act 2015.

I know there is a lot of interest in the contents of the JFS and also the Secretary of State's Fisheries Statement. At this stage, it is too early to comment on the contents. The Bill sets out consultation and scrutiny requirements. It also sets the deadline for the production of the first JFS.

I want to provide the Committee with reassurance the JFS will be developed in discussion with stakeholders, with pre-consultation engagement as well as the formal consultation process. This will provide all stakeholders with the opportunity to drive the contents of the JFS and as such our over arching policy direction for the following 6 years.

When we exit the EU a range of functions and powers which were previously exercised at the EU level will be exercised by the Secretary of State on behalf of the UK or exercised by Welsh Ministers in relation to Wales, the Welsh zone and Welsh vessels. Fish stocks are a shared natural resource, not just intra UK but also on an international scale. As a result a Fisheries Management Framework Agreement is needed to ensure effective management of this shared resource.

The JFS provides the cornerstone of the Fisheries Management Framework Agreement. This framework will cover a range of legislative and non-legislative solutions ranging from provisions contained within the UK Fisheries Bill and retained EU legislation and will be underpinned by a range of MoUs and concordats. It will be some time before all of this Framework is in place, I will write to the Committee with further details when available.

Access to British Fisheries

The Fisheries Bill consolidates and clarifies a range of legislation relating to the licensing of fishing vessels, making clear each administration is responsible for the licensing of its own vessels. The Bill revokes the automatic access of EU vessels to UK waters, reflecting new arrangements whereby access to British Fisheries will be controlled through annual Coastal States negotiations. The Bill provides powers to Welsh Ministers to license foreign fishing vessels within Wales and the Welsh zone.

However, in preparation for a possible exit before the UK Fisheries Bill receives Royal Assent, the Fisheries Administrations have introduced secondary legislation to allow us to control foreign vessels in UK Waters in the interim. Officials are considering what necessary amendments will need to be made to the UK Bill as a result of the introduction of these Statutory Instruments.

Whatever the mechanism, the practical administration of foreign fishing vessel licensing will be undertaken by a Single Issuing Authority (SIA). The SIA will provide a single point of contact for foreign vessels and, for European Member States and the Commission. The intention is the SIA will act on behalf of the Welsh Ministers in relation to the licensing of foreign fishing vessels in Wales and the Welsh zone.

Our ability to set appropriate license conditions within Welsh waters will not be affected by this proposed delegation of administrative functions in relation to the issuing of licenses to foreign vessels.

Discussions on the establishment of the SIA remain ongoing. I would be happy to update the Committee at the appropriate time, including any details of financial implications for Welsh Government.

Fishing opportunities and quota share

I have consistently said I want Welsh fishers to receive their fair share of fishing opportunities within Welsh waters. I have written to UK Ministers expressing my views and I will continue to press for a better settlement. Any rebalancing of the share of fishing opportunities between the UK and EU following our exit from the EU should be used to redress this imbalance.

Financial assistance powers and future funding

We are working with UK Government and the other Devolved Administrations to identify scope to maximise the economic growth of the UK's marine sectors. This work will guide policy in how best to support the sustainable growth of the different industry sectors in a strategic and streamlined way.

Access to markets

Welsh Government is working with industry to grow the Welsh fisheries industry, through the industry led Wales Seafood Strategy.

International markets – careful consideration needs to be given to the fact most of the seafood produced in Wales is exported alive therefore freight times are a consideration for target markets. There are also cultural and religious considerations. Welsh Government promotes its seafood to a global market the largest global seafood trade show in Brussels annually and also through targeted trade missions: 2017 – China, 2018 - Hong Kong.

Domestic markets - the seafood species routinely caught in Wales are not normally those eaten in Wales and the UK and as such it would take a multi-generational change in eating habits to replace the international markets with domestic markets. However, any new quota regime may see a change in species caught and Welsh Government will need to be agile in assisting the industry to establish markets for these products.

Brexit and our seas and future fisheries policy

Brexit and our seas is intended to start a conversation and to inform our future fisheries policy. In order to undertake a meaningful consultation exercise in this respect we first need a better picture of the fisheries management arrangements that will be in place post EU exit. Consequently, the consultation will be published when I am confident we can reflect the latest position.

Regards,

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in black ink and is positioned above the printed name and title.

Lesley Griffiths AC/AM

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

Welsh Government response to the Constitutional and Legislative Affairs Committee report (published 12 February 2019) on the Welsh Government's Legislative Consent Memorandum on the Fisheries Bill

CLAC Recommendation	Welsh Government Response
<p>Recommendation 1</p> <p>During the debate on the consent motion in respect of the Legislative Consent Memorandum, the Minister should explain her views about the amount of legislative power being provided to the Welsh Ministers through the UK Government's Fisheries Bill.</p>	<p>Accept</p> <p>The First Minister has written to the Climate Change, Environment and Rural Affairs Committee in general terms on this matter. However, I am happy to explain the Government's view on this during the debate also.</p>
<p>Recommendation 2</p> <p>The Minister should write to this Committee to:</p> <p>(i) clarify which provisions within the Bill are necessary solely for the purpose of providing a common UK legislative framework;</p> <p>(ii) clarify which provisions within the Bill (and the legislative competence of the Assembly) are not necessary for the purpose of providing a common legislative framework and in each case the reason for their inclusion;</p> <p>(iii) confirm that it is her intention to bring forward a Welsh Fisheries Bill as soon as possible;</p> <p>(iv) explain how a Welsh Fisheries Bill will work with the UK Fisheries Bill, particularly in the context of the common framework.</p>	<p>Accept</p> <p>(i) Clauses 1 – 6 and Schedule 1 are all in relation to Joint Fisheries Statement. Clauses 9 – 17 and Schedules 2 and 3 are providing common licencing powers, setting clearly who is responsible for licencing which vessels, other provisions within the Bill are necessary for the functioning of the framework, Clauses 31 – 38 and Schedule 6.</p> <p>(ii) Brexit has created an urgency to ensure immediate arrangements are in place while preserving our ability to create new systems in the future.</p> <p>At present the Assembly only has legislative competence for fisheries matters in relation to Wales (i.e. the first 12 nautical miles of territorial sea). The Welsh Ministers' Executive Competence in this area, however, extends to both Wales and the Welsh zone. In order to make appropriate provision in primary legislation at this stage, therefore, it was necessary to proceed with the provisions in the UK Fisheries Bill. The Welsh Government has been able to secure the additional legislative competence for the Assembly via the UK Fisheries Bill and, consequently, the Assembly will not suffer with this restriction on its legislative competence as we move</p>

	<p>forward.</p> <p>I see the Welsh provisions, not related to the common framework, as transitional subject to the introduction at the appropriate time of a Welsh Fisheries Bill which is able to include provisions which apply to both Wales and the Welsh zone and Welsh fishing Boats beyond that zone</p> <p>Schedule 4 provides Welsh Ministers with the power to create financial assistance schemes in relation to Wales. Schedule 7 provides powers to Welsh Ministers via amendments to the Marine and Coastal Access Act 2009 in relation to the exploitation of the sea fisheries resources. Neither of these provisions could have been included in a Welsh Fisheries Bill at this time as both provisions have elements which apply in the Welsh zone beyond Wales for which the National Assembly for Wales currently has no competence.</p> <p>(iii) In regards to a Welsh Fisheries Bill, it is likely we will at some stage need to make further fisheries provisions in a Welsh Act. The powers we are seeking in this UK Fisheries Bill are needed as soon as possible in order to ensure that the operation of Welsh fisheries is as effective as possible. However, until the UK Fisheries Bill has passed through Parliament it is difficult to commit to a timetable. We are dependent on a number of provisions, and in particular the extension of the Assembly’s legislative competence.</p> <p>(iv) It is difficult to give a firm answer to this at this time. The final provisions of the UK Fisheries Bill are not yet know but any gaps which become apparent as we move post-Brexit (and having secured the additional legislative competence) can then be dealt with via a Welsh Fisheries Bill.</p>
<p>Recommendation 3</p> <p>The Minister should seek an amendment to the UK Fisheries Bill to insert a sunset clause in order to ensure there is future clarity about the application of primary legislation on fisheries in Wales.</p>	<p>Reject</p> <p>I see the Welsh provisions, not related to the common framework, as transitional until a Welsh Fisheries Bill is introduced. As and when the future direction of Welsh fisheries management becomes clear, further analysis of the necessary primary powers</p>

	<p>can be undertaken and it will only be appropriate to consider the terms of a Welsh Fisheries at this stage.</p> <p>In addition, as I note above, until the UK Fisheries Bill has passed through Parliament it is difficult to commit to a timetable. We are dependent on a number of provisions, and in particular the extension of the Assembly’s legislative competence. Currently this is to be commenced by the Secretary of State by an Order. I am seeking for this to be commenced automatically.</p> <p>My position remains therefore it is not appropriate for a sunset clause to be included in the Bill (given the current uncertainties regarding the future management of Welsh fisheries) but I restate my commitment to bring forward Welsh legislation as soon as possible.</p>
<p>Recommendation 4</p> <p>The Minister should provide an update to the Committee about progress on resolving the Welsh Government’s concerns with clause 18 of the UK Government’s Fisheries Bill, including an explanation of whether the inter-governmental agreement spoken of is likely to be put in place and, if so, if it would, in effect, allow UK Ministers to act in devolved areas without any scrutiny by the National Assembly.</p>	<p>Accept</p> <p>This is a red line for me and we have sought for amendments to the Bill on this matter. We have been unable to reach agreement with the UK Government on an amendment which would expressly resolve this matter. However, I am happy we have made progress on the matter (described below) and I am content with the approach we have agreed with UK Government.</p> <p>To overcome the concerns raised, my officials have worked with Defra to obtain further reassurances. I have reached an agreement with the Secretary of State for Environment, Food and Rural Affairs to set out in the Fisheries MoU, more detail on the intended use of the power and strengthened consultations processes. This will align the work already underway on establishing an agreed Dispute Resolution Mechanism. Officials are working together, as a matter of priority, to agree the detail needed. I intend to share the outcome of these discussions in advance of the debate on the consent motion.</p>
<p>Recommendation 5</p> <p>The Minister should work towards including a legislative provision for a dispute</p>	<p>Reject</p> <p>I do not accept a legislative provision is necessary on this matter. However, it is</p>

<p>resolution mechanism within the UK Government's Fisheries Bill and keep the Committee updated with detailed information about her discussions with the UK Government about such provision.</p>	<p>imperative we have a fit for purpose dispute resolution mechanism in place. As such, an intergovernmental dispute resolution mechanism is being taken forward within the parameters of existing and emerging intergovernmental agreements and ways of working. Welsh Government officials are working with UK Government and Devolved Administrations on the final mechanism and further detail on the outcome of discussions on this will be made available to the Committee as soon as possible.</p>
<p>Recommendation 6</p> <p>As regards notifying the National Assembly of regulations made by the UK Ministers in devolved areas under the Fisheries Bill, once enacted, the Minister should commit to following an equivalent procedure to that set out in Standing Order 30C.</p>	<p>I note the Committee's recommendation and will give it further consideration and respond in due course.</p>
<p>Recommendation 7</p> <p>The Minister should ensure that the information requested in recommendations 2, 4 and 5 should be provided to the Committee in good time before a legislative consent motion seeking the consent of the Assembly in respect of provisions in the UK Government's Fisheries Bill is debated. Progress on implementing recommendations 3 and 6 should be provided during the debate on the legislative consent motion.</p>	<p>Accept</p> <p>It is my intention to provide all of the information requested on all recommendations in good time before a legislative consent motion seeking the consent of the Assembly, to enable full consideration by Members in advance of the debate.</p>