Cynulliad Cenedlaethol Cymru

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig

National Assembly for Wales

Climate Change, Environment and Rural Affairs Committee

Lesley Griffiths AM Minister for Environment, Energy and Rural Affairs

5 April 2019

Dear Lesley

Thank you for your letter, dated 27 March and your response to the Committee's report on the Legislative Consent Memorandums ('LCMs') for the Fisheries Bill.

The Committee considered your response at its meeting on 3 April and agreed I should write to you to follow up on a number of issues.

The need for legislation and the approach taken (Conclusions 1 to 6)

Conclusion 1: The Welsh Government should explain why it has not been able to fulfil commitments it has previously given to this Committee in relation to the development of UK common frameworks. In particular, it should explain why the UK Bill was not developed in collaboration and why stakeholders were not involved at a sufficiently early stage in its development.

While your response makes clear you are satisfied that you have fulfilled the commitments you previously gave in relation to the development of the UK frameworks, it does not address the specific issue of the lack of stakeholders' involvement in the development of the UK Bill.

1. We would like you to address this outstanding issue in your response to this letter. Can you provide examples of how stakeholders were involved in the development of the UK Bill. Please specify who those stakeholders were and how they were involved.



Conclusion 3: The Welsh Government has not explained the purpose and effect of these additional provisions. As such, we are not yet convinced that the Welsh Government has provided adequate justification for the additional powers it is seeking via the UK Bill.

Conclusion 4: The Welsh Government should explain the purpose and intended effect of the executive powers for Welsh Ministers in Schedules 4, 6 and 7. It should identify which of these powers are time-critical, and whether any of the powers could reasonably be deferred until the Assembly's competence has been extended to allow for a future Welsh fisheries Bill to be introduced.

Although you have accepted Conclusions 3 and 4, your response is not as comprehensive as we would have expected. It appears to repeat much of the information already set out in the LCM and in your evidence to us, without expanding on the detail.

2. Can you provide a more detailed explanation of the purpose and intended effect of the executive powers beyond that already included in the LCM and in your evidence to the Committee .This should distinguish between new and existing powers.

In responding to our request for clarification on which of the powers are time-critical, you state:

"The powers provided in the UK Bill may need to be exercised on day 1 after exit from the EU or very shortly afterward", and could not wait for a Welsh fisheries Bill. The alternative would be to rely on the Secretary of State to legislate for Wales in the Welsh zone in the intervening period."

We note, however, that the Welsh Government has recently made secondary legislation in relation to fisheries on the basis that the UK Fisheries Bill may not have passed through Parliament before EU exit. This includes legislation to prohibit foreign fishing vessels from fishing in Welsh waters without a licence.

3. Can you clarify which of the specific powers provided may be needed in the immediate post-Brexit period.

Conclusion 5: The Welsh Government should give a commitment that time will be made available in the legislative programme for a Welsh fisheries Bill to be brought forward and passed before the end of the Fifth Assembly.

You have told this Committee that you fully intend that a Welsh Fisheries Bill will be passed before the end of this Assembly. However, you have rejected Conclusion 5 on the



basis that "it is difficult to commit to a timetable...until the UK Fisheries Bill has passed through Parliament". You will shortly be asking the Assembly to give up its legislative powers, so that the UK Parliament can legislate in this area. You have told us this is for transitional purposes. We believe it is incumbent on you to explain to the Assembly when these transitional arrangements will be replaced by a Welsh Bill. Given that we are approaching the fourth year of the Fifth Assembly, we remain concerned that there will be insufficient time remaining in this Assembly to legislate for future fisheries policy in Wales.

4. Can you clarify when you will be in a position to notify us of your intention to bring forward a Welsh Bill.

Access to British fisheries (Conclusions 12 to 15)

Conclusion 13: The Welsh Government should provide further details on the proposal for the Marine Management Organisation to issue a single licence to foreign fishing vessels. The Welsh Government should clarify how this would impact on its power to grant licences, in particular, the ability of Welsh Ministers to impose specific licence conditions on foreign fishing boats in relation to the Welsh zone. For example, to require onboard CCTV monitoring.

In your response, you explain that the practical issuing of licenses will be undertaken by a Single Issuing Authority, namely the MMO, but that "it will be for the Welsh Ministers to set appropriate and proportionate licence conditions in relation to Wales and the Welsh zone". We welcome this clarification. However, your response does not include details on how and when the Welsh Ministers will set licensing conditions for foreign vessels.

We note that, in preparation for a possible EU exit before the UK Bill receives Royal Assent, you have recently made secondary legislation for the purpose of controlling foreign vessels in Welsh waters post-Brexit. The Explanatory Memorandum accompanying that legislation states:

"It is intended that foreign vessels will comply with the same standards applied to the domestic fleet, along with additional requirements such as catch and position reporting."



5. Can you provide further details, beyond those set out above, on how and when these additional requirements will be determined.

Fishing opportunities and quota share (Conclusions 16 to 20)

Conclusions 16 to 20 called for the following:

- further action to rebalance the fundamental unfairness in the allocation of the UK quota, in particular, additional amendments to Article 17 of the Common Fisheries Policy regulations and a review of the Fisheries Concordat (Conclusions 16 and 17);
- new quota should be allocated in accordance with environmental, social and economic criteria, with a view to addressing the imbalance in Wales' quota share (Conclusion 18);
- an amendment to the UK Bill to address concerns about the extent of the Secretary for State's powers in relation to the determination of fishing opportunities (Conclusion 19); and
- clear evidence of the steps the Minister is taking to secure improvements in Wales' quota share (Conclusion 20).

While you have accepted these (or in the case of Conclusion 17, accepted in principle), the narrative does not reflect this.

You state that "Article 17 does not require amendment for the UK to move away from the use of historic catches as the main criteria for allocation. Article 17 provides a range of considerations."

While we acknowledge this, we heard in evidence that the application of Article 17 is problematic and the fact that there is no requirement to use environmental, social and economic criteria when allocating quota means there is an over reliance on the historic catch criteria for allocating quota. Consequently, we called for amendments to be made to Article 17 to address this, which you have not accepted. Instead, you state that "any new approach [to allocation] must be fair and sustainable in line with the Well-being of Future Generations (Wales) Act 2015". It is unclear what this will mean in practice.

6. Can you provide the Committee with details of any consultation you have undertaken with stakeholders on these provisions.

In your covering letter, you refer to correspondence with UK Ministers in which you express views on the need for "a better settlement" for Welsh fishing opportunities.



- 7. We would like you to share that correspondence, and any responses received, with the Committee to enable us to understand more fully what you consider will be a "better settlement" for Welsh fisheries.
- 8. We would like you to explain what aligning the approach to allocation with the Future Generations (Wales) Act 2015 will mean in practice.

We note that you are already in discussion with the UK Government and the other devolved administrations "on a number of matters [in relation to allocation] where [you] will be looking for change". However, no further detail is provided. We would like you to provide further details on these matters.

- 9. We would like you to share with us any recent correspondence with the UK Government in relation to Wales' quota share, and any responses received.
- 10. We would like to confirm that you are actively pursuing with the UK Government and the other devolved administrations a move away from the use of historic catches as the main determination for quota allocations.

Financial assistance powers and future funding (Conclusions 21 to 24)

Conclusion 23: The Welsh Government should seek a commitment from the UK Government that future funding arrangements for the fisheries sector will be developed in partnership with the devolved administrations and that there will be parity of esteem between partners. It should also seek a commitment that the level of funding should take account of any additional costs arising from the UK Bill.

Conclusion 24: The absence of financial information risks misleading the Assembly about the potential financial implications arising from the legislation. The Welsh Government must address this matter. If it will not do so, we will request that the Finance Committee consider this and, if necessary, bring forward appropriate amendments to Standing Orders.

In responding to the above conclusions, you state:

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



11. We seek further assurance from you that the Welsh fisheries sector will not face any reduction in funding as a result of Brexit.

We note that you have rejected Conclusion 24 on the basis that the Welsh Government has complied with the requirements relating to the LCM procedure. You point out that the Committee could have requested additional financial information during the scrutiny process.

- 12. Can you provide details of any work you have undertaken to assess the costs of the implementing the provisions within the UK Bill.
- 13. Can you provide details of your latest assessment of the financial implications arising from the UK Bill.

We are pleased that you have accepted the majority of the Committee's suggestions for amendments to the UK Bill.

- 14. We would like you to update us on any progress made in securing agreement from the UK Government to amendments in relation to the following:
 - a requirement to review the fisheries objectives (Conclusion 8);
 - a requirement for the fisheries policy authorities to report to the relevant legislature on progress made in policy implementation and in delivering the fisheries objectives (Conclusion 10); and
 - a requirement on the Welsh Ministers to consult on proposals for any future financial assistance scheme established under Schedule 4 (Conclusion 21).

We understand that the Plenary debate on the LCMs has yet to be scheduled. Pending your response to the above issues, and time permitting, we may wish to publish a supplementary report to help further inform the debate.

I should be grateful if you could respond as soon as possible, and by **24 April**, at the latest.

Yours sincerely,



Mile Medges

Mike Hedges AM

Chair of Climate Change, Environment and Rural Affairs Committee



Lesley Griffiths AC/AM Gweinidog yr Amgylchedd, Ynni a Materion Gwledig Minister for Environment, Energy and Rural Affairs



Ein cyf/Our ref: LG/0374/19

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April 2019

Dear Mike

Climate Change, Environment and Rural Affairs Committee report on the Legislative Consent Memorandum in relation to the UK Fisheries Bill – follow up letter

Thank you for your letter dated 5 April, following the consideration by the Committee of the Welsh Government's response to your report on the UK Fisheries Bill LCM. I have set out responses to your questions below.

The need for legislation and the approach taken

1. We would like you to address this outstanding issue in your response to this letter. Can you provide examples of how stakeholders were involved in the development of the UK Bill? Please specify who those stakeholders were and how they were involved.

This is a UK Government Bill and Defra published their white paper consultation titled the Sustainable fisheries for future generations on 4 July 2018, prior to the Bill being introduced in October 2018. The summary of responses document notes in total 34,667 responses were received.

These consisted of:

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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.

- 34,440 campaign responses (comprising of campaigns from Greenpeace, Marine Conservation Society, Whale and Dolphin Conservation and Angling Trust)
- 227 individual responses

At the inter-government level, we continue to develop the framework, which sets the high level framework and engagement and working arrangements between governments.

The Joint Fisheries Statement (JFS) in particular, is the key mechanism for stakeholders to engage to inform and shape our policies for delivering the fisheries objectives. A detailed and inclusive approach to stakeholder engagement on the development of the JFS is currently being drawn up and information on this will be made available as soon as possible.

2. Can you provide a more detailed explanation of the purpose and intended effect of the executive powers beyond that already included in the LCM and in your evidence to the Committee? This should distinguish between new and existing powers.

As you know the timing for the UK's exit from the EU has now been put back to October 2019, unless a deal can be reached sooner. The latest information from UK Government is the Bill is unlikely to be given Parliamentary time until a deal with Europe has been reached. This could, of course, change. The Bill continues to evolve and I commit to making further information available, at the appropriate time in the Bill's progression through Parliament, to ensure the Committee and the Assembly are provided with the necessary information to make their consent decision.

I expect there will be further amendments to the Bill, which relate to Wales. Following this, a further Supplementary Legislative Consent Memorandum will be laid for Assembly scrutiny.

In addition to the Supplementary Legislative Consent Memorandum, I will provide a paper covering all the Bill provisions which will explain the purpose and intended effect of the executive powers within the Bill in greater detail.

3. Can you clarify which of the specific powers provided may be needed in the immediate post-Brexit period?

I restate the uncertain future we have ahead of us. It is wise to seek these enabling powers now to achieve parity with the other Fisheries Administrations and enable us to respond to the emerging situation, whether these powers are needed immediately on EU Exit or on a longer term basis. The intention is these powers will be transitional. A Welsh Fisheries Bill (once the National Assembly for Wales has secured the extension to the Assembly's Legislative Competence via the UK Fisheries Bill) will provide an opportunity to refine powers to better fit the fisheries management challenges which will become clearer after we exit the EU. In summary, with regard to the need to use the powers in schedules 4, 6 and 7 immediately post Brexit:

<u>Schedule 4</u> – It is possible a scheme could be introduced once we leave the EU, depending on timescales and circumstances. My officials continue to work closely with Defra and the other Devolved Administrations to consider future schemes and funding mechanisms for the fishing industry going forward.

<u>Schedule 6</u> – this Statutory Instrument making power is necessary given the uncertainty of what we will face as we exit the European Union. It may be necessary to make secondary legislation, in unforeseen circumstances. It would be unwise to constrain ourselves (and place ourselves at a disadvantage in comparison to the other UK fisheries administrations) by not including this in the UK Bill and making it available at the earliest opportunity.

Schedule 7 — these powers will form part of our fisheries management toolkit and could be used immediately or soon after depending on pressures arising. These powers will also ensure the position in the various UK Fisheries Administrations remains parallel. The alternative could result in a situation where England, Scotland and Northern Ireland are able to take action to (for example) protect an area of sea but the Welsh Ministers are without the necessary enabling power until a Welsh Fisheries Bill could be brought forward. It seems unwise to take the risk when the UK Fisheries Bill presents an appropriate legislative vehicle to provide the necessary powers. I am also seeking an amendment to enable the Welsh Ministers to exercise the powers in the new section 134A and B of the Marine and Coastal Access Act 2009 (inserted by Schedule 7 to the UK Fisheries Bill) in emergency situations (removing the requirement to consult, only where absolutely necessary). These powers are important to act quickly to sustainably manage our fisheries in Wales and the Welsh Zone.

4. Can you clarify when you will be in a position to notify us of your intention to bring forward a Welsh Bill?

The First Minister will make his annual statement on the legislative programme before summer recess. As he stated in his letter to you of 22 March, it is clear we will need to put provisions onto the Welsh statute book and the intention is the UK Fisheries Bill powers will be transitional until we understand better what powers will be necessary post EU-exit and, at this stage, any additional powers can be put in place via a Welsh Fisheries Bill (once we have secured the extension to the Assembly's Legislative Competence via the UK Fisheries Bill). The UK Fisheries Bill will not lead to the Assembly giving up any legislative powers. In fact, the UK Fisheries Bill will lead to an extension of Assembly Legislative Competence in relation to this subject. It will then be within the remit of any future Welsh Fisheries Bill to adjust any of the powers included in the UK Fisheries Bill and provide such new powers as may prove necessary. At present, for reasons of both timing and current restrictions on the Assembly's Legislative Competence in this area, we are dependent on a number of the UK Fisheries Bill provisions (in particular the extension of the Assembly's legislative competence). However, until the Bill has passed through Parliament and the developing post EU-exit position becomes clearer it is difficult to commit to a timetable for a Welsh Fisheries Bill.

Access to British fisheries

5. Can you provide further details, beyond those set out above, on how and when these additional requirements will be determined?

At the point we exit the EU, and are no longer bound by the Common Fisheries Policy, the new licensing system for foreign vessels will be launched. The current intention is, the Single Issuing Authority will be acting on behalf of the Welsh Ministers in licensing foreign fishing vessels and seeking authorisation for any Welsh vessels who wish to fish in European waters. The licence will reference licence conditions for each of the four fisheries administrations. The licence conditions for Welsh waters, which set the rules for how vessels fishing in our seas operate, will be set and managed by Welsh Ministers. The Welsh Ministers will be responsible for each licensing decision made in relation to relevant boats. Welsh Government Officials are currently working with officials from the other Devolved Fisheries Administrations and the Marine Management Organisation (which, is intended to be the host organisation for the Single Issuing Authority) in order to develop any additional requirements which may be considered necessary. The intention is for the necessary licence conditions to be made available on the Welsh Government website, and these will be regularly updated.

Fishing opportunities and quota share

6. Can you provide the Committee with details of any consultation you have undertaken with stakeholders on these provisions?

This is a UK Government Bill and they carried out consultation with stakeholders, in advance of introducing these Bill provisions.

The Welsh Government position on the share of quota is our small scale low impact fisheries have been disadvantaged for too long. The Well-being of Future Generations (Wales) Act 2015 is clear; we need to ensure coastal communities see value in the fish off their shores both now and for future generations.

There is an opportunity for the UK Government in its future negotiations with the EU, to win a greater share of fish which could be used to rebalance fishing opportunities to allow small scale coastal fleets to become more economically sustainable and investible.

The Welsh Government has been pushing the UK Government throughout these processes for a fairer share of fishing opportunity. We have made it clear we consider there is a fundamental imbalance to quota in the UK and will continue to press the UK Government to address this matter.

- 7. We would like you to share that correspondence, and any responses received, with the Committee to enable us to understand more fully what you consider will be a "better settlement" for Welsh fisheries.
- 8. We would like you to explain what aligning the approach to allocation with the Future Generations (Wales) Act 2015 will mean in practice.
- 9. We would like you to share with us any recent correspondence with the UK Government in relation to Wales' quota share, and any responses received.
- 10. We would like to confirm that you are actively pursuing with the UK Government and the other devolved administrations a move away from the use of historic catches as the main determination for quota allocations.

I fully accept the need to rebalance the fundamental unfairness in the allocation of quota and I will continue to push for this. Discussions with the other UK fisheries administrations have begun and I can confirm I am committed to exploring all options with UK Government and will consider carefully which of these would best support the fishing industry in Wales whilst still supporting the sustainability of our stocks.

Alignment with the Well-being of Future Generations (Wales) Act 2015 (WFG Act) is about understanding the whole picture – having the science and evidence to know what resources and stocks are available to us, which are at risk, which have recovered and which can be exploited further. It's also about understanding the human element, what impact various policies have on fishing communities and coastal communities as a whole. It's about utilising all of this information to better inform policies and decision.

I have attached correspondence between myself and Michael Gove MP. Due to sensitivity markings, I am unable to share all correspondence relating to this matter. However, I have set out under question 6, what I consider a better settlement and unfair quota share to mean.

We are currently working with Natural Resources Wales to develop a Marine Evidence Strategy for Wales which will:

- provide a framework to support the collection of marine evidence for developing, implementing, informing and evaluating marine policies and programmes
- support wider engagement and understanding around the risks and opportunities in Welsh seas
- define high level, strategic marine evidence priorities for Wales and guide the implementation, monitoring and review of actions to meet those priorities
- improve collaboration and co-ordination of scientific knowledge, resources and communication
- help align and develop Wales' marine evidence capacity and promote innovation

Financial Assistance powers and future funding

11. We seek further assurance from you that the Welsh fisheries sector will not face any reduction in funding as a result of Brexit.

I expect the UK Government to honour its commitment to guarantee all of the current EU funding programmes in full once we exit the EU. In terms of all funding arrangements after we exit the EU, Welsh Government has been clear Wales must not receive a penny less as a result of exiting the EU.

- 12. Can you provide details of any work you have undertaken to assess the costs of the implementing the provisions within the UK Bill?
- 13. Can you provide details of your latest assessment of the financial implications arising from the UK Bill?

Work is underway to assess the full costs of the Bill. We do not have a final position yet given the evolving nature of the Bill and the impact of a further delay to EU Exit. However, I expect the Bill will have few immediate financial implications but are likely to be additional costs in providing new functions over the longer term. I will write to the Committee in advance of the debate to set out the financial implications for the Bill.

- 14. We would like you to update us on any progress made in securing agreement from the UK Government to amendments in relation to the following:
- a requirement to review the fisheries objectives (Conclusion 8);
- a requirement for the fisheries policy authorities to report to the relevant legislature on progress made in policy implementation and in delivering the fisheries objectives (Conclusion 10); and
- a requirement on the Welsh Ministers to consult on proposals for any future financial assistance scheme established under Schedule 4 (Conclusion 21).

Welsh Government officials continue to discuss this with Defra and the other Devolved Fisheries Administrations, and this is currently being taken forward within the remit of the Joint Fisheries Statement Working Group.

Lesley Griffiths AC/AM

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

The Rt Hon Michael Gove MP



From the Secretary of State for Environment, Food and Rural Affairs

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Lesley Griffiths AM Cabinet Secretary for Energy, Planning and Rural Affairs Welsh Government Cardiff **CF99 1NA**

9 December 2018

Dear Lesley.

I am writing to let you know that tomorrow the Government will announce that it is tabling an amendment to the Fisheries Bill and committing to extra funding for the fishing industry.

On Monday the Government will table an amendment which will enshrine its commitment to secure a fairer share of fishing opportunities for UK fishermen. The amendment would place a legal obligation on the government, when negotiating a fisheries agreement with the EU, to pursue a fairer share of fishing opportunities than the UK currently receives under the Common Fisheries Policy (CFP). This will give legal weight to our commitment to take back control of our waters and to secure a fairer share of fishing opportunities for the whole of the UK fishing industry.

I will also announce that the Government has committed £37.2 million of extra funding to boost the UK fishing industry during the Implementation Period. This will equate to around £2.4 million for Wales. It is in addition to the existing European Maritime and Fisheries Fund, which at €243m over seven years is, as you know, broadly equivalent to £32m a year. The funding will be delivered through the existing EMFF framework, so it will be provided to the sector using the current EMFF delivery mechanisms. The new funding will boost the industry as we become an independent coastal state, preparing the UK to receive a greater share of future fishing opportunities.

In addition to this I will announce that the Government will put in place new, domestic, longterm arrangements to support the UK's fishing industry from 2021, through the creation of four new schemes comparable to EMFF to deliver funding for each nation of the UK. The Welsh Government will lead on the scheme for Wales and details will be agreed at the 2019 Spending Review.

With every good wish,

Michael Gove



Lesley Griffiths AC/AM Gweinidog yr Amgylchedd, Ynni a Materion Gwledig Minister for Environment, Energy and Rural Affairs



Ein cyf/Our ref LG/02464/18

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January 2019

Dear Michael

Thank you for your letter of 9 December regarding an amendment to the UK Fisheries Bill and commitments for further funding for the industry.

Given the close working between our officials on finance in relation to our exit from the EU, I was very disappointed this was the first I have heard of the successor to the European Maritime and Fisheries Fund.

Any successor scheme must reflect the needs of the distinct fishing industry in Wales. You also recognise Wales will need to develop its own scheme to meet the unique demands of our industry. As a result, I expect to be fully involved in the Spending Review to enable us to put forward a robust case for a fair budget for Wales.

Whilst I welcome the further £2.4million funding, I fear this money will do little to aid the fishing industry in Wales, which, as a primarily small scale shellfish based industry, is dependent on continued unfettered access to EU markets. Securing continued access to the European market must be a priority in the exit negotiations. I am also concerned this funding is to be delivered through EMFF, a scheme which may not best align to our needs as we exit the EU.

In relation to the proposed amendment to the Fisheries Bill, as we set out in 'Securing Wales' Future', we want to see the Welsh fishing industry receive its fair share of fishing

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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.

opportunities in the future. Therefore, any increase in the UKs share must be used to address these historic imbalances.

Lesley Griffiths AC/AM

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