

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

Fisheries Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Fisheries Bill (the “Bill”) was introduced in the House of Commons on 25 October 2018. The most recent version of the Bill (following House of Commons Committee consideration) was published on 17 December 2018 and can be found at:

[Bill documents — Fisheries Bill 2017-19 — UK Parliament](#)

Policy Objective

3. The UK Government’s stated policy objectives are to take back control of UK seas following the UKs exit from the European Union, providing a replacement to the Common Fisheries Policy.

Summary of the Bill

4. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.
5. The Bill makes provision for:
 - policy objectives in relation to fisheries, fishing and aquaculture;
 - access to British fisheries;
 - the licensing of fishing boats;
 - the determination and distribution of fishing opportunities;
 - schemes to be established for charging for unauthorised catches of sea fish;
 - grants in connection with fishing, aquaculture or marine conservation;
 - the recovery of costs in respect of the exercise of public functions relating to fish or fishing;
 - to confer powers to make further provision in connection with fisheries, aquaculture or aquatic animals;
 - to make provision about byelaws and orders relating to the exploitation of sea fisheries; and for connected purposes.
6. The Bill also, at the request of Welsh Government, includes powers for Welsh Ministers.

Update on position since the publication of the first Legislative Consent Memorandum

7. The Welsh Government laid a Legislative Consent Memorandum in respect of the Bill on 15 November 2018, based on the version of the Bill as introduced to Parliament on 25 October 2018.
8. The Memorandum confirmed the Welsh Government was generally supportive of the Bill as drafted, other than Clause 18 (Power of Secretary of State to determine fishing opportunities). However, there were also two areas which had not been sufficiently addressed.
9. Firstly, the Bill did not address our concerns regarding the National Assembly's lack of Legislative Competence for fisheries matters beyond Wales (i.e. the National Assembly's legislative competence was not equivalent to the Welsh Ministers' executive competence in relation to fisheries matters). On 17 December, to address this issue, new clause 39 was agreed for inclusion in the Bill at Commons Committee stage and an explanation on this is covered in paragraphs 17 – 19 below.
10. Secondly, the Welsh Government wanted to see amendments to the Marine and Coastal Access Act 2009 ("2009 Act") included in the Bill which would allow Welsh Ministers to vary from time to time the conditions attached to any fishing permits issued by the Welsh Ministers pursuant to the 2009 Act. This will allow the Welsh Ministers to manage Welsh fisheries in a much more flexible and responsive way.
11. Welsh Government is in discussion with UK Government, with a view to securing an amendment on this matter at a later stage in the Bill process.
12. Clause 18 provides that the Secretary of State will set the total UK fishing opportunities (in terms of both the maximum quantity of sea fish and the maximum numbers of days that British fishing boats may spend at sea) only for the purposes of complying with international obligations in the UK. Whilst it is appropriate that the Secretary of State sets the overall total of fishing opportunities derived from coastal state negotiations when we leave the European Union, we noted we were not content with the drafting of clause 18 in the first Legislative Consent Memorandum relating to this Bill.
13. The UK Government view is clause 18 relates to international obligations which are reserved functions and a consent requirement is not therefore appropriate. Welsh Government remains of the view that it is appropriate for the UK Government to develop, refine and enter into international agreements, as it is a reserved matter. However, the implementation of international agreements in areas of devolved competence is not reserved, and falls within the Legislative Competence of the National Assembly for Wales. This was confirmed by the Supreme Court in *Reference of the UK Withdrawal from the EU (Legal Continuity) (Scotland) Bill* [2018] UKSC 64. As the term "International Obligations" (used in the Bill) is broad and may

cover the implementation of such an agreement, the Clause does impact on devolved competence and as such Assembly consent is required.

14. The exercise of this function will be subject (pursuant to clause 19) to a requirement to consult with the Welsh Ministers (and other UK fisheries administrations) and we also expect the exercise of this function to be subject to the Fisheries Management Framework Agreement which all of the UK fisheries administrations intend to agree as we exit the European Union.
15. Further amendments to the Bill are being discussed with UK Government. These include an amendment to the interim order making power set out in section 136 of the 2009 Act which would enable interim orders to be made by the Welsh Ministers for fisheries management purposes in situations that are not solely connected to protection of a Marine Conservation Zone (or a zone that may be designated as a Marine Conservation Zone). These no procedure Orders would allow Welsh Ministers to act quickly and responsively to prevent potential damage to our marine environment while more appropriate measures are developed in the usual way. This need to act quickly will be more acute once we exit the European Union and the Common Fisheries Policy no longer applies in Welsh waters.

Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required.

16. The following amendments which are relevant to Wales and are within the Legislative Competence of the National Assembly for Wales have been made to the Bill during Commons Committee consideration:
17. New clause 39 amends section 108A (legislative competence) of the Government of Wales Act 2006 (“2006 Act”) and makes a number of further consequential changes to the 2006 Act. A new section 108A(4A) is inserted which provides that references in subsections (2)(b) and (3) of section 108A to Wales includes the area of the Welsh zone in relation to fishing, fisheries or fish health. The effect is that, in relation to fishing, fisheries and fish health, the legislative competence of the National Assembly for Wales is extended to Wales and the Welsh zone.
18. The Welsh Government is of the view that the National Assembly for Wales can already (and will continue to be able to) legislate in relation to Welsh fishing boats beyond Wales on the basis that such legislation would be “in relation to Wales” for the purposes of section 108A(2)(b) of the 2006 Act.
19. Securing this amendment in the Bill is a significant constitutional step forward and will enable the National Assembly for Wales to bring forward an Assembly Fisheries Bill in relation to Wales, the Welsh zone and Welsh fishing boats beyond that zone in future.

20. Amendments to Clause 17 have been made so as to properly introduce the amended (and extended) provisions set out in Schedule 3 to the Bill.
21. New clause 41 makes a technical addition to the Bill by providing that any amendments to secondary legislation made by the Bill, and which could have been made under another enactment, have effect as if made under that enactment. The purpose of this provision is to ensure the amendment of statutory instruments by the Bill does not limit what can be done under the powers under which the instruments were originally made.
22. Paragraph 5 of Schedule 3 to the Bill (which makes consequential amendments to the Sea Fisheries (Conservation) Act 1967 (“1967 Act”) has been amended to make further changes to section 22 of the 1967 Act which provide that references to “British Fishing Boat” in that Act and subordinate legislation made under that Act will include a “foreign fishing boat”. This will ensure that the 1967 Act and any legislation already made pursuant to the same will apply equally to both domestic UK and foreign fishing boats.
23. New paragraphs 6 to 10 have also been added to Schedule 3 to the Bill in order to make consequential amendments (as a result of the repeal of section 4 of the 1967 Act by the Bill) to the Fishery Limits Act 1976, the Fisheries Act 1981, the Sea fish (Conservation) Act 1992, the Government of Wales Act 2006 and the Marine and Coastal Access Act 2009.
24. At the request of Welsh Government, a new paragraph 12 has been inserted into Schedule 3 to the Bill which amends the Sea Fishing (Licences and Notices) Regulations 1994 (S.I. 1994/2813) (“the 1994 Regulations”). The 1994 Regulations still apply in Wales but do not, presently, allow for changes in licences and notices to be notified to licence holders by publication on a website. The equivalent English, Scottish and Northern Irish Licences and Notices legislation has already been amended to this effect. This change is essential to the operation of the new fisheries management regime immediately following the coming into force of the relevant Bill provisions. The only practical way to ensure that the amendments to the 1994 Regulations come into force at the necessary time are to include these changes in the Bill. These and other essential changes (to ensure operability post coming into force of the new fisheries management regime) to the 1994 Regulations and the Regulations applying in England, Scotland and Northern Irish Licences and Notices are brought forward (following amendment) by Schedule 3 to the Fisheries Bill. Given the essential nature of both the proposed amendments to the 1994 Regulations and the timing of those amendments, the Welsh Government recommends that these changes are made in the UK Government’s Fisheries Bill.

25. Consent is required for the provisions because they modify the Assembly's legislative competence or because they fall within the Assembly's legislative competence.

Welsh Government position on the Bill as amended

26. Welsh Government welcomes the amendments made to the Bill during the House of Commons Committee consideration. Discussions continue with UK Government on some areas of the Bill, and if required, a further Supplementary Legislative Consent Memorandum will be laid.

Reasons for making these provisions for Wales in the Fisheries Bill

27. The Bill creates the primary legislative elements of the UK Framework for fisheries management and support post EU Exit. These provisions could only appropriately be applied through a UK Bill, providing a uniform set of powers, obligations and objectives.

Financial implications

28. There are no direct financial implications for Wales as a result of taking these provisions in this Bill.

Conclusion

29. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as there needs to be a UK wide approach to create the Fisheries Framework which can only be done in a UK bill.

30. The amendments made to the Bill to date and the expected positive outcome from ongoing discussions with UK Government, are expected to address the remaining concerns set out above and in the first Legislative Consent Memorandum.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
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