

The Welsh Government's Legislative Consent Memorandum on the Fisheries Bill

February 2019



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About the Committee

The Committee was established on 15 June 2016. Its remit can be found at:
www.assembly.wales/SeneddCLA

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Background

The Bill

Overview¹

1. The UK Government's Fisheries Bill² (the Bill) received its first reading in the House of Commons on 25 October 2018. The Committee Stage in the House of Commons ended on 17 December 2018. A further version of the Bill, as amended in Public Bill Committee, was published on 18 December 2018.³ The date of the House of Commons Report Stage is yet to be announced.

2. The explanatory notes to the Bill state that:

“The Fisheries Bill (the Bill) will provide the legal framework for the United Kingdom to operate as an independent coastal state under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) after the UK has left the European Union (EU) and the Common Fisheries Policy (the CFP). The Bill creates common approaches to fisheries management between the UK government and the Devolved Administrations, known collectively as the Fisheries Administrations, and makes reforms to fisheries management in England.”⁴

3. The legal background to the devolution of fisheries is explained in the explanatory notes. They state:

“Subject to very few exceptions, the devolved legislatures and administrations have legislative and executive competence in relation to fisheries and marine conservation in their territorial waters.

- The regulation of sea fishing in the Scottish zone and the regulation of Scottish fishing boats anywhere are devolved matters.
- The regulation of sea fishing in the Northern Ireland zone and the regulation of Northern Ireland fishing boats anywhere are

¹ Unless specifically stated otherwise in this report, the clauses referred to relate to the Bill on first reading in the House of Commons.

² [Fisheries Bill 2017-19, HC 278](#)

³ [Fisheries Bill 2017-19, HC 305](#)

⁴ UK Government, [Fisheries Bill: Explanatory Notes](#), October 2018, paragraph 1

devolved matters. In Northern Ireland, the foreshore and seabed are excepted matters.

- The regulation of sea fishing is devolved in the Welsh inshore area but the National Assembly of Wales does not have legislative competence in relation to fisheries in the Welsh offshore area. Fisheries is not reserved under Schedule 7A to the Government of Wales Act 2006. The regulation of sea fishing is not reserved so is devolved where provisions can be said to relate to Wales (which includes the inshore area). Welsh Ministers do have executive competence in relation to fisheries in the offshore region. The regulation of Welsh fishing boats anywhere is devolved, because Welsh fishing boats are registered in a Welsh port and can therefore be said to relate to Wales wherever they are fishing.

Subject to certain exceptions, the Devolved Administrations have devolved competence in relation to marine licensing in their inshore area and the Scottish Ministers and the Welsh Ministers have executive competence in relation to marine licensing in respect of their offshore area.

The Devolved Administrations have executive competence in relation to marine planning in their offshore area as well as competence over marine planning in their inshore area.”⁵

4. The Bill sets objectives for fisheries policy authorities, replacing the objectives currently in Article 2 of the CFP. Clauses 1 to 6 of the Bill set out fisheries objectives that the UK Government and Devolved Administrations must aim to achieve when setting out their policies in two new policy documents: a Joint Fisheries Statement (JFS) and the Secretary of State's Fisheries Statement (SSFS).

5. In particular, clause 2 defines the Welsh Ministers as “the fisheries policy authority” for Wales and clause 3 sets out that a JFS must be prepared by the fisheries policy authorities acting jointly, and the first JFS and SSFS must be prepared and published before 1 January 2021. The JFS must be laid in draft before each of the legislatures for scrutiny, and consulted on appropriately. Schedule 1 sets out how the JFS and SSFS are to be prepared and published.

6. Clause 6 requires the relevant national authorities (including the Welsh Ministers) to pursue the policies outlined in the relevant fisheries statements that

⁵ UK Government, [Fisheries Bill: Explanatory Notes](#), October 2018, paragraph 43

are applicable to them unless relevant considerations indicate otherwise. Clause 6(2) requires a relevant national authority to state its reasons if it does not take a decision in accordance with the JFS.

7. Clause 7 ends the current automatic rights for EU vessels to fish in UK waters, while clause 8 sets out the access arrangements for foreign fishing boats to British fisheries i.e. through a licence or “a purpose recognised by international law...”.

8. Clauses 9-17 and Schedule 2 broadly consolidate and clarify existing law with regards to the licensing of fishing boats, as well as making some policy changes. They provide changes to the current regime for the licensing of UK vessels, as well as making provisions for the licensing of non-UK fishing boats in UK waters. Clause 10 provides that it is a matter for each nation of the UK to license their own fishing vessels; so for example, the Welsh Ministers would be able to grant a fishing licence in respect of a Welsh fishing vessel.

9. Clause 18 sets out the power for the Secretary of State to set “fishing opportunities”, which are defined in the Bill as:

- the maximum quantity of sea fish that may be caught by British fishing boats;
- the maximum number of days that British fishing boats may spend at sea.

10. These functions are reserved to the Secretary of State for the “purpose of complying with an international obligation” of the UK. This clause replaces the current provision in EU law that allows the European Council to determine fishing opportunities in EU waters.

11. Clause 19 provides that a determination under Clause 18 can only be made after consultation with the Welsh and Scottish Ministers, Northern Ireland Department and the Marine Management Organisation (MMO).

12. Clause 20 of the Bill retains, subject to minor amendments, the criteria from Article 17 of the CFP to be considered when distributing fishing opportunities. For the purpose of clause 20, the “relevant national authorities” are the Secretary of State and the MMO. The explanatory notes accompanying the Bill state that Clause 20 does not apply Article 17 to the other Fisheries Administrations (including the Welsh Ministers), at their request. This means that the criteria in Article 17, as revised by Clause 20 of the Bill, only apply in England, so only the English fisheries authorities have to apply these criteria.

13. Clause 21 places a duty on relevant national authorities, including the Welsh Ministers, to exercise their fisheries functions so as to ensure that UK fishing opportunities are not exceeded.

14. Currently under the UK's membership of the EU and CFP, financial assistance is given through the European Maritime Fisheries Fund (EMFF). Clause 28 introduces Schedule 4, which gives the Welsh Ministers powers to give or arrange for financial assistance for any person for certain purposes, including for:

- the conservation, enhancement or restoration of the marine and aquatic environment;
- the promotion or development of commercial aquaculture activities or commercial fish activities;
- the reorganisation of businesses involved in commercial aquaculture activities or commercial fish activities;
- contributing to the expenses of persons involved in commercial aquaculture activities or commercial fish activities;
- the promotion or development of recreational fishing.

15. Paragraph 2 of Schedule 4 states that financial assistance must be given in accordance with a "scheme established by regulations made by the Welsh Ministers". These powers are available in relation to Wales, the Welsh zone, or Welsh fishing boats.

16. Clause 31 gives broad powers to make provisions on matters currently regulated by the EU under the CFP. These are:

- for the purpose of implementing an international obligation of the United Kingdom relating to fisheries, fishing or aquaculture;
- for a conservation purpose; or
- for a fish industry purpose.

17. A "conservation purpose" and "a fish industry purpose" are defined, and the Clause lists the matters that the regulations must be related to.

18. Clause 33 provides regulation-making powers for the Secretary of State in order to make provision regarding aquatic animal diseases.

19. The Welsh Ministers must be consulted before the Secretary of State makes any provisions under Clauses 31 and 33, and provide consent in certain circumstances.

20. Clause 37 introduces Schedule 6, which provides the Welsh Ministers with corresponding regulation-making powers in relation to both Clauses 31 and 33. Paragraph 7(3) of Schedule 6 limits those regulation-making powers of the Welsh Ministers to making provisions which are within the legislative competence of the National Assembly for Wales. Equally, the Welsh Ministers must consult the other fisheries policy authorities, and any other appropriate persons, before making provisions under these Clauses.

21. Clause 38 introduces Schedule 7, which confers powers on the Welsh Ministers to make Orders in relation to the exploitation of sea fisheries, and the impact of fishing on marine conservation. These provisions replace EU measures for the protection of the marine environment in Member States' offshore zone. By amending the *Marine and Coastal Access Act 2009*, the Bill permits the Welsh Ministers to make Orders in relation to Wales and the Welsh offshore area for conservation purposes.

22. There are several differences between the Welsh Government and the UK Government regarding the provisions for which the National Assembly's consent is required. The UK Government's view is that the legislative consent process will be engaged for clauses 1 to 17, 21, 29 to 43, Schedules 1 to 4, and Schedules 6 and 7.⁶ The Welsh Government does not acknowledge that clauses 29, 32, 36, 39-43 and Schedule 3 require consent but believes that clauses 18 to 20 and clause 28 require consent. This difference of opinion is considered later in the report.

Regulation-making powers

23. The UK Government's Delegated Powers Memorandum outlines the regulation-making powers in the Bill.⁷ It confirms the powers for Ministers of the Devolved Administrations:

“Fisheries is a devolved matter and the Bill contains a number of powers which will be exercisable by the Devolved Administrations as well as by the Secretary of State. To support a consistent approach to fisheries management across the UK, it also contains some powers which are exercisable by the Secretary of State in relation to devolved

⁶ UK Government, *Fisheries Bill: Explanatory Notes*, October 2018, paragraph 60 and Annex A

⁷ UK Government, *Fisheries Bill: Delegated Powers Memorandum*, October 2018

matters – but with the consent of the Devolved Administrations. The Bill also extends the powers of the MMO to make byelaws to control the impact of fishing on the marine environment and confers equivalent powers on Scottish Ministers and Welsh Ministers.”⁸

24. With regards to the purpose of the delegated powers, the Delegated Powers Memorandum states:

“The Bill will create a dynamic fisheries regime. The Department recognises that, in order to do this, the Bill contains a number of broad delegated powers but has considered the scope of these powers very carefully. It has sought to balance the need for powers broad enough to allow us to react quickly to changes in the international fisheries management regime and to scientific advice against the need for effective Parliamentary oversight. It has considered carefully the nature of the powers being sought. Many fisheries measures are highly technical and in the Department’s view they are best dealt with in future secondary legislation. Others will be of more interest to Parliament and the Bill recognises this. By setting out the power of the Secretary of State to determine the UK’s fishing opportunities, it constrains what is currently a prerogative power. The Bill also provides for scrutiny by Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, of a Joint Fisheries Statement which the UK Fisheries Administrations must adopt, setting out how their policies will achieve or contribute to the achievement of key UK fisheries objectives. It is UK Government policy to consult wherever appropriate but the Bill contains a number of provisions requiring consultation of the Devolved Administrations and of others likely to be affected by regulations made under the Bill.”⁹

25. The Bill provides regulation-making powers for the Welsh Ministers as follows:

Regulation-making power	Procedure that applies
Schedule 2 paragraph 7(1) (as introduced by clause 13)	Negative
Schedule 2 paragraph 7(3) (as introduced by clause 13)	Negative
Schedule 2 paragraph 7(5) (as introduced by clause 13)	Affirmative
Schedule 4 (as introduced by clause 28)	Affirmative
Schedule 6 (as introduced by clause 37)	Negative or affirmative

⁸ UK Government, [Fisheries Bill: Delegated Powers Memorandum](#), October 2018, paragraph 8

⁹ UK Government, [Fisheries Bill: Delegated Powers Memorandum](#), October 2018, paragraph 9

26. As regards the choice of procedure for regulations made under Schedule 6, the negative procedure applies so long as those Regulations do not:

- amend primary legislation;
- amend Article 17 of the CFP Regulation;
- impose fees;
- create a criminal offence or increase the penalty for or widening the scope of a criminal offence; confer functions on, modify functions of or relate to the management of producer organisations or inter-branch organisations.

27. The Bill therefore provides the Welsh Ministers with Henry VIII regulation-making powers under Schedule 6 that are subject to the affirmative procedure.

28. The Bill requires the Secretary of State to seek the Welsh Ministers consent to make regulations under clauses 9(3), 11(2), and, in some circumstances, clauses 31 and 33.

29. As currently drafted, the Bill proposes that regulations made under clause 18(8) are subject to the negative procedure.

The Welsh Government's Legislative Consent Memorandum

30. In accordance with Standing Orders 29.1 and 29.2, an Legislative Consent Memorandum (LCM) is required because provisions in the Bill modify or fall within the Assembly's legislative competence.

31. On 15 November 2018, the Cabinet Secretary for Energy, Planning and Rural Affairs¹⁰ laid before the National Assembly an LCM in respect of the Bill.¹¹

32. On 27 November 2018, the Business Committee referred the LCM to this Committee, the Climate Change, Environment and Rural Affairs (CCERA) Committee, and the External Affairs and Additional Legislation Committee for consideration. The Business Committee set a reporting deadline of 12 February 2019.¹²

¹⁰ Following a Welsh Government Cabinet reshuffle on 13 December 2018, the Cabinet Secretary for Energy, Planning and Rural Affairs became the Minister for Energy, Planning and Rural Affairs..

¹¹ Welsh Government, [Legislative Consent Memorandum, Fisheries Bill](#), November 2018

¹² Business Committee, [Timetable for consideration of the Legislative Consent Memorandum on the Fisheries Bill](#), November 2018

33. The Welsh Government's LCM states that:

“the Bill... at the request of Welsh Government, includes powers for Welsh Ministers.”¹³

34. The powers provided to the Welsh Ministers by the Bill are not time limited, as no sunset clause is currently included within the Bill.

35. Paragraphs 7 to 36 of the LCM set out the Welsh Government's assessment of which provisions in the Bill require consent.¹⁴

36. As set out in paragraph 21, there are differences between the view of the Welsh Government and the UK Government, regarding the provisions that require consent. The Welsh Government, in contrast to the UK Government, believes that clauses 18 to 20 and clause 28 require consent.

37. Paragraphs 37 to 42 of the LCM set out the Welsh Government's reasons why including provision for Wales in the Bill is appropriate:

“The Fisheries 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.

With exit from the EU in March 2019 there is no time for a suitable legislative vehicle to pass through the Assembly. Any such Assembly Bill would also only be able to deal with the necessary administrative arrangements in relation to Wales and the proposed UK Fisheries Bill provides powers for the Welsh Ministers in relation to Wales, the Welsh zone and Welsh fishing boats beyond that zone as appropriate.

With the current devolution arrangements an Act of the Assembly would not be able to make all of the provisions necessary for the coherence of the Bill. This would leave us relying in part on the UK Fisheries Bill and in part on a Welsh fisheries Bill.

Welsh Government is generally supportive of the Bill as drafted, other than clause 18. However, there are also two areas which have not been sufficiently addressed. Firstly the Bill does not address our concerns regarding the National Assembly's Legislative Competence for fisheries

¹³ Welsh Government, [Legislative Consent Memorandum, Fisheries Bill](#), November 2018, paragraph 6

¹⁴ Welsh Government, [Legislative Consent Memorandum, Fisheries Bill](#), November 2018

matters beyond Wales. Welsh Government are seeking to bring the National Assembly's competence in line with the Welsh Ministers' executive competence, which would make the introduction of pan UK frameworks less complex moving forwards.

Secondly Welsh Government would like to see the Marine and Coastal Access Act 2009 amended to allow Welsh Ministers to vary from time to time the conditions attached to any permits issued pursuant to the Act. Allowing us to manage our fisheries in a much more flexible and responsive way.

We continue to work with UK Government to resolve these and other issues and will bring forward supplementary Legislative Consent Memoranda as necessary.”¹⁵

38. On 10 January 2019, the Welsh Government laid a Supplementary LCM.¹⁶

39. The Supplementary LCM states that:

“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.”¹⁷

40. A new clause 39 was added to the Bill at committee stage, which amends section 108A of the Government of Wales Act 2006 (the 2006 Act), and makes a number of further consequential changes to the 2006 Act. These amendments widen the Assembly's legislative competence in respect of fisheries, fishing and fish health, so as to include the Welsh Zone. The Supplementary LCM states:

“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,

¹⁵ Welsh Government, Legislative Consent Memorandum, Fisheries Bill, November 2018

¹⁶ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.2), Fisheries Bill, January 2019

¹⁷ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.2), Fisheries Bill, January 2019. paragraph 26

fisheries and fish health, the legislative competence of the National Assembly for Wales is extended to Wales and the Welsh zone.

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.

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."¹⁸

41. The Supplementary LCM highlights amendments to the *Marine and Coastal Access Act 2009* that the Welsh Government want to be made by the Bill:

"... 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.

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."¹⁹

42. The Supplementary LCM also notes the disagreement between the Welsh Government and the UK Government in respect of Clause 18 of the Bill:

"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

¹⁸ Welsh Government, *Supplementary Legislative Consent Memorandum (Memorandum No.2), Fisheries Bill*, January 2019, paragraphs 17-19

¹⁹ Welsh Government, *Supplementary Legislative Consent Memorandum (Memorandum No.2), Fisheries Bill*, January 2019, paragraphs 10-11

not content with the drafting of clause 18 in the first Legislative Consent Memorandum relating to this Bill.

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."²⁰

Report by the House of Lords Delegated Powers and Regulatory Reform Committee

43. The House of Lords Delegated Powers and Regulatory Reform Committee published its report (the DPRR Committee's report) on the UK Fisheries Bill on 15 November 2018.²¹ Given the significance of the UK Fisheries Bill, the Delegated Powers and Regulatory Reform Committee reported in time for committee stage in the House of Commons, the same approach they adopted in relation to the European Union (Withdrawal) Bill and Agriculture Bill.

44. While acknowledging that the strategic aim of the Fisheries Bill is essentially the same as that of the Agriculture Bill, the DPRR Committee's report concludes that "... the Fisheries Bill is a major improvement on the Agriculture Bill so far as delegated powers are concerned".²²

²⁰ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.2), Fisheries Bill, January 2019, paragraphs 12-13

²¹ House of Lords, Delegated Powers and Regulatory Reform Committee, Fisheries Bill, 39th Report of Session 2017-2019, HL Paper 226, 15 November 2018

²² House of Lords, Delegated Powers and Regulatory Reform Committee, Fisheries Bill, 39th Report of Session 2017-2019, HL Paper 226, 15 November 2018, paragraph 2

Committee consideration

45. We took evidence from the Minister on 21 January 2019.²³

46. Our consideration of the LCM was also informed by correspondence between the Chair of the CCERA Committee and the Minister.²⁴

The lack of a written statement and impact assessments

47. Unlike with the UK Agriculture Bill, the Minister has not issued any official statements in relation to the Bill. When we asked why this was she said:

“...they’re two very different Bills ... They’re quite often conflated and compared in a way that they shouldn’t be because, again, they’re very different. Agriculture’s very different to fisheries management, so I don’t think we can compare them. So, I think we’re in a very different space with this Bill, which is why I haven’t made a statement as yet. And I think, because—and this sounds really obvious—the four countries share the same fish, we are much keener to work together to find a solution and to get the right framework in place.”²⁵

48. Furthermore, the Bill is not accompanied by publicly available impact assessments that comment on the provisions in the Bill as they relate to Wales.

The need for a UK Bill and working with the UK Government

49. The Bill creates the primary legislative elements of the UK Framework for fisheries management and support once the UK has left the European Union. As well as providing the Welsh Ministers with regulation-making and executive powers, the Bill contains some powers which are exercisable by the Secretary of State in relation to devolved matters to support the expressed aim of ensuring a consistent approach to fisheries management across the UK. However these powers are only exercisable with the consent of the Welsh Ministers.

50. In setting the context for the Bill, the Minister told us:

²³ Constitutional and Legislative Affairs (CLA) Committee, RoP, 21 January 2019

²⁴ [Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, 22 January 2019](#)

²⁵ CLA Committee, RoP, [34], 21 January 2019

“... the Bill as far as it relates to Wales is absolutely necessary for us to be able to manage our fisheries and our marine environment appropriately when we exit the EU.”²⁶

51. In a letter to the CCERA Committee the Minister said:

“The Bill provides a comprehensive suite of fishery management powers for the UK, including a wide range of powers for the Welsh Ministers. (...) 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. [New] Clause 39 of the Fisheries Bill provides for an extension of the Assembly’s Legislative Competence to the offshore area of the Welsh zone. (...) 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.”²⁷

52. We asked the Minister about the development of the Bill and the level of inter-governmental discussion and co-operation. The Minister told us:

“I think it’s probably safe to say we didn’t get off to the best start. Certainly, we weren’t involved in the drafting of the Bill. However, as soon as the Bill did come forward, we had then extensive engagement, particularly at an official level, but also at a ministerial level.

... I think we’ve been able to be much more influential and we’ve been able to bring forward changes to the Bill much easier than the previous one.”²⁸

53. She added:

“... I think the level of engagement was very good—much quicker than the Agriculture Bill; I think we learned lessons there. ... I think I’m much happier with the engagement in relation to this Bill.”²⁹

²⁶ CLA Committee, RoP, [29], 21 January 2019

²⁷ Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, 22 January 2019

²⁸ CLA Committee, RoP, [31], 21 January 2019

²⁹ CLA Committee, RoP, [31], 21 January 2019

54. During Second Reading in the House of Commons, the Secretary of State for Environment, Food and Rural Affairs, Michael Gove MP, paid tribute to the constructive manner of negotiations with the Welsh Government.³⁰

55. We asked the Minister whether there were any provisions in the Bill that do not relate to common frameworks but are within the National Assembly's legislative competence. However, we did not receive a particularly clear response.³¹

56. We did not take evidence from the Minister regarding clause 2, Schedule 1, clause 6 or clause 20 but note the following comments made in correspondence with the CCERA Committee, which highlight how the Bill has been prepared.

57. As regards clause 2, the Minister said:

“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 scrutiny of the Bill. It is understood that milestones you mention [for example in relation to Maximum Sustainable Yield] will be included in the Joint Fisheries Statement.”³²

58. In respect of clause 6, the Minister said:

“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.”³³

59. As with clauses 2 and 6, the Minister's letter to the CCERA Committee confirms the Welsh Ministers were not involved in drafting the Schedule 1 provisions:

“The provisions relating to schedule 1 were drafted by Parliamentary Council following instructions from UK Government. Welsh Minister were not consulted on the instructions. I am not aware of what

³⁰ House of Commons, Second Reading, Fisheries Bill, 21 November 2018, col 899

³¹ CLA Committee, RoP, [41], 21 January 2019

³² Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, 22 January 2019

³³ Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, 22 January 2019

consideration UK Government gave to [including provision for the approval of a JFS by the appropriate legislature]."³⁴

60. As we noted earlier, the Explanatory Notes accompanying the Bill state that Clause 20 does not apply Article 17 to the other Fisheries Administrations (including the Welsh Ministers), at their request. However, in her letter to the CCERA Committee, the Minister stated:

"...officials from the devolved administrations voiced a number of concerns about the inclusion of this provision in the Bill. (...) Our understanding is in practice, when allocating fishing opportunities, article 17 of the Common Fisheries Policy will not apply to Welsh Ministers. (...) 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."³⁵

61. Subsequently, the Minister told the CCERA Committee that the Welsh Government was seeking an amendment to clause 20 to apply Article 17 in Wales.³⁶ An official accompanying the Minister explained the position:

"What we were looking to do originally was not to have article 17, which is under clause 20, apply in Wales. Because we've got well-being of future generations, which really no-one else in the UK has, that can help inform how we move forward, how we make sure there's community benefit for how things are allocated, for example. But what that appears to have done is introduced a degree of confusion, because we need a consistent way of, at a high level, how we administer the distribution across the UK, because it's the same fish. So, what we're looking at at the moment is how we can reapply clause 20 to Wales."³⁷

³⁴ Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, 22 January 2019

³⁵ Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, 22 January 2019

³⁶ CCERA Committee, RoP [188], 24 January 2019

³⁷ CCERA Committee, RoP [189], 24 January 2019

Delegated powers and the making of regulations laid before the National Assembly

62. The Minister told us that she had requested regulation-making powers relating to financial assistance, nature conservation reasons, and, more generally, to “manage our fisheries post Brexit much more dynamically”.³⁸

63. We asked the Minister whether the powers in the Bill were a “like-for-like” equivalent of current powers, or whether the Bill presented an opportunity to introduce new policy by using the powers requested. The Minister replied:

“I think it’s probably like-for-like and it’s to enable us to be able to manage our fisheries in a much more meaningful way. We will have to, obviously, amend existing fisheries enactments. We may have to change ... retained EU legislation.

...

It would enable us to deviate from EU legislation, wouldn’t it, but I don’t think it would enable us to do it without consultation.”³⁹

64. An official accompanying the Minister called the provisions in the Bill a “toolset of powers”⁴⁰. When questioned, again, whether the powers were “like-for-like”, the official added:

“They’re enhancements to our existing powers. They’re not changes to policy; they’re enhancements.”⁴¹

65. He added:

“At the moment, for example, in the Marine and Coastal Access Act, the permitting powers that are there at the moment would require us to remake legislation every time we amended a permit. As we’re dealing with a lot of unknown circumstances as we exit the European Union, the ability to be able to adapt those permits means that it would be a more fit-for-purpose way of controlling fisheries.”⁴²

³⁸ CLA Committee, RoP, [49], 21 January 2019

³⁹ CLA Committee, RoP, [49 and 51], 21 January 2019

⁴⁰ CLA Committee, RoP, [58], 21 January 2019

⁴¹ CLA Committee, RoP, [60], 21 January 2019

⁴² CLA Committee, RoP, [62], 21 January 2019

66. When we asked why the enhanced powers couldn't wait for a Welsh Fisheries Bill, the Minister told us, that the Welsh Government "might have to bring regulations in very quickly. It could be the first week of April".⁴³ She added:

"Obviously, you know the legislative programme that we currently have during this term—it's very full, so we're going to have to look at that, obviously, to bring it through the fisheries policy."⁴⁴

67. During Second Reading of the Bill in the House of Commons, several MPs raised concerns about the proposed use of the negative procedure for scrutinising subordinate legislation arising from the Bill.⁴⁵

68. We asked the Minister how she intends to use the powers in Schedule 6. She told us:

"These are very important powers. They're very powerful. I think this is probably a level of power that we haven't had before. They're really important so that we can amend and change the EU legislation that's retained without seeking primary legislation. As I said, we may need to deviate from EU legislation, so this would allow us to do so. It may help with implementing new international obligations."⁴⁶

69. The Minister added:

"You'll be aware of the significant level of statutory instruments that are being made by Welsh Ministers at the moment; ... we may need to make changes as early as the first week of April. So, we need to make sure that we've got these powers."⁴⁷

70. In her letter to the CCERA Committee, she highlighted the wide range of powers being provided to the Welsh Ministers, and in respect of those included in Schedule 6, said:

"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

⁴³ CLA Committee, RoP, [66], 21 January 2019

⁴⁴ CLA Committee, RoP, [68], 21 January 2019

⁴⁵ House of Commons, Second Reading, Fisheries Bill, 21 November 2018, cols 936, 941

⁴⁶ CLA Committee, RoP, [101], 21 January 2019

⁴⁷ CLA Committee, RoP, [102], 21 January 2019

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.”⁴⁸

Secretary of State seeking the consent of the Welsh Ministers under the Bill

71. We asked the Minister about the powers in the Bill enabling the Secretary of State to act in devolved areas with the consent of the Welsh Ministers, as the position and rationale was not immediately clear from a reading of the LCM nor Supplementary LCM. The Minister said:

“So, I thought it was quite clear in the LCM and the supplementary LCM, but, obviously, we’re laying down all the SIs, and I know there were some concerns from Members around that ... it’s just a matter of Assembly time. I think we worked out that if we brought forward every SI, it would take six months of Tuesdays and Wednesdays, and doing nothing else, but I am aware that, obviously, there are concerns around scrutiny, but we’re laying statements... I will make sure that where there are areas where we do have concerns, Members are aware of them.”⁴⁹

A sunset clause

72. As highlighted earlier in the report, the powers provided to the Welsh Ministers by the Bill are not time limited because no sunset clause is currently included within the Bill.

73. We asked the Minister whether it was her intention for the powers in the Bill to be temporary and, if so, why the Bill does not contain a sunset clause. The Minister said:

“Yes, absolutely, they are temporary. I’ve always made it very clear that we expect to bring forward a Welsh fisheries policy. There’s no sunset clause because we don’t yet have fisheries built into our legislative programme, so that’s the reason for that.”⁵⁰

⁴⁸ Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, 22 January 2019

⁴⁹ CLA Committee, RoP, [117], 21 January 2019

⁵⁰ CLA Committee, RoP, [71], 21 January 2019

Disagreement with the UK Government on clause 18

74. As previously indicated in this report, the Welsh Government is not content with clause 18 as currently drafted.

75. We asked the Minister whether the issues in relation to clause 18 had been resolved. The Minister told us:

“They haven’t fully been resolved. Basically, the UK Government doesn’t share our view on this matter, so the discussions are ongoing. And, certainly, I’ve had these discussions at a ministerial level and, obviously, officials are continuing to have them. I absolutely recognise that the conduct of international obligations is reserved, but when you come, then, to implement those obligations, if they’re in a devolved area, that’s up to us. But, as I say, the UK Government doesn’t really share the view on that.

I think, myself, Scotland, Northern Ireland and the UK Government all agree that the Secretary of State needs to be able to set the top-level fishing opportunities in UK waters, but our concern is, I suppose, around the very broad way that the power is currently written. So, at the moment, as it stands now, the DEFRA Secretary of State could decide on quotas for scallops in Cardigan bay. So, he would be able to set that at the moment. Now, Michael Gove tells me he wouldn’t do that; okay, that’s fair enough, I can take that, but what about future UK Governments? So, it’s really important. He could also decide on the number of days that the fisheries was open, for instance, so we don’t accept that that is the case. So, those discussions are ongoing. I am hopeful that we will get an agreement in the next few weeks.

...

I think we’re getting there. As I say, the discussions I’ve had—. I had a very brief discussion about this last Monday at the quadrilateral in London. I do think we’re getting there.”⁵¹

76. An official accompanying the Minister provided further detail:

“The issue hinges on the term ‘international obligations’ in the clause itself, which we feel is too broad. So, what we’re seeking is some reassurance, maybe in the form of the mechanics of the inter-

⁵¹ CLA Committee, RoP, [74-75 and 78], 21 January 2019

ministerial agreement that we've got in place, because this area does span reserved and devolved—some assurance that the National Assembly for Wales can be consulted and also provide a view on any changes that are brought forward that affect devolved administrations' powers.”⁵²

77. We asked the Minister whether she was minded to withhold a recommendation for consent if, in relation to clause 18, the Bill is not amended to her satisfaction. The Minister said:

“Certainly it's something that we're considering. I have red lines, and I think this, obviously, comes in that category. I think, as we work forward on the fisheries management framework, this is an area where officials know it is absolutely a priority that we get this right.”⁵³

78. In pursuing the issue of the implications of clause 18 for fishing in Welsh waters, the Minister told us:

“We are also looking at getting some sort of inter-ministerial agreement in the way that we've had on the agricultural side for a long time. So, these are part of the discussions that we are having...”⁵⁴

79. She subsequently added:

“So, I think once clause 18 is sorted, that will be all the red lines ticked off, and I will then be able to recommend [consent].”⁵⁵

A dispute resolution mechanism

80. The issue of a dispute resolution mechanism was raised in the House of Commons, with MPs calling for a mechanism for consulting the devolved administrations and one which would prevent joint statements from falling.⁵⁶

81. We asked the Minister whether this was an ideal opportunity to set a legislative precedent for a disputes resolution procedure, particularly as regards clause 18. While initially suggesting that she agreed with that position,⁵⁷ when

⁵² CLA Committee, RoP, [79], 21 January 2019

⁵³ CLA Committee, RoP, [81], 21 January 2019

⁵⁴ CLA Committee, RoP, [88], 21 January 2019

⁵⁵ CLA Committee, RoP, [111], 21 January 2019

⁵⁶ House of Commons, Second Reading, Fisheries Bill, 21 November 2018, cols 929, 953, 955, 960

⁵⁷ CLA Committee, RoP, [90], 21 January 2019

asked to confirm whether the mechanism should be put on the face of the legislation, the Minister said:

“Certainly that’s a discussion that we can have, and I’d be very happy to update the committee following the meeting this week, if that would be helpful.”⁵⁸

82. An official accompanying the Minister said:

“There haven’t been any discussions about following a legislative approach for—. We have discussed dispute resolution in a fisheries context, but it’s sort of wrapped up in the work of the joint fisheries statement, because the joint fisheries statement is how we come together, how we negotiate, how we respect the fact that Wales has the Well-being of Future Generations (Wales) Act 2015. So, our definition of sustainability is enshrined in legislation. So, the joint fisheries statement is to create that vehicle to respect both devolution and to enable us to bind ourselves together around some of these things.

...

It would be more appropriate for the joint fisheries statement, I would believe, largely because it needs to be fit for purpose in the future as well, and we’re in an evolving position.”⁵⁹

83. Following on from a commitment given during evidence, the Minister wrote to us stating:

“At the [most recent Senior Steering Group meeting on Marine and Fisheries last week] officials discussed clause 18 of the draft UK Fisheries Bill and I am advised they have registered the concerns on this matter and have asked DEFRA to consider and respond, taking into account the existing intergovernmental principles and practices on co-operative working.”⁶⁰

84. The Minister’s letter to the CCERA Committee also covered the issue of dispute resolution:

⁵⁸ CLA Committee, RoP, [92], 21 January 2019

⁵⁹ CLA Committee, RoP, [95 and 97], 21 January 2019

⁶⁰ [Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to the Chair, 29 January 2019](#)

“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.”⁶¹

Further amendments to the UK Government's Fisheries Bill

85. The supplementary LCM outlines further amendments to the Bill that the Welsh Government is discussing with the UK Government, including, as indicated earlier, an amendment to the interim order making power in section 136 of the *Marine and Coastal Access Act 2009*. This 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.

86. On 21 January 2019 the Minister told us:

“...I think this has been a long-standing issue and, certainly since I've been in post, it's something that stakeholders have wanted to see—so, that ability to be able to reissue a permit without having to have legislation, so having that flexibility to be able to do that. Again, we've had some significant dialogue, really, with the UK Government around this issue, and I do expect to see further amendments coming forward.

...

I think they absolutely accept that this is an area that we will have, and if we do get these further amendments, obviously, Chair, I will lay a further supplementary LCM.”⁶²

87. In terms of the Bill's progress through the UK Parliament, the Minister said:

“I understand from a discussion I had with Michael Gove last Monday they are working to a much more accelerated timetable now, particularly with the threat of no deal.”⁶³

⁶¹ Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, 22 January 2019

⁶² CLA Committee, RoP, [106 and 108], 21 January 2019

⁶³ CLA Committee, RoP, [111], 21 January 2019

88. The Minister reflected on this in her letter to the CCERA Committee:

“...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.”⁶⁴

A Welsh Government Fisheries Bill

89. Earlier sections of this report have referenced the Minister's stated intention to bring forward a Welsh Fisheries Bill in the near future.

90. As the Cabinet Secretary for Energy, Planning and Rural Affairs, the Minister committed to bring forward Welsh-specific fisheries legislation in written evidence ahead of her appearance before the CCERA Committee in July 2018 for Brexit scrutiny:

“... we will need to introduce a Welsh Fisheries Bill following exit from the EU to replace legacy European legislation, most of which will be saved by minimal amendments which make its ‘operable’ rather than optimal, when any implementation period ends. In particular we will need to take action in relation to the setting of fishing opportunities in Wales, control and enforcement and science and evidence.

We stand ready to work with Defra on their proposals for English fisheries and to ensure any proposals do not adversely impact on devolved priorities.”⁶⁵

91. During her evidence session with CCERA she said:

“In relation to a Welsh fisheries Bill, I haven't got a timescale. We have been working more on the agricultural Bill although, obviously, we're doing preparatory work for the fisheries Bill. Again, we haven't seen the UK fisheries Bill. My understanding is they are hoping to publish a UK fisheries Bill in January of next year, but we have not had that shared with us at all. So, we need some clarity on the legislative framework, really, before we can then shape our Bill but, obviously, we can't just sit

⁶⁴ Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, 22 January 2019

⁶⁵ Lesley Griffiths AM, Cabinet Secretary for Energy, Planning and Rural Affairs, [Brexit Scrutiny](#) submitted to the Climate Change, Environment and Rural Affairs Committee, July 2018

back and wait for the UK Government, so we are doing some preparatory work.

I would imagine the fisheries Bill I will be looking to go out to consultation on towards the end of this year, maybe early next year, in preparation. So, it's a bit hard to tell you what a future fisheries Bill will look like at the moment. As we shape our proposals—I'm sure I'll be in front of committee again—but I'll certainly be very happy to keep committee updated if I'm not.”⁶⁶

92. During budget scrutiny with the CCERA Committee in November 2018, the then Cabinet Secretary outlined her intention to launch a “Brexit and our Seas” consultation in 2019, which “will then influence the Welsh fisheries policy that we'll need post Brexit”.⁶⁷

93. In evidence to us the Minister said:

“...when we bring forward our own Welsh fisheries Bill, if we hadn't got that clause [39] in, we wouldn't have been able to have the legislative competence in relation to that.”⁶⁸

94. In a letter to the CCERA Committee, in responding to a question about the rationale for requesting powers in the UK Bill, the Minister answered that the Welsh Government is “considering bringing forward a Welsh Bill (if necessary) once the Assembly competence applies to the whole of the Welsh Zone”.⁶⁹ However, in response to a later question, the Minister said that it is her “intention to bring forward a Welsh fisheries Bill...”.⁷⁰

95. She subsequently confirmed to the CCERA Committee, that while “the legislative programme is very squished” and they needed to find a slot, it was her intention for a Welsh Fisheries Bill to be passed before the end of the Fifth Assembly.⁷¹

⁶⁶ CCERA Committee, RoP [62-63], 18 July 2018

⁶⁷ CCERA Committee, RoP [107], 8 November 2018

⁶⁸ CLA Committee, RoP, [43], 21 January 2019. See also RoP, [47].

⁶⁹ Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, 22 January 2019, response to question 3

⁷⁰ Letter from Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, 22 January 2019, response to question 20

⁷¹ CCERA Committee, RoP [29-33], 24 January 2019

Our view

96. Regrettably, the Minister's evidence lacks clarity and it has been difficult to unpick not only the rationale for the approach adopted by the Welsh Government but also its future intentions.

97. A written statement would therefore have been beneficial to aid with our scrutiny of the LCM. The Minister's argument that no statement was laid for the Bill because it is different to the Agriculture Bill (which was accompanied by a written statement) falls well short of what we would regard as a reasonable explanation.

98. We have become increasingly concerned about a transfer of powers from the National Assembly as the legislature to the Welsh Government as the executive. This concern is amplified where powers are delegated to the Welsh Ministers through a UK Bill, which Assembly Members are not directly able to influence through tabling amendments as a means of testing and potentially improving the legislation.

99. We acknowledge that the Bill is the first Bill aiming to create primary legislative elements of a post-Brexit UK-wide common framework. However, it was disappointing that the Minister did not clearly explain which provisions in the Bill relate to common frameworks and which provisions concern other matters. This is information that could have been usefully included and explained in the LCM.

100. We therefore remain unclear about the extent to which the Bill goes beyond what is necessary to achieve a common legislative framework.

101. Whilst the Bill creates a common framework, the extensive regulation-making and executive powers it provides to the Welsh Ministers should not be overlooked.

102. In our report on the Welsh Government's LCM on the Agriculture Bill we said:

“We also note that the LCM for the UK Agriculture Bill prepared by the Welsh Government describes each power being taken, but does not then comment on the appropriateness of each delegated power or the

appropriateness of the procedure to be applied (as would be expected for a Welsh Government Bill)."⁷²

103. It is therefore frustrating that the LCM for this Bill does not adequately identify the regulation-making powers being taken, let alone seek to justify why they are being taken or the procedure to be applied in each case. We acknowledge that the UK Government's explanatory notes for the Fisheries Bill are better than those for the Agriculture Bill. Nevertheless we believe it would have been appropriate and good practice to include the information in the LCM as it applies to the exercise of powers by the Welsh Ministers.

104. We have been surprised by the Minister's description of the regulation-making powers provided to the Welsh Ministers by Schedule 6 as providing "a level of power that we haven't had before" and being "really important so that we can amend and change the EU legislation that's retained without seeking primary legislation".

105. These comments add weight to our earlier concern about the transfer of power from legislature to executive and could be construed as not fully recognising the role of the National Assembly as a legislature within the Welsh democratic process. They were also made after our report on the Welsh Government's LCM for the Agriculture Bill, which stated that similar remarks made by the Minister in the context of that Bill were unwelcome.

Recommendation 1. 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.

106. As we discuss below, we are concerned that the Minister did not provide clarity on whether the Bill is transitional legislation needed solely as a consequence of Brexit. The Minister's response that the powers within the Bill are probably like-for-like, and the subsequent response from her official that the Bill actually contains enhancements to existing powers, highlights our concerns.

107. Part of the justification for the Welsh Government's approach to the Bill is based on a lack of legislative time in the National Assembly. As first noted in our report on the Welsh Government's LCM for the Agriculture Bill, comments made in July 2018 suggested that the Welsh Government's legislative programme built in flexibility to deal with Brexit-related legislation. It remains unclear, therefore,

⁷² CLA Committee, The Welsh Governments Legislative Consent Memorandum on the UK Agriculture Bill, January 2019, paragraph 128

why the Minister has again suggested that the legislative timetable and the burden on the National Assembly is an insurmountable obstacle to the Welsh Government bringing forward its own Brexit-related legislation.

108. Furthermore, we find the Minister's remarks about the extent to which Welsh Ministers have been making Brexit-related regulations unsatisfactory. At the time of her evidence session the Welsh Ministers had made two Brexit-related regulations although it had consented to the UK Ministers acting in devolved areas on at least 70 occasions.

109. We accept that the UK's withdrawal from the EU is a process which may require a pragmatic approach. However, the now often used defence of pragmatism is becoming over-used and carries risks in the context of Welsh devolution and good law-making.

110. If the National Assembly's workload needs to increase because of Brexit, it is the responsibility of the executive to bring the necessary business forward in good time, just as it is the responsibility of the legislature to consider and decide how it will programme the required scrutiny.

111. As our report highlights, while there is a lack of clarity about the certainty of the Welsh Government developing its own Fisheries Bill, the Minister has said, on a number of occasions, that she does intend to bring forward such a Bill in this Assembly term. We highlight this point for two reasons.

112. First, a stated aim of the Bill is to ensure uniformity and a consistent approach to post-Brexit fisheries policy across the nations within the UK. However, having indicated that a Welsh Government Bill, which introduces provisions for Wales-specific policies, will be introduced, it remains unclear how the UK and Welsh Bills will work together. To add to that uncertainty, the LCM implies that we need to rely on a UK Bill because of the inconvenience of having Welsh fisheries split between UK and Welsh Bills.

113. Secondly, if it is indeed the Welsh Government's intention to bring forward its own fisheries legislation, it is unclear why the Minister has not sought the inclusion of a sunset clause in the Bill. This would add weight and impetus to the Minister's commitment to bring forward her own legislation. Again, however, there is uncertainty because in her evidence to us, the Minister told us "There's no sunset clause because we don't yet have fisheries built into our legislative programme" (although we recognise that that may change).

Recommendation 2. The Minister should write to this Committee to:

- (i) clarify which provisions within the Bill are necessary solely for the purpose of providing a common UK legislative framework;
- (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;
- (iii) confirm that it is her intention to bring forward a Welsh Fisheries Bill as soon as possible;
- (iv) explain how a Welsh Fisheries Bill will work with the UK Fisheries Bill, particularly in the context of the common framework.

Recommendation 3. 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.

114. As regards clause 18, we note and share the view of the Welsh Government that the implementation of international agreements in areas of devolved competence does not appear to be reserved, meaning it would fall within the National Assembly's legislative competence.

115. The Minister told us that the current drafting of clause 18 was a red line. Subsequently, the Minister and her official advised us that the issue causing the dispute may be resolved by means of an inter-ministerial agreement. We do not believe that the development of such an agreement is an adequate substitute for a legislative solution. We are particularly concerned about how any such agreement whether for clause 18 or any other provisions in the Bill would be subject to scrutiny and oversight by the National Assembly.

Recommendation 4. 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.

116. We believe the Bill needs to include provision for a disputes resolution mechanism. In our view, such a mechanism would be welcome from all sides; for example it would help ensure UK Ministers don't act in the best interests of England only or that unilateral action is taken by the Welsh Ministers.

117. We note that the Minister herself has raised the prospect of a disputes resolution mechanism in her correspondence with the CCERA Committee. We welcome the Minister's commitment which implied that the next discussions with the UK Government would include the matter of making legislative provision for dispute resolution. We are, therefore, disappointed that the Minister's letter to us of 29 January 2019 merely states that Welsh Government officials have registered concerns with DEFRA on this matter. This is not, in our view, satisfactory.

Recommendation 5. The Minister should work towards including a legislative provision for a disputes 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.

118. We welcome new clause 39, introduced by amendment at committee stage in the House of Commons, which will extend the legislative competence of the National Assembly in relation to sea fisheries in the offshore zone and thereby align with the existing executive competence of the Welsh Ministers.

119. We are disappointed about the lack of information in the LCM about the rationale and process for the Welsh Ministers providing consent to the UK Government acting in devolved areas under clauses 9 and 11, and in appropriate circumstances, under clauses 31 and 33.

Recommendation 6. A 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.

120. In light of our recommendations in this report and until have considered any further supplementary LCMs, should they come forward, we are not in a position to express a view as to whether the National Assembly should provide its consent to the clauses of the Bill referred to in the LCM and supplementary LCM.

Recommendation 7. 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.

121. Overall, the Minister's evidence lacked clarity. As a result it delivers a level of uncertainty regarding how much the Welsh Government is in control of, and therefore seeking to influence, important legislation which will impact on Wales.