

# LEGISLATIVE CONSENT MEMORANDUM

## 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 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 Assembly.
2. The Fisheries Bill (the “Bill”) was introduced into the House of Lords on 29 January 2020. The Bill can be found at:

[Bill documents – Fisheries Bill 2019 – 20 – UK Parliament](#)

### Policy Objective

3. The UK Government’s stated position is the Fisheries 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 and 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, fisheries statements and fisheries management plans;
  - 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 Fisheries Bill was previously introduced into UK Parliament in October 2018 and was amended following Commons Committee scrutiny stage. A legislative consent memorandum and a supplementary legislative consent memorandum were laid in the Assembly in November 2018 and January

2019 respectively. However, following prorogation for the General Election in December 2019, the Bill fell. This legislative consent memorandum covers all relevant provisions within the new Bill introduced on 29 January 2020. At the request of Welsh Government, the Bill includes powers for the Welsh Ministers.

### **Provisions in the Bill for which consent is required**

7. Consent is required for the provisions listed below because they modify the Assembly's legislative competence or because they fall within the legislative competence of the Assembly.

#### *Fisheries Objectives, fisheries statements and fisheries management plans*

8. Clause 1 defines a set of fisheries objectives which apply across the whole of the UK. These objectives include sustainability, precautionary approach, bycatch and equal access for UK vessels in UK waters.
9. Clause 2 requires the Fisheries Policy Authorities (FPA) to prepare and publish a Joint Fisheries Statement (JFS) within 18 months from the Act passing. The JFS must set out policies for achieving, or contributing to the achievement of the fisheries objectives. It also requires the making of a statement explaining fisheries management plans will be used to achieve or contribute to the achievement of the objectives. It sets out what the statement must contain and/or specify. The Welsh Ministers are defined as a FPA in clause 48 – interpretation.
10. Clause 3 allows for the JFS to be replaced or amended. It introduces Schedule 1 and sets out timings for the JFS to be reviewed at least every 6 years.
11. Schedule 1 – Fisheries Statements and management plans: preparation and publication  
Part 1 defines the procedure for the preparation and publication of a JFS. Part 1 paragraph 2 requires the FPAs prepare a draft JFS and consult interested persons. Part 1 paragraph 3(1) provides in their role as a FPA the Welsh Ministers are required to lay the draft JFS before the Assembly. Part 1 paragraph 4 makes provision for the publishing the finalised JFS.  
  
Part 3 defines the procedure for the preparation and publication of a fisheries management plan. Paragraph 10 requires the FPA to consult interested persons upon the draft and have regard to any representations made to them about it. Part 3 paragraph 11 makes provision for the publishing of the finalised fisheries management plans.
12. Clause 6 sets out a duty to prepare and publish the Fisheries Management Plans listed in the JFS. The plan must specify each sea fish, type of fishing and area to which it relates and what indicators will be used for monitoring the effectiveness of the plan. Further, whether available scientific evidence

is sufficient to allow assessment of a stock's maximum sustainable yield and what steps required as a result of this assessment.

13. Clause 7 sets out that Fisheries Management Plans can be amended, replaced or revoked in response to a relevant change of circumstances. If changes to the plans are not consistent with the JFS, the FPAs must make a statement explaining the reasons for this.
14. Clause 8 provides that Fisheries Management Plans can be amended or replaced and provides that they must be reviewed at least every 6 years. It also introduces Part 3 of Schedule 1 which requires each authority preparing a plan to consult interested persons upon it.
15. Clause 9 makes short term provision for fisheries policy authorities to prepare and publish Fisheries Management Plans in advance of the first JFS.
16. Clause 10 requires all national fishing authorities, including the Welsh Ministers, to exercise all functions in relation to fisheries, fishing or aquaculture in accordance with the JFS and the Fisheries Management Plans unless a relevant change of circumstances indicates otherwise and, in which case, reasons for that departure must be stated in a published document.
17. Clause 11 introduces the requirement for fisheries policy authorities to prepare and publish a report on the extent policies in the JFS have been implemented and achieved, or contributed to the achievement of, the fisheries objectives. The report must also include the extent to which policies within Fisheries Management Plans have been implemented and have affected the level of stocks of sea fish. The reporting period is once every three years and a copy of the report must be laid before the Assembly by the Welsh Ministers.

#### *Access to British Fisheries and regulation of foreign fishing boats*

18. Clause 12 mandates that a foreign fishing vessel must not enter British fishery limits unless it does so pursuant to a valid UK Fishing Licence or for a purpose recognised in either international law or under a treaty
19. Clause 13 introduces Schedule 2 which contains amendments of subordinate legislation, includes Welsh Ministers' legislation, to ensure that it applies to foreign fishing boats and British fishing boats equally

#### *Licensing of fishing boats*

20. Clause 14 provides that fishing anywhere by a British fishing boats is prohibited unless authorised by a licence. It goes onto to set out a number of exceptions to that general rule (restating the current law). Clause 14(3) gives the Secretary of State the power to amend the exceptions by regulations, under affirmative procedure, with the consent of Welsh

Ministers, Scottish Ministers and the Northern Ireland Department. If a boat fishes in contravention of this requirement, the master, the owner and the charterer (if any) are each guilty of an offence.

21. Clause 15 provides that it is a matter for each nation of the UK to licence their own fishing vessels. For our purposes, clause 15 provides that the Welsh Ministers are able to grant a fishing licence in respect of a Welsh fishing vessel.
22. Clause 16 provides that fishing within British fishery limits by a foreign fishing boat is prohibited unless authorised by a licence. It allows the Secretary of State to create, vary or amend exceptions in relation to that requirement, via regulations under the affirmative procedure, with the consent of Welsh Ministers, Scottish Ministers and the Northern Ireland Department.
23. Clause 17 provides powers for each nation of the UK to grant a licence to a foreign fishing boats in relation to the relevant administrative area. It enables the Welsh Ministers to licence foreign fishing vessels within Wales and the Welsh zone.
24. Clause 18 provides a definition of 'sea fishing licence' for the Act and introduces Schedule 3.
25. Schedule 3 - Sea Fishing Licences: Further Provisions  
Schedule 3 sets out a range of provisions relating to sea fishing licences, including the ability to attach conditions to a sea fishing licence and that breach of a licence condition is a criminal offence. It provides a power to vary conditions and to suspend or revoke sea fishing licences. Paragraph 4 imposes a duty on each sea fish licensing authority to comply with requests from other such authorities in order to ensure regulatory consistency. Paragraph 7 gives each national authority (which is defined as the Welsh Ministers in relation to the licensing of Welsh fishing boats and in relation to foreign fishing boats in Wales and the Welsh zone) the power to make regulations regarding the way in which the sea fish licensing authority (also the Welsh Ministers in relation to the matters stated above) may exercise their licensing functions. Unless those Regulations contain a provision reducing the amount of time a fishing boat may spend at sea (in which case an affirmative procedure applies), the negative procedure applies. Paragraph 8 provides that the Secretary of State may make provision which could be made by either the Welsh Ministers, Scottish Ministers or Northern Ireland department with the consent of Welsh Ministers, Scottish Ministers and the Northern Ireland Department

*Access and licensing: offences and consequential amendments*

26. Clause 19 sets out the penalties for offences under the preceding clauses. Clause 20 applies offences under preceding clauses to bodies corporate.

Clause 21 confirms in relation to such an offence, proceedings should be commenced in the United Kingdom.

27. Clause 22 introduces Schedule 4 which contains consequential amendments.
28. Schedule 4 – Access and licensing: minor and consequential amendments  
Schedule 4 contains minor and consequential amendments to the statute book, consequential upon the licensing provisions contained in clauses 12 and 14 to 21 to ensure the rest of the statute book correctly refers to those new licensing provisions.

### *Fishing opportunities*

29. Clause 23 provides that the Secretary of State will set the total UK fishing opportunities in terms of both the maximum quantity of sea fish (the catch quota) and the maximum numbers of days that British fishing boats may spend at sea (the effort quota) but may only do so for the purposes of complying with international obligations to determine fishing opportunities of the UK. Clause 23 provides a broad power for the Secretary of State to set UK quotas, which could as drafted apply to stocks of fish species which are only present wholly within the waters of one of the devolved administrations. In relation to the effort quota, clause 23(8) allows the Secretary of State to make regulations for determining the number of days a vessel is to be regarded to have spent at sea.
30. Clause 24 provides that a determination of fishing opportunities (catch and effort quota) under clause 23 can only be made after consultation with Welsh Ministers, Scottish Ministers, Northern Ireland Department and the Marine Management Organisation (MMO).
31. Clause 25 amends Article 17 of the Common Fisheries Policy Regulation to place duties on the Secretary of State, the MMO, Welsh Ministers, Scottish Ministers and the Northern Ireland Department, as national fisheries authorities, in relation to the distribution of fishing opportunities.
32. Clause 26 places a duty on relevant national authorities, to exercise their fisheries functions so as to ensure that UK catch and effort quotas are not exceeded.
33. Clause 27 introduces Schedule 5 which confers powers on Welsh Ministers for the sale of fishing opportunities for a calendar year.
34. Schedule 5 – Sale of Welsh fishing opportunities for a calendar year  
Schedule 5 confers powers on the Welsh Ministers to make Regulations to make provision for the sale of rights to use a Welsh catch quota and a catch effort quota for a calendar year. The quota would be available to Welsh fishing boats. Regulations are subject to the Affirmative resolution procedure and the Welsh Ministers must consult such persons as they think appropriate.

### *Grants and charges*

35. Clause 33 introduces Schedule 6 which confers powers on Welsh Ministers in relation to the creation of financial assistance schemes.
36. Schedule 6 – Financial Assistance: Powers of Devolved Authorities  
Paragraph 1 of Schedule 6 provides the Welsh Ministers with powers to give financial assistance or to arrange for such assistance to be given to any person for certain purposes. These powers are available in relation to Wales or the Welsh zone or Welsh fishing boats. Such financial assistance must be given in accordance with a scheme established by regulations (subject to affirmative procedure) made by the Welsh Ministers. Paragraph 3 of Schedule 6 makes related consequential amendments.
37. Clause 34 introduces Schedule 7 which confers powers on the Welsh Ministers to make regulations to impose charges.
38. Schedule 7 – Imposition of charges: powers of Devolved Authorities  
Schedule 7 confers powers on the Welsh Ministers to make regulations to impose charges in respect of relevant marine functions including functions relating to fishing quotas, ensuring that fishing activities are carried out lawfully, registration of buyers and catch certificates. The Welsh Ministers must consult such persons as they consider appropriate before exercising this power. The Regulations are subject to approval by the Assembly by Negative resolution procedure.
39. Clause 35 amends the Fisheries Act 1981 to remove a reference to Member State.

### *Powers to make further provision*

40. Clause 36 gives the Secretary of State the power to make Regulations regarding fisheries and aquaculture for certain listed purposes. Clause 38 provides the Secretary of State with a power to make Regulation regarding aquatic animal disease. Clause 39(3) provides that the Secretary of State cannot exercise those functions in so far as it would relate to a matter within the legislative competence of the Assembly. However, Clause 40(2) provides that such provision could be included with the consent of the Welsh Ministers. Clause 39 (4) provides that the Secretary of State can make regulations relating to Welsh fishing boats outside of the Welsh zone. The Welsh Ministers must be consulted before the Secretary of State makes any provision under clauses 36 or 38 in any event (clause 41).
41. Clause 42 introduces Schedule 8 which provides Welsh Ministers with powers to make provision commensurate with clauses 36 and 38.
42. Schedule 8 – Powers to make further provision: Devolved Authorities  
Paragraph 6 gives the Welsh Ministers the power, to make Regulations in relation to fisheries and aquaculture to make provision for the purposes of

implementing an international obligation of the UK relating to fisheries, fishing or aquaculture, for conservation purpose or for a fish industry purpose. Paragraph 8 gives the Welsh Ministers the power to make Regulations, to make provision about aquatic animal diseases. Paragraph 9(3) confirms the Welsh Ministers may only exercise those powers to make provision that would be within the legislative competence of the Assembly, if it were included within an Act of the Assembly. Paragraph 10 provides that unless those Regulations deal with certain listed matters (for example, amending primary legislation), they will be subject to the Assembly's approval by Negative resolution procedure. Where the circumstances specified at paragraph 10(2) exist, the Regulations are subject to the Affirmative resolution procedure. Paragraph 10(1) requires that the Welsh Ministers consult with the Secretary of State, Scottish Ministers and Northern Ireland Department and other persons likely to be affected before making such Regulations.

### *Miscellaneous*

43. Clause 43 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 Assembly is extended to Wales and the Welsh zone. The commencement provisions mean clause 43 (legislative competence of the Assembly) comes into force automatically after the Act is passed (within two months by convention).
44. Clause 44 introduces Schedule 9 which contains powers for the Welsh Ministers in relation to the exploitation of sea fisheries resources.
45. Schedule 9 – Powers relating to the exploitation of sea fisheries resources  
Schedule 9 provides powers relating to the exploitation of sea fisheries resources by making a number of amendments to the Marine and Coastal Access Act 2009. Paragraph 12 of Schedule 9 inserts new sections 134A to 134C into the 2009 Act which provide the following powers for the Welsh Ministers.

Section 134A enables the Welsh Ministers to make Orders in relation to Wales for the purposes of conserving marine flora and fauna or marine habitats or types of marine habitats. Section 134B enables the Welsh Ministers to make Orders in relation to the Welsh offshore region (i.e. the area of the Welsh zone which lies beyond Wales) for the purposes of conserving marine flora and fauna or marine habitats or types of marine habitats or features of geological or geomorphological interest. Section 134C makes further provision regarding the matters that can be included in an Order under sections 134A or 134B.

Paragraphs 18 of Schedule 9 inserts a new sub-section 135(1A) into the 2009 Act which requires the Welsh Ministers to consult with the MMO, the Scottish Ministers and the Northern Ireland Department and other persons likely to be affected before making an Order under the new section 134B. Paragraph 19 of Schedule 9 inserts a new sub-section 136(1A) into the 2009 Act which extends the section 136 power to make Interim Orders to the Welsh offshore region. Paragraph 18 (6) provides that if the Welsh Ministers consider there is an urgent need to make an order under section 134A or 134B the consultation requirement is waived akin to the existing powers in 134 of the 2009 Act. Paragraphs 22 to 31 make further consequential amendments to the 2009 Act and the Water Resources Act 1991.

The powers of the Welsh Ministers to make legislation pursuant to the amendments made to the Marine and Coastal Access Act 2009 are subject to the approval of the Assembly by the Negative resolution procedure by virtue of section 316(8) of that Act.

46. Clause 45 introduces Schedule 10.

47. Schedule 10 – Common Fisheries Policy Regulation: Minor and consequential amendments.

Schedule 10 revokes Article 2 (objectives of the Common Fisheries Policy), Article 5 and Annex I (right of equal access for EU fishing vessels to waters of member states), and Article 16 (distribution of fishing opportunities by the council to member states).

### **Provisions in the Bill for which consent is not required**

48. Clause 4 defines the Secretary of State Fisheries Statement (SSFS), its relationship to a/the JFS. It provides a JFS may omit a relevant Secretary of State policy. It defines relevant Secretary of State policy and provides that they should be included within a SSFS.

49. Clause 5 sets out provisions on the timing, publication, review and amendment of the SSFS. Further provisions in Schedule 1 create a consultation requirement and a requirement that the consultation draft is laid before Parliament.

50. Clauses 28 - 32 relate to discard prevention charging schemes and contain no Welsh provisions.

### **Reasons for making these provisions for Wales in the Fisheries Bill**

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



52. Welsh Government is supportive of the Bill as drafted. We welcome the inclusion of clause 43 which extends the Assembly's legislative competence for fisheries matters beyond Wales, into the Welsh zone. This brings the Assembly's competence in line with the Welsh Ministers' executive competence.
53. The Welsh Government will take powers for the Welsh Ministers in the Bill as an interim measure until a Wales Fisheries Bill is brought forward to the Assembly.
54. Until this Bill is passed, within the current devolution arrangements, a Assembly Bill would only be able to deal with the necessary administrative arrangements in relation to Wales (but not the wider Welsh zone), resulting in a lack of coherence, and reliance in part on the UK Bill and in part on a Wales Fisheries Bill.
55. It is appropriate, therefore, to seek these powers now to enable us to act quickly and decisively in Wales, in an uncertain future, which enables the fullest opportunities for our immediate fisheries management and our future fisheries policy.
56. We will continue to work with UK Government through the passage of the Bill and will engage fully with the Assembly through the legislative consent motion process.

### **Financial implications**

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

### **Conclusion**

58. It is the view of the Welsh Government 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. The Bill also contains a number of provisions which must be in place before the end of the implementation period. For non-framework powers, it is important the Welsh Ministers are able to act quickly and decisively in Wales, until we can bring forward a comprehensive Wales Fisheries Bill.

**Lesley Griffiths AM**  
**Minister for Environment, Energy and Rural Affairs**  
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