

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 Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Fisheries Bill (“the Bill”) was introduced into the House of Lords on 29 January 2020 and completed its passage through the House of Lords on 1 July 2020. The latest version of the Bill can be found here:

[Bill documents - Fisheries Bill 2019-21 - UK Parliament \(post Lords Report stage\)](#)

Policy Objective

3. The UK Government’s stated position is the Bill will provide the legal framework for the UK 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.

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

6. The Welsh Government laid a Legislative Consent Memorandum on 12 February 2020, based on the Bill as introduced into Parliament on 29 January 2020.
7. The Memorandum confirmed the Welsh Government is supportive of the Bill as introduced. We welcome the inclusion of what is now clause 45 which extends the Senedd's legislative competence for fisheries matters beyond Wales, into the Welsh zone. This brings the Senedd's competence in line with the Welsh Ministers' executive competence.
8. The Welsh Government will take powers for the Welsh Ministers in this Bill as an interim measure until a Welsh Fisheries Bill is brought forward to the Senedd.

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

9. The following amendments which make provision in relation to Wales and are within the legislative competence of the Senedd, have been made to the Bill during the House of Lords Report stage (no amendments were made at Lords Committee stage):
10. Clause 1 defines a set of fisheries objectives which apply across the whole of the UK. An amendment has been made to the Sustainability Objective which makes sustainability the prime objective and raises up the relative importance of environmental concerns within that objective.
11. Clause 18 - a new clause has been included in the Bill titled National landing requirement. This new clause requires the Secretary of State to consult on and establish a 'national landing requirement' to ensure a minimum percentage of fish caught by both domestic and foreign fishing vessels in UK waters are then landed at a port in the UK, Isle of Man, Guernsey or Jersey.
12. Clause 26 - this amendment relocates the rules relating to the distribution of quota from the Common Fisheries Policy Regulation to the Bill.
13. Clause 27 - a new clause has been included in the Bill which requires the Secretary of State *before* making a UK determination to reserve a minimum allocation of England fishing opportunities for new entrants into the sector and for boats whose length is of 10 metres or less. Thereafter, the Secretary of State would have to consider the case for increasing this quota each year and lay statements before Parliament.
14. Our initial view is the drafting of clause 27 lacks clarity and results in a question around whether consent is required by the Senedd. Whilst it requires an element of English fishing opportunities to be reserved for new

entrants and vessels under 10 metres, the requirement for the calculation to be carried out *before* the Secretary of State makes the determination on UK fishing opportunities, raises questions as to how the calculation may impact upon the devolved administrations fishing opportunities. This may not be consistent with the current arrangements within the 2012 Fisheries Concordat. We do not believe this is the intention of the amendment but it has the potential to impact Welsh fishing opportunities and as drafted, we think it will require the consent of the Senedd. However, we think this is a drafting issue which will need to be clarified.

15. Clause 48 – a new clause has been included which mandates the use of remote electronic monitoring (REM) on all fishing vessels above 10 metres in length which fish in UK waters and requires plans to be published to extend REM to all vessels.
16. Change references to the National Assembly for Wales to Senedd Cymru. At the request of the Welsh Government, amendments were tabled by the UK Government and were subsequently agreed, to make changes to the Bill to update all references to the National Assembly for Wales to the Senedd Cymru. The amendments are made to references in Schedule 1, clauses 11 and 39, Schedule 8, and clauses 43, 47 and 50.
17. Schedule 10 – Common Fisheries Policy Regulation: Minor and consequential amendments. A new Schedule 10 has been inserted, which incorporates the material which was previously in that Schedule and makes further amendments to retained EU Regulations. Four technical amendments have been made via UK Government amendments:
18. References to Article 2 of the Common Fisheries Policy. Article 2 of the Common Fisheries Policy Regulation (1380/2013) sets out the objectives of the Common Fisheries Policy. This UK Government amendment revokes Article 2 so it is clear it does not apply as part of retained EU law. There are also consequential amendments to replace references to Article 2 with references to the Fisheries Objectives in this Bill throughout EU retained law.
19. Quota Flexibilities. This amendment relates to the Secretary of State's power to determine UK fishing opportunities. It would allow these opportunities to be set subject to the current range of flexibilities. Without this the current flexibilities (borrowing, inter species flexibility, de minimis, scientific quota, live bait exemption and predator damage exemption) could be prohibited by clause 28 (duties to ensure fishing opportunities are not exceeded) of the Bill, leading to an unworkable situation for fisheries management.
20. Additionally the length of time a determination can be made by the Secretary of State has been changed from a "calendar year" to a more flexible time period. The default position is still for the determination to be made on an annual basis but for some species and international agreements it is necessary to build in flexibility. This change also applies

to Welsh Government powers in Schedule 5 – sale of fishing opportunities, for consistency.

21. Multi-annual Plans. These amendments build in some flexibility to the existing Multi-annual Plans, including by making the application of the key provisions within them subject to variation where a “relevant change of circumstances” is identified (this is consistent with the approach in the Bill for the Joint Fisheries Statement and Fisheries Management Plans).
22. Consent is required for the above provisions because they modify the Senedd’s legislative competence or because they fall within the Senedd’s legislative competence.

Welsh Government position on the Bill as amended

23. The Welsh Government acknowledges all the amendments made at Lords Report stage.
24. The Welsh Government supports the Lords clause 26 amendment, which replicates the criteria in Article 17 of the Common Fisheries Policy Regulation on to the face of the Bill.
25. We welcome the amendments updating the Bill to reflect the Senedd Cymru change of name, following Royal Assent of the Senedd and Elections (Wales) Act 2020 in January 2020. These were tabled at the request of the Welsh Government.
26. We also support the UK Government amendments to Schedule 10, as these are operational changes, which we agree are necessary for a workable statute book at the end of the Implementation Period.
27. For the other amendments agreed at Lords Report stage to clauses 1, 18, 27 and 48, this is a rapidly developing situation and we need to consider the policy and devolution implications of each amendment in detail. Our key concerns are to ensure the changes introduced are consistent with our Welsh fisheries policies and do not cut across either the Senedd competence or Welsh Ministers executive powers.
28. If after detailed analysis, we are content for amendments to remain in the Bill, at the very least, we expect we would need drafting issues to be resolved, to add clarity in both policy intent and to more clearly reflect the devolution settlement.
29. Discussions continue with UK Government on some areas of the Bill and on the amendments made during the Lords Report stage. We will set out more detail on our position as the situation develops and the Bill continues its passage through the House of Commons.

Follow up from recent Senedd Committees reports on the Legislative Consent Memorandum on the Bill

30. Further to the scrutiny of the Legislative Consent Memorandum by the Legislation, Justice and Constitution Committee and their recommendation 7 we have set out, in Annex A, the SI-making powers for the Welsh Ministers contained within the Bill, the reasons for taking the powers and the choice of procedure for each power.

Financial implications

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

Conclusion

32. We remain committed to the UK wide approach to create the Fisheries Framework which can only be done in a UK bill. For the non-framework powers in the Bill, it is important the Welsh Ministers are able to act quickly and decisively in Wales, until we can bring forward a comprehensive Welsh Fisheries Bill.

33. We support the government amendments made to the Bill, and the clause 26 amendment. We are continuing with detailed analysis on the wider implications for industry and stakeholders on the other amendments made by the Lords to clauses 1, 18, 27 and 48. At the very least, should these amendments remain, we expect we would need drafting issues to be resolved, to add clarity in both policy intent and to more clearly reflect the devolution settlement.

34. We continue to work with the UK Government on this Bill. It began its progress in the House of Commons on 2 July and there will be further opportunities to seek to amend any parts of the Bill which do not currently work in the best interests of Wales.

35. It is anticipated a further Supplementary Legislative Consent Memorandum will be laid following House of Commons Committee stage, and in advance of a consent motion debate within the Senedd.

Lesley Griffiths AS/MS
Minister for Environment, Energy and Rural Affairs
July 2020

Annex A

Supplementary Legislative Consent Memorandum – UK Fisheries Bill 2019-21. Provisions which contain powers for the Welsh Ministers to make Regulations and Orders

The Bill provides a number executive powers or tools, which are vested in the Welsh Ministers (and the other administrations) in order to maximise each administrations' ability and power to manage their own fisheries. These tools will be used to implement and deliver the policies developed in the fisheries framework. These functions are operational and necessary to ensure we can put the policies agreed within the framework into effect, but in a way which is best tailored to the needs of Wales.

Provision number	Description of power	Legislative procedure
Schedule 3, para 7(1) (Sea fishing licences)	Make provision by Regulations as to - the manner in which a sea fish licensing authority's licensing functions are to be exercised; the time when a licence, or a variation, suspension or revocation of a licence has effect; the time when a licence condition or the addition, removal or variation of a condition has effect.	Negative resolution procedure
Schedule 3 para 7(3) (Sea fishing licences)	Make provision by Regulations authorising the making of charges in relation to a licence.	Negative resolution procedure
Schedule 3 para 7(5) (Sea fishing licences)	Make provision by Regulations as to the principles to be applied by a licensing authority when attaching conditions relating to time spent at sea.	If Regulations reduce the time which a fishing boat may spend at sea they are subject to the affirmative resolution procedure. Otherwise the negative resolution procedure applies.

Schedule 5, para 1 (Sale of Welsh fishing opportunities)	Provision for by Regulations the sale of rights to use one or more Welsh catch quotas and Welsh effort quotas.	Affirmative resolution procedure
Schedule 6, paras 2 (2) (Financial assistance)	Provision by Regulations to establish a scheme to give financial assistance for nine listed purposes connected to management of the marine and aquatic environment and fish and aquaculture purposes.	Affirmative resolution procedure
Schedule 7, para 2 (1) (Imposition of charges)	<p>Make provision by Regulations for the Welsh Ministers to impose charges in respect of the exercise by them of a “relevant marine function”.</p> <p>A “relevant marine function” means a function relating to –</p> <ul style="list-style-type: none"> (a) fishing quotas; (b) ensuring that commercial fish activities are carried out lawfully; (c) the registration of buyers and sellers of first-sale fish; (d) catch certificates for the import and export of fish. 	Negative resolution procedure
Schedule 8, para 6 (1) and (4) (Powers to make further provision)	<p>Make provision by Regulations to implement a regional fisheries management agreement to –</p> <ul style="list-style-type: none"> (a) to implement an international obligation of the UK relating to fisheries, fishing or aquaculture 	<p>Affirmative resolution procedure if including provision:</p> <ul style="list-style-type: none"> amending or repealing primary legislation; imposing fees; creating a criminal offence or increasing the penalty for, or

	<p>(b) for a conservation purpose</p> <p>(c) for a fish industry purpose</p> <p>If not implementing a regional fisheries management agreement - to make provision by Regulations about sea fishing including quantities caught, landing, by catch, minimum size restrictions, marine stock targets, fishing equipment, methods of fishing, processing of sea fish, information, producer organisation, marketing of fishery products, record keeping, alien species, locally absent species and enforcement.</p>	<p>widening the scope of, a criminal offence; or conferring functions on, modifying functions of, or otherwise relating to the regulation of: a producer organisation in the UK; or an inter-branch in the UK.</p> <p>If regulations do not include the provision described above, they are subject to the negative resolution procedure.</p>
<p>Schedule 8, para 8(1) (Powers to make further provision)</p>	<p>Make provision by Regulations for the purpose of monitoring, controlling, preventing or eradicating diseases of fish or other aquatic animals.</p>	<p>Affirmative resolution procedure if including provision:</p> <p>amending or repealing primary legislation; imposing fees; creating a criminal offence or increasing the penalty for, or widening the scope of, a criminal offence; or conferring functions on, modifying functions of, or otherwise relating to the regulation of: a producer organisation in the UK; or an inter-branch in the UK.</p>

		If regulations do not include the provision described above, they are subject to the negative resolution procedure.
Schedule 9, para 17, which inserts sections 134A, 134B and 134C into the Marine and Coastal Access Act 2009 (Amendments of the Marine and Coastal Access Act 2009)	Make provision by Order relating to the exploitation of sea fisheries resources in Wales and the Welsh zone for the purposes of conserving marine flora or fauna, or marine habitats.	No Assembly procedure.
Schedule 9, para 18 (Amendments of the Marine and Coastal Access Act 2009)	Make interim provision by Order relating to the exploitation of sea fisheries resources in the Welsh offshore region for the purpose of protecting any feature in an area in that region if the Welsh Ministers think there are reasons to consider designating the area as an MCZ and there is an urgent need to protect the feature.	No Assembly procedure.