

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 3)

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. Following completion of the House of Lords scrutiny stages, the Fisheries Bill (“the Bill”) was introduced into the House of Commons on 2 July 2020, Second Reading was held on 1 September and amendments have been tabled for Commons Committee stage (which is being held between 8-17 September). The latest version of the Bill can be found here **(but is subject to change following Commons Committee stage)**:

[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 second 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. A Supplementary Legislative Consent Memorandum (No. 2) was laid on 8 July, following amendments made to the Bill during House of Lords scrutiny. The Bill has entered the House of Commons and is currently being considered by Committee.
7. This Supplementary Legislative Consent Memorandum covers amendments tabled up to and including 7 September (and the outcome of the first day of Committee consideration on 8 September). This enables laying, in accordance with Standing Orders, within two weeks of the date of amendments being tabled in the House of Commons.
8. In relation to any amendments tabled after 7 September (and considered in later Committee days) the Minister will write to all Members of the Senedd and the Climate Change, Environment and Rural Affairs and Legislation, Justice and Constitution Committees to provide further information and to confirm the outcome of the Committee consideration, in advance of the Legislative Consent Motion debate.
9. The Welsh Government remains supportive of the Bill, as it continues to progress through Parliament. Clause 45 secures a significant extension of legislative competence for the Senedd in relation to fishing, fisheries and fish health matters beyond Wales, into the Welsh zone and aligns the Senedd's competence with the Welsh Ministers' executive powers.
10. 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.

Tabled amendments to the Bill since the publication of the Supplementary Legislative Consent Memorandum (no 2), for which consent is required.

11. The following amendments which make provision in relation to Wales and are within the legislative competence of the Senedd. The government amendments were tabled for House of Commons Committee stage on 2 September and non-government amendments on 3 September:

UK Government tabled amendments (in clause order)

12. Clause 1 (amendment 1) the sustainability objective was amended by the House of Lords and a further amendment has been tabled to re-instate the original wording.

13. Clause 2 (amendment 2) extends the period of time for publishing the Joint Fisheries Statement from 18 months to 24 months.
14. Clause 18 (amendment 5) removes the amendment made at the House of Lords relating to a National landing requirement.
15. Clause 27 (amendment 6) removes an amendment made by the House of Lords which required 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.
16. Clause 35 / Schedule 6 (amendment 57) provides that financial assistance schemes established by the Welsh Ministers under the powers contained in Schedule 6 may include requirements to publish information about financial assistance given under the scheme (equivalent powers are also provided to the other fisheries administrations).
17. Clause 41 (amendment 7) clarifies the Secretary of State's power to make regulations under clause 38 or 40 in relation to sea fishing by Welsh fishing boats outside of the Welsh zone, a matter that is also within the scope of the corresponding Welsh Ministers power conferred by Schedule 8.
18. Clause 48 (amendment 8) removes the amendment made by the House of Lords relating to remote electronic monitoring.
19. Clause 51 (amendment 9) changes the definition of minimum conservation reference size.
20. Clause 53 and new clause (amendment 55 and new clause 1) introduces a new Schedule on the conservation of seals and confirms its coming into force date.
21. Schedule 2 (amendments 22 and 23) make minor amendments to the Sea Fish (Specified Sea Areas) (Regulation of nets and Other Fishing Gear) Order 2001, which continues to apply in relation to the Welsh zone, to remove superfluous wording in a provision relating to the powers of British sea-fishery officers.
22. Schedule 3 (amendment 27) updates the definition of "licensing function" so it includes functions under clause 16.
23. Schedule 4 (amendments 29 – 35) amend the Sea Fishing (Licences and Notices) Regulations 1994, which make provision in relation to Wales about the manner in which a sea fish licence may be granted and in relation to how a notice of variation, suspension or revocation may be effected. The amendments introduce an expedited process for granting temporary licences to foreign vessels. The temporary licence will last two

weeks and thereafter must be replaced with a licence granted in the usual manner.

24. Amendment 48 to Schedule 4 revokes two Welsh Ministers statutory instruments which were introduced last year in relation to the licensing of foreign fishing boats in preparation for the UK's exit from the European Union but which are now superseded by Bill provisions:
 - Sea Fish Licensing (Wales) Order 2019
 - Sea Fishing (Licences and Notices) (Wales) Regulations 2019
25. Amendment 49 to Schedule 4 is a technical amendment clarifying the transitional provisions applying on the transition from the licensing regime in the Sea Fish (Conservation) Act 1967 to the licensing regime in the Bill.
26. Schedule 8 (amendment 50) clarifies the scope of the Welsh Ministers' power to make regulations under paragraph 6 or 8 of Schedule 8 in relation to sea fishing by Welsh fishing boats outside of the Welsh zone.
27. Schedule 9 (amendment 52) a technical amendment is tabled to update a cross reference to the Conservation of Habitats and Species Regulations 2017 so it refers to the current regulations.
28. Schedule 10 (amendment 53) revokes Regulation (EU) 2017/2403 of the European Parliament and of the Council on the sustainable management of external fishing fleets (SMEFF) so it will no longer be retained EU law and amendments 59 and 60 are tabled to make minor changes to retained EU legislation in connection with the application of the landing obligation and extension of existing exemptions.
29. New schedule (New schedule 1) makes amendments to the Conservation of Seals Act 1970 and the Wildlife (Northern Ireland) Order 1985. The amendments generally prohibit the killing, injuring or taking of seals, and limits the circumstances in which it can be permitted.

Non-government tabled amendments (in clause order)

30. Clause 1 – A number of amendments are tabled for clause 1:
 - Amendment 61 would place a duty on public authorities to have regard to the fisheries objectives in exercising their fisheries functions;
 - Amendment 71 would add to the fisheries objectives the “public asset” and “safety and workforce” objectives, defined in amendment 72;
 - Amendment 74 proposed to add the avoidance of the degradation of the aquatic environment to the definition of the ecosystem objective;
 - Amendment 75 changes the definition of the “ecosystem objective” to include the reversal of negative impacts on marine ecosystems in all circumstances;

- Amendment 76) changes the definition of the “ecosystem objective” to include the elimination of incidental catches of sensitive species in all circumstances;
 - Amendment 77 would add the generation of accurate real-time scientific data to the definition of the “scientific evidence objective”;
 - Amendment 78 removes the objective for bycatch to be landed where appropriate;
 - Amendment 79 would extend the definition of the “equal access objective” to cover equal access to fishing opportunities;
 - Amendment 73 expands the “climate change objective”;
 - Amendment 72 defines the “public asset” and “safety and workforce” objectives.
31. Clause 2 (amendment 62) would add a requirement on the Secretary of State to lay before Parliament an annual statement on progress towards achieving the fisheries objectives, it is not clear whether it is proposed the report relate to England or the United Kingdom. .
32. Clause 3 (amendment 63) would require the Secretary of State to establish a system for resolving a dispute between the fisheries policy authorities which could otherwise result in no joint fisheries statement being published. Amendments 64 and 65 would ensure the joint fisheries statement is subject to review every five years, instead of every six years
33. Clause 7 (amendment 68) changes the reference to ‘available scientific evidence’ to the “best available”.
34. Clause 9 (amendment 69) ensures when a fisheries policy authority acts alone to introduce transitional provision, it must first consult with other fisheries policy authorities to ensure joined-up policy making.
35. Clause 12 (amendment 80) makes express provision that a foreign fishing boat is not committing an offence if it enters or remains in British waters due to conditions presenting a danger to life or property.
36. Clause 26 (amendment 82) adds access by recreational fishing to increased stock levels of recovering species to the list of things that national fisheries authorities must seek to incentivise when distributing catch quotas and effort quotas.
37. Clause 54 (amendment 83) would change the short title of the Act to the *Sustainable Fisheries Act 2020*
38. Consent will be required for the above provisions because, if agreed, they will modify the Senedd’s legislative competence or because they would fall within the Senedd’s legislative competence.

Welsh Government position on the tabled amendments for the Bill

Government tabled amendments (in amendment order)

39. Amendments 1 – 60 and New Clause 1 and New Schedule 1 were all tabled with the agreement of the Welsh Government and as such, we would support them being included in the Bill. Amendments 1 and 2 were considered on the first day of Committee and have been agreed. Our position on each of the amendments is as follows:
40. Amendment 1 – the Welsh Government is committed to delivering sustainable fisheries. It is at the core of our fisheries management approach, which aligns with our duties under our flagship Welsh legislation, the Well-being of Future Generations (Wales) Act 2015 and our Environment (Wales) Act 2016, to carry out sustainable development in delivering our well-being goals, and delivering sustainable management of our natural resources. Our policies within the Joint Fisheries Statement will reflect these duties and our strong commitment to delivering sustainable development in Wales.
41. Amendment 2 – it is necessary to extend the timeframe for publishing the Joint Fisheries Statement from 18 to 24 months to enable all the necessary steps to be undertaken in time and to incorporate pre-election periods of the Scottish Parliament, Senedd Cymru and Northern Ireland Assembly elections in 2021 and 2022. Steps include statutory consultation and scrutiny by each legislature. Stakeholder engagement to support the drafting was launched last month.
42. Amendment 5 – it is our intention to further develop Welsh policy in relation to economic link requirements as part of the holistic development of our future fisheries policy, subject to scrutiny by the Senedd. Therefore this provision for the Welsh Ministers is not required in the UK Bill
43. Amendment 6 – any ring-fencing should take place only after fishing opportunities have been allocated to each administration.
44. Amendment 7 – we agree this change clarifies the scope of the Secretary of State’s power to make regulations under clause 38 or 40.
45. Amendment 8 – it is a matter of devolved policy for the Welsh Ministers to determine the appropriate approach in relation to Wales. It is our intention to further develop Welsh policy in relation to electronic monitoring in a way which reflects the needs and context of the Welsh fleet, therefore this provision for the Welsh Ministers is not required in the UK Bill.
46. Amendment 9 is considered to be a more accurate definition.

47. Amendments 22 – 23 makes necessary technical changes.
48. Amendment 27 is necessary as it updates the definition of “licensing function” so it includes functions under clause 16.
49. The amendments 29 – 35 will prevent any significant licensing air gap for foreign vessels. Similar amendments are introduced to the equivalent regulations applicable in England, Scotland and Northern Ireland (Amendments 36-47).
50. Amendment 48 - the SIs will be superseded by Bill provisions and are no longer necessary.
51. Amendment 49 is a necessary transitional provision to ensure the licensing regime in the Bill functions correctly.
52. Amendment 50 is a minor clarification of the scope of the Welsh Ministers’ power to make regulations under paragraph 6 or 8 of Schedule 8 in relation to Welsh fishing boats outside of the Welsh zone.
53. Amendment 52 is a minor but necessary technical changes.
54. Amendment 53 revokes SMEFF which would create duplication with the licensing system. We are content the Bill provisions render the SMEFF regulation surplus and is no longer needed.
55. Amendment 55 and new clause 1 and new Schedule 1 - from January 2022 the USA’s Marine Mammal Protection Act (MMPA) will only allow imports of fish from fisheries which do not allow the intentional killing of marine mammals. This amendment to the Conservation of Seals Act is supported.
56. Amendment 57 (and 54, 56 and 58 equivalent powers for all fisheries administrations) is required to ensure the financial assistance scheme provisions are reflect existing requirements under the European Maritime and Fisheries Fund to publish information and are compliant with existing legal requirements on data protection.
57. Amendments 59 and 60 are necessary to ensure the ongoing use of discard exemptions.

Non-government tabled amendments (in amendment order)

58. Amendments 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80 were considered during the first day of Commons Committee and all were withdrawn, amendment 73 was not agreed, following a vote.
59. For the remaining amendments (tabled up to and including 7 September, which were not considered by Committee on day one) our position is:

60. The powers proposed in Amendment 80 are already provided for by the Bill and international law.

61. Amendment 82 relates to a devolved matter. As provisions of the Bill apply to recreational fishing and commercial fishing alike we do not consider it appropriate to raise the profile of one sector over others in this bill.

62. Amendment 83 would be acceptable and aligned with our position on sustainable fisheries management.

Financial implications

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

Conclusion

64. 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.

65. We support all the government amendments tabled for the Bill and our position on the non-government amendments has been set out above.

66. I will write to the Climate Change, Environment and Rural Affairs and Legislation, Justice and Constitution Committees and all Members of the Senedd following the completion of the Commons Committee stage, in advance of the Legislation Consent Motion debate which is scheduled for 29 September.

67. I will provide the outcome of proceedings, the latest version of the Bill and any further information necessary to aid consideration of the implications of the Bill on legislative competence by the Senedd.

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