

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

11 January 2019

Dear Lesley,

Consideration of the Legislative Consent Memorandum for the Fisheries Bill

Thank you for agreeing to give evidence on the Legislative Consent Memorandum ('LCM') for the UK Fisheries Bill at the Climate Change, Environment and Rural Affairs Committee's meeting on the 24 January.

We would like detail and/or clarification, beyond that provided in the LCM and the Supplementary LCM, on the following issues to inform our work:

The LCM states:

"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 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.**"

The LCM goes on to state that, **at the request of Welsh Government**, the UK Bill also includes powers for the Welsh Ministers.

The Welsh Government has given commitments to publishing a consultation, *Brexit and our seas* in the spring term and to introducing a Welsh fisheries Bill.

The need for legislation and the approach taken

Question 1. To what extent does the UK Bill include provisions that are additional to those necessary to establish a legislative UK Framework for fisheries post EU Exit? Which of these provisions could have been included in a future Welsh fisheries Bill?



Question 2. Which of the powers for the Welsh Ministers were included at the request of the Welsh Government?

Question 3. What is the rationale for requesting these powers, particularly if the Welsh Government intends to introduce a Welsh fisheries Bill?

Question 4. What are the implications for the Welsh Government and the fisheries sector if these powers are not included in the UK Bill?

Question 5. Schedule 6 includes broad powers for Welsh Ministers to make provision for 'conservation' and 'fish industry' purposes. Why is it necessary to include these provisions in a UK Bill, rather than a future Welsh fisheries Bill which will be subject to the full Assembly scrutiny process?

Fisheries objectives

The Common Fisheries Policy objectives (set out in Article 2 of the EU Common Fisheries Policy Regulations) will no longer apply following the UK's exit from the EU. Clause 1 of the UK Bill sets out the UK's "fisheries objectives", which reflect some of the Common Fisheries Policy ('CPF') objectives.

Question 6. How do the fisheries objectives in clause 1 differ from, and improve on those set out in Article 2 of the Common Fisheries Policy Regulations?

Question 7. What consideration was given to including milestones and/or targets for achieving the fisheries objectives in the Bill, for example in relation to Maximum Sustainable Yield (as currently included in the CFP)? Will these be included elsewhere, for example, in a JFS?

Question 8 How will progress towards achieving the fisheries objectives be measured and monitored in Wales? Is there any intention to develop a common approach to measuring and monitoring progress across the UK?

Fisheries statements

Clause 2 to 6 make provision for a "Joint Fisheries Statement" ('JFS') and a "Secretary of State Fisheries Statement" ('SSFS'). Under this provision, the fisheries policy authorities (i.e. the UK Government and devolved administrations) must prepare and publish a JFS before 1 January 2021. A corresponding requirement is placed on the Secretary of State in respect of a SSFS.

Schedule 1 makes provision for the preparation and publication of a JFS. This includes consultation on a draft JFS before being laid before the appropriate legislature, and responding to any resolutions and recommendations.



Clause 2(1) provide that a JFS will state the fisheries authorities' policies for achieving, or contributing to the achievement of, the fisheries objectives. Clause 6(2) requires authorities (and the Marine Management Organisation - MMO) to exercise their functions relating to fisheries, fishing or aquaculture in accordance with the policies contained in a JFS. However, authorities can deviate from those policies but must state their reason.

Question 9. Can you explain in detail how the fisheries policy authorities will "act jointly" in relation to the JFS? How will the Fisheries Management Framework Agreement, referred to in the Supplementary LCM, inform this approach?

Question 10. Can you clarify whether the fisheries policy authorities would be expected to consult appropriate legislatures on any revisions to a draft JFS arising from scrutiny of another appropriate legislature, before the final text of a JFS is published?

Question 11. While Schedule 1 provides for scrutiny of a JFS by the appropriate legislature before it is published, a JFS will not be subject to the approval of those legislatures. What consideration was given to including such provision?

Question 12. Can you explain how and to whom a statement under clause 6(2) will be made? Why is there no formal mechanism in the Bill to this effect?

The SSFS covers many of the more detailed objectives which are contained within Article 2(5) of the Common Fisheries Policy. The SSFS must include the Secretary of State's policies in relation to these objectives. These objectives would only be applicable to reserved powers and those that apply to England only.

Question 13. Can you clarify the purpose and intended effect of a SSFS as it relates to Wales?

- What are the reserved powers that the SSFS will apply to?
- Do you intend to provide comparable detailed objectives that would apply to Wales? If so, when and how?

Power of the Secretary of State to determine fishing opportunities

Clauses 18 and 19 make provisions in relation to fishing opportunities (or quota) for British fishing boats. Clause 18 provides that the Secretary of State may determine fishing opportunities. A determination may be made only for the purpose of complying with an international obligation of the UK in this regard.

Clause 19 requires the Secretary of State to consult Welsh Ministers (and the other devolved administrations) before making or withdrawing a determination under clause 18.



The Fisheries Concordat between the UK Government and devolved administrations ('the Concordat') states:

"The Administrations note that this Concordat involves an agreement to allocate amounts of quota to each Administration. Such allocations do not constitute a permanent split of UK fishing opportunities."

The Concordat sets out the basis on which quota currently allocated to the UK will be allocated to each of the administrations. It also enables the devolved administrations to make changes to how fishing opportunities can be allocated within their jurisdiction.

Question 14. Can you clarify whether the Bill, as drafted, provides Wales (and the other devolved administrations) with a *right* to fishing opportunities? If not, why not?

Wales currently receives 1% of the UK's quota share. Even if overall UK quota levels increase after Brexit, Wales will only get 1% of that increase.

Question 15. In terms of fishing quota, the benefit to Wales from the UK's exit from the EU will be marginal. Do you think this is acceptable? What discussion have you had with the UK Government in this regard?

Question 16. On what basis will fishing opportunities in Wales be distributed and what mechanism will be used?

Question 17. Will the Fisheries Concordat need to be reconsidered in light of the provisions in the Bill? If so, in what way?

Question 18. Can you clarify whether clause 20 relates to the distribution of fishing opportunities by the Secretary of State (or the MMO) to the UK's four nations, or to the distribution of fishing opportunities by the Secretary of State (or the MMO) to English fishing boats?

According to the Explanatory Notes accompanying the UK Bill, amendments to Article 17 of the Common Fisheries Policy Regulation provided for by clause 20, which describes how fishing opportunities should be distributed, will not apply to Wales. Article 17 contains provisions relating to transparent and objective criteria as the basis of that distribution. The Explanatory Notes state that clause 20 "does not apply Article 17 to the other Fisheries Administrations, at their request".



Question 19. Can you outline your reasons for this? What will this mean in practice?

Sale of fishing opportunities and discard prevention charging schemes

Clause 22 provides powers for the Secretary of State to introduce a different approach to quota allocation **for England only**. This includes setting out a process for selling fishing opportunities.

Article 15 of the CFP Regulations (which are unamended by the UK Bill) introduces a discard ban in the form of a landing obligation for all fish caught. The ban comes into full force on 1 January 2019.

Clauses 23 to 27 makes provision for the Secretary of State to establish, for England, a charging scheme allowing payment to be made for "an unauthorised catch of fish". According to the Explanatory Notes accompanying the UK Bill, clause 23 was included "to address the concerns on the impact of the discard ban". No equivalent provisions are made in relation to Wales.

Question 20. What consideration did you give to requesting corresponding provisions for sale of fishing opportunities and discard prevention charging schemes for Wales?

Finally, we are aware that the Bill has already completed committee stage in the House of Commons. **We would like you to provide a timeline for the Bill's passage through Parliament, and to seek assurance from you that this will provide sufficient time for the Welsh Government to negotiate any amendments that may be deemed necessary or desirable.**

I should be grateful if you would respond to the above by **Friday 18 January**. While I appreciate that this is a tight deadline, it will help ensure the best use of time at our session on 24 January.

Yours sincerely,



Mike Hedges AM

Chair of Climate Change, Environment and Rural Affairs Committee

Copied to: Mick Antoniw AM, Chair of Constitutional and Legislative Affairs Committee
David Rees AM, Chair of European Affairs and Additional Legislation Committee

