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Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/LG/2661/20

Mr Mick Antoniw AS/MS
Chair of Legislation, Justice and Constitution Committee
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3 September 2020

Dear Mick,

Thank you for letter dated 31 July relating to the Supplementary Legislative Consent Memorandum (Memorandum No 2) on the Fisheries Bill. I have provided a response to the specific questions you have raised below:

Supplementary Legislative Consent Memorandum (Memorandum No 2)

Update to the Committee on the policy and devolution implications of the amendments to Clauses 1, 18, 27 and 48 by House of Lords

In answer to your questions 1 a. – d. and 2 a. – b., 3 a. – c., I can provide an update on these. As you will see, the UK Government has tabled amendments for Commons Committee stage to reverse the amendments made during the Lords Report stage to clauses 1, 18, 27 and 48. Under Secretary of State Victoria Prentis MP sought my views on this approach and advised their position is they support the spirit of the amendments but the amendments themselves are legally and constitutionally unsound. My position is as follows:

Clause 1 – sustainability objective

This amendment results in legal uncertainty. In my response to Minister Prentis I recognised the concerns raised and noted there would need to be further refinement of this provision so that environmental sustainability is appropriately prioritised. 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

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

reflect these duties and our strong commitment to delivering sustainable development in Wales.

As such, I have emphasised our support for the spirit of the amendment to Minister Prentis and asked her to make this clear during Committee stage in the House of Commons.

Clause 18 – national landing requirement

As drafted this amendment does not reflect the devolution settlement and licence conditions requiring all UK vessels to establish an economic link with the UK are already in place. 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 Welsh Ministers is not required in the UK Bill.

Clause 48 – remote electronic monitoring

This amendment cuts across our devolution settlement and as a matter of devolved policy it is 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 that reflects the needs and context of the Welsh fleet, therefore this provision for Welsh Ministers is not required in the UK Bill.

Clause 27 - new quota from the English allocation for new entrants and under 10m boats

We had immediate concerns on how this provision could be interpreted, due to it having the potential to impact on the UK quota “pot”, which although we note is not the intention, could impact on our devolved competence. As such, any ring-fencing should take place only after fishing opportunities have been allocated to each administration.

I hope this explanation and the tabled amendments for Commons Committee stage, provide the clarity you are seeking.

Schedule 10 amendments

You have asked two questions on the amendments within Schedule 10 to retained direct EU legislation and changes of references to Secretary of State from fisheries administrations, you ask:

4. We note that a new Schedule 10 has been inserted into the Bill which incorporates the material that was in the original Schedule 10 but with further amendments to retained EU legislation.

a. Several of the references to “a fisheries administration” in this Schedule have been changed to “Secretary of State”. Some of the provisions within new Schedule 10 could be considered to relate to the observation or implementation of international obligations, which is devolved. For example, the amendments proposed to articles 4 and 6 of Regulation 2018/973 (by paragraphs 6(4) and (6) of Schedule 10 to the Bill) include provisions that appear to confer functions on the Secretary of State, in place of the fisheries administrations, in relation to observing and implementing international obligations. While we acknowledge that consent is being sought in relation to Schedule 10, why are these functions being bestowed upon the Secretary of State rather than the fisheries administrations and why wasn’t this highlighted in the Memorandum No 2?

My officials worked closely with UK Government officials, following legal analysis of each reference in retained EU law, to establish where the roles lie, in line with the devolution settlement. Officials were very clear about the nuances of the devolution settlement in relation to international obligations and our role in implementing them. It is my view, these

have been applied correctly in respect of the devolution settlement. I have provided a table at Annex 1 to explain the rationale for the amendments made via Schedule 10 of the Bill.

b. With regards to the power to determine fishing opportunities and quota flexibilities, and as noted in paragraphs 19 and 20 of the Memorandum No 2, the length of time a determination of UK fishing opportunities can be made by the Secretary of State has been changed. References to “calendar year” have been deleted and there is no substitute wording. Therefore, the possible period is open ended, although we acknowledge that regulations made under the provisions could include a timeframe. This change also applies to the Welsh Ministers’ powers in Schedule 5 and we note that the Memorandum No 2 suggests this was to enable “consistency”. Did you discuss the amendment to Schedule 10 with the UK Government and the consequential effect on the Welsh Minister’s powers in Schedule 5, and can you confirm that the Senedd’s consent should also be sought for the relevant amendments to Schedule 5?

Yes, my officials discussed and agreed these provisions in advance of them being tabled and I confirm the amendment made to paragraph 1 of Schedule 5 will require the consent of the Senedd.

5. Paragraphs 34 and 35 of the Memorandum No 2 state that 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”, and that it is anticipated that a further Supplementary Legislative Consent Memorandum will be laid following the House of Commons Committee Stage. Can you confirm that it is your intention to ensure that there is sufficient time for Senedd Committees to consider any further Supplementary Legislative Consent Memorandum ahead of the relevant consent motion debate in Plenary?

Second Reading was held in the House of Commons on 1 September and Committee Stage is due to be held between 8 – 17 September. A number of government amendments have been tabled for Committee stage and I would draw your attention to those. My officials have been working with UK Government to agree the amendments relating to Wales, and I would like to provide early confirmation of my support for them.

The Legislative Consent Motion (LCM) debate has been scheduled for 29 September, prior to Commons Report stage, in line with our usual approach of aiming to ensure the UK Parliament has time to take account of the Senedd’s consent decision before a Bill is passed. A Supplementary Legislative Consent Memorandum will be laid as soon as possible.

[Welsh Government response to your report on the Legislative Consent Memorandum on the Bill](#)

You have also asked some questions on our response to your report on the Legislative Consent Memorandum:

6. During your evidence session with the Committee on the Bill on 16 March you were asked whether we would be bound by a common framework agreement in the future and if there was anything in the Bill that would inhibit our ability to legislate in this area of devolved competence, to which you answered “No, my understanding is not” (see paragraphs 46 and 47 of the transcript). Given this exchange, recommendation 3 of the Committee’s report asked that you explain how a future Welsh Fisheries Bill will work within a UK-wide common fisheries framework. In your response to recommendation 3, you state that any future Welsh Fisheries Bill will need to

consider the UK Fisheries Objectives set out in the UK Fisheries Bill and that you “expect the key framework provisions, such as the objectives and the [Joint Fisheries Statement] to remain in the UK Bill”. Given the comments you made in our 16 March meeting, can you confirm that, whilst the Bill does not prevent the Welsh Government from bringing forward a Welsh Fisheries Bill containing provisions that replace those under the UK Bill that constitute a common framework agreement, you are committed to retaining the key framework provisions in the UK Bill (once enacted) as it applies in Wales and it is not the intention of this Welsh Government to move away from the UK-wide fisheries objectives should it be the Government in place during the Sixth Senedd?

Yes, we are committed to retaining the key framework provisions in the UK Bill as it applies in Wales. By their nature, the powers are in place to ensure we work across the UK within the same framework, replicating the approach in the Common Fisheries Policy to managing our shared resources. The objectives have been drafted to reflect the cornerstones of modern fisheries management. They are consistent with the progressive international principles of fisheries management, our devolved position and our own Welsh legislation. The Senedd’s legislative competence will not be diminished by the framework. The fisheries objectives do effect Welsh Ministers executive powers, in such that the exercise of those functions must be in accordance with the objectives. However, the Senedd could remove or amend the objectives for Wales if it so wished.

I can confirm it is not our intention to move away from the UK-wide objectives. How each government achieves the objectives is a matter for them, acting either jointly or alone, within their own competence, and the policies for achieving or contributing to the achievement of the objectives will be set out in the Joint Fisheries Statement (JFS). The Welsh Ministers will then be required to act in accordance with the JFS.

7. With regards to recommendations 5 and 6 in our report, while we welcome your intention to ensure Members have an opportunity to review the Memorandum of Understanding in relation to clause 23 in advance of the relevant consent motion debate in Plenary, can you confirm that it is also your intention to ensure that there is sufficient time for Senedd Committees to consider the Memorandum of Understanding ahead of such a Plenary debate?

I am happy to provide an update to the Committee regarding progress being made to finalise the Fisheries Framework Memorandum of Understanding (MoU) and in particular progress relating to clause 24 (formally clause 23). My officials are engaging in a regular working group which is progressing the drafting of the MoU (including the Dispute Resolution Mechanism and consideration of the Concordat).

In lieu of the MoU, which is still in development and will therefore not be ready ahead of the completion of the Bill’s passage, I have written to the UK Government to seek agreement on the key issues on which I need assurance in order to recommend the Senedd gives consent to the Bill. I will share the outcome of this request with the Committee at the earliest opportunity.

8. While we acknowledge your detailed response to recommendation 8 in our report regarding the regulation-making powers in Schedule 3 of the Bill, please can you provide further information on when Welsh Ministers would consider it expedient to exercise the powers in Schedule 3 as a sea fish licensing authority?

The licensing powers within the Bill and Schedule 3 provide the Welsh Ministers with the necessary powers to deliver an effective and robust licensing system now and in the future. As I noted in my response to your LCM report, we have amended our existing licensing SIs

to ensure they remain in place once the Bill comes into force, and the powers within the Bill replicate the previous powers set out in the Sea Fish (Conservation) Act 1967 and the Sea Fish Licensing Order 1992 in relation to British fishing boats. The Bill provisions also impose new licensing requirements upon foreign fishing boats fishing within British fishery limits, which are required in consequence of the UK's exit from the EU.

The sea fish licensing authority powers within the Bill enable us to continue to effectively control and licence fishing in our waters, with powers such as enabling us to condition, vary and revoke licences, work with other authorities where needed etc. These powers are, and will continue to be, used regularly in the normal course of exercising the sea fish licensing authority functions.

In terms of British fishing boats, the current licensing regime will continue. For foreign fishing vessels, the Welsh Ministers, along with the other administrations, have agreed for licences for foreign vessels to be issued by the Single Issuing Authority, who will act under a Section 83 GOWA arrangement. They won't have decision making powers as the Welsh Ministers will authorise the licences before they issue.

At present there are no current plans to use the regulation making powers to either amend the existing system or establish a new one. However, should the Welsh Ministers feel it expedient to do so in the future, the powers will be available to them. Any such regulations will be subject to approval by the Senedd.

I hope this helps to provide further clarity, however, if you have a specific concern, I would be happy to answer it.

I am writing in similar terms to Mike Hedges MS, Chair of Climate Change, Environment and Rural Affairs Committee

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive, flowing style.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Annex 1 Rationale for the amendments made via Schedule 10 of the Bill

EU retained law (in Schedule 10)	Rationale for change from “fisheries administration” to “Secretary of State”
Common Fisheries Policy Regulation (Regulation (EU) No 1380/2013)	
<p>Article 28, 29 and 33</p>	<p>Article 28 sets out that the objective of the external fishing policy of the United Kingdom is to ensure sustainable exploitation, management and conservation of marine biological resources and the marine environment by conducting the external relations of the United Kingdom in accordance with its international obligations and policy objectives.</p> <p>Article 29 provides that the Secretary of State should actively support and contribute to the activities of international organisations dealing with fisheries including regional fisheries management organisations.</p> <p>Article 33 provides that the Secretary of State must engage with third countries with a view to ensuring that stocks of common interest to the UK and third countries are managed sustainably.</p> <p>Under paragraph 10 (1) & (2) of Part 1 of Schedule 7A of the Government of Wales Act 2006 international relations are a reserved matter, International relations includes relations with territories outside of the UK, with the EU and its institutions and with other international organisations.</p> <p>Whilst paragraph 10(3) confirms that observing and implementing international obligations are outside of the reservation and are therefore devolved, we do not consider the subject matter of the above Articles could be described as observation of or implementation of international obligations.</p> <p>The Common Fisheries Regulation will, by operation of the European Union Withdrawal Act 2018, form part of the UK statute book as retained EU law. It was previously amended by the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/739). Regulation 3 of those 2019 Regulations established the UK fisheries administrations and their remit for the purpose of any relevant retained direct EU legislation relating to the common fisheries policy. Regulation 3 also made amendments to articles 28, 29 and 33 to transfer functions under those articles from EU institutions to a fisheries administration.</p> <p>In relation to Wales, the Welsh Ministers are the fisheries administration in so far as the obligation or power under consideration would be within the legislative competence of the Senedd, if included in an Act of the Senedd, or if it could have been imposed or conferred by a function of the Welsh Ministers exercisable immediately before exit day. If a power or obligation does not fall into either of those categories the Secretary of State is the fisheries administration for that matter in relation to Wales.</p> <p>The impact of the amendments already made to these Articles by the 2019 Regulations was such that the functions under those articles were in effect already transferred to the Secretary of State in relation to Wales, in line with the devolution settlement. Officials therefore take the view that the amendments made by Schedule 10 do not change this position, but rather clarify it.</p>
Regulation (EU) 2018/973 – North Sea Multi-Annual Plan	

<p>Article 4, 6 & 13</p>	<p>Article 4 relates to targets in respect of fishing mortality and as amended requires the Secretary of State to request data from ICES, or a similar independent scientific body recognised at international level.</p> <p>Article 6 relates to requesting conservation reference points from the ICES, or a similar independent scientific body recognised at international level.</p> <p>Article 13 provides that the Secretary of State should engage with third countries with a view to ensuring that those stocks of common interest to the UK and a third country are arranged in a sustainable manner consistent with the Basic Regulation.</p> <p>Under paragraph 10 (1) & (2) of Part 1 of Schedule 7A of the Government of Wales Act 2006 international relations are a reserved matter, International relations includes relations with territories outside of the UK, with the EU and its institutions and with other international organisations.</p> <p>Whilst paragraph 10(3) confirms that observing and implementing international obligations are outside of the reservation and are therefore devolved, we do not consider the subject matter of the above Articles could be described as observation of or implementation of international obligations.</p> <p>Articles 4, 6, and 13 of this Regulation were previously amended by regulation 25 of the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/753) to transfer functions under those articles from EU institutions to a fisheries administration.</p> <p>In relation to Wales, the Welsh Ministers are the fisheries administration in so far as the obligation or power under consideration would be within the legislative competence of the Senedd, if included in an Act of the Senedd, or if it could have been imposed or conferred by a function of the Welsh Ministers exercisable immediately before exit day. If a power or obligation does not fall into either of those categories the Secretary of State is the fisheries administration for that matter in relation to Wales.</p> <p>The impact of the amendments already made to these Articles by the 2019 Regulations was such that the functions under those articles were in effect already transferred to the Secretary of State in relation to Wales, in line with the devolution settlement. Officials therefore take the view that the amendments made by Schedule 10 do not change this position, but rather clarify it.</p>
<p>Regulation (EU) 2019/472 Western Waters Multi Annual Plan</p>	
<p>Article 4, 7 & 15</p>	<p>Article 4 relates to target in respect of fishing mortality and as amended requires the Secretary of State to request data from ICES, or a similar independent scientific body recognised at international level.</p> <p>Article 7 relates to requesting conservation reference points from the ICES, or a similar independent scientific body recognised at international level.</p> <p>Article 15 relates to the exploitation of stocks of common interest by third countries. It provides that the Secretary of State should engage with those third countries with a view to ensuring that those stocks are arranged in a sustainable manner consistent with the Basic Regulation.</p>

Under paragraph 10 (1) & (2) of Part 1 of Schedule 7A of the Government of Wales Act 2006 international relations are a reserved matter, International relations includes relations with territories outside of the UK, with the EU and its institutions and with other international organisations.

Whilst paragraph 10(3) confirms that observing and implementing international obligations are outside of the reservation and are therefore devolved, we do not consider the subject matter of the above Articles could be described as observation of or implementation of international obligations.

Regulation (EU) 2019/472 will by operation of the European Union Withdrawal Act 2018, form part of the UK statute book as retained EU law. It was previously amended by the Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1312). Regulation 6 amended to articles 4, 7 and 15 to transfer functions under those articles from EU institutions to a fisheries administration.

In relation to Wales, the Welsh Ministers are the fisheries administration in so far as the obligation or power under consideration would be within the legislative competence of the Senedd, if included in an Act of the Senedd, or if it could have been imposed or conferred by a function of the Welsh Ministers exercisable immediately before exit day. If a power or obligation does not fall into either of those categories the Secretary of State is the fisheries administration for that matter in relation to Wales.

The impact of the amendments already made to these Articles by the 2019 Regulations was such that the functions under those articles were in effect already transferred to the Secretary of State in relation to Wales, in line with the devolution settlement. Officials therefore take the view the amendments made by Schedule 10 do not change this position, but rather clarify it.