

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 the 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 National Assembly.
2. The Fisheries Bill (the “Bill”) was introduced in the House of Commons on 25 October 2018. The Bill can be found at:

[Bill documents — Fisheries Bill 2017-19 — UK Parliament](#)

Policy Objective

3. The UK Government’s stated policy objectives are to take back control of UK seas following the UKs exit from the European Union, providing a replacement to 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;
 - 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 Bill also, at the request of Welsh Government, includes powers for Welsh Ministers.

Provisions in the Bill for which consent is required

7. To the extent that the Clauses below apply in relation to Wales, they are within the Legislative Competence of the National Assembly for Wales.

Fisheries Objectives and fisheries statements

8. Clause 1 defines a set of fisheries objectives which apply across the whole of the UK. These objectives include sustainability, precautionary approach, equal access for UK vessels in UK waters, and a discard objective.
9. Clause 2 defines the Joint Fisheries Statement (JFS), and defines the Welsh Ministers as a Fisheries Policy Authority for the purposes of the Bill.
10. Clause 3 requires the Fisheries Policy Authorities to act jointly in the preparation of a JFS, and introduces Schedule 1.

11. Schedule 1 – Fisheries Statements: preparation and publication

Part 1 defines the procedure for the preparation and publication of a JFS. Part 1 paragraph 3(1)(b) specifies that the consultation draft must be laid before the appropriate legislature by each fisheries policy authority. Part 1 paragraph 3(4) specifies that where the fisheries policy authority is the Welsh Ministers, the appropriate legislature is the National Assembly for Wales. Part 1, paragraph 3(3) states that the fisheries policy authority must lay before the appropriate legislature a statement setting out a response to any resolution or recommendation in response to the consultation. Part 1 paragraph 4 makes provision for the publishing of the JFS.

12. Clause 4 allows for the JFS to be amended.
13. Clause 5 requires the first JFS to be published before the 1 January 2021 and reviewed at least every 6 years.
14. Clause 6 requires relevant national authorities, which includes Welsh Ministers for the purposes of the JFS, to exercise its functions in relation to fisheries, fishing or aquaculture in accordance with the JFS unless 'relevant considerations indicate otherwise' and, in which case, reasons for that departure must be stated.

Access to British Fisheries

15. Clause 7 removes the principle of equal access to European waters from the Common Fisheries Policy.
16. Clause 8 mandates that a foreign fishing vessel must not enter British fishery limits unless in possession of a valid UK fishing Licence or for a purpose recognised in international law or a treaty.

Licensing of fishing boats

17. Clause 9 provides fishing can only be undertaken by licensed British fishing boats subject to a number of exceptions to that general rule. Clause 9(3) gives the Secretary of State the power to amend this section by regulations, under affirmative procedure, with the consent of Welsh and Scottish Ministers and the Northern Ireland Department.
18. Clause 10 provides that it is a matter for each nation of the UK to license their own fishing vessels. For our purposes, clause 10 provides that the Welsh Ministers are able to grant a fishing licence in respect of a Welsh fishing vessel.
19. Clause 11 requires foreign fishing vessels to be licensed if fishing within British fishery limits and 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 and Scottish Ministers and the Northern Ireland Department.
20. Clause 12 provides powers for each nation of the UK to grant a license to a foreign fishing boats in relation to the relevant administrative area. For our purposes, clause 12 enables the Welsh Ministers to license foreign fishing vessels within Wales and the Welsh zone.
21. Clause 13 provides a definition of 'sea fishing licence' for the Act and introduces Schedule 2.
22. Schedule 2 - Sea Fishing Licences: Further Provisions

Schedule 2 sets out a range of provisions relating to sea fishing licences, including the ability to attach conditions to a sea fishing licence, and the power to vary, suspend or revoke sea fishing licences and any conditions attached to the same from time to time. Paragraph 4 imposes a duty on each sea fish licensing authority to comply with requests from other such authorities in order to ensure consistency and enforceability. Paragraph 7 gives each national authority (which is defined as the Welsh Ministers in relation to the licensing of Welsh fishing boats or 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.

Access and licensing: offences and consequential amendments

23. Clause 14 sets out the penalties for offences under the preceding clauses. Clause 15 applies offences under preceding clauses to bodies corporate.

Clause 16 sets the jurisdiction for these offences to be considered as if they had been committed in any part of the UK.

24. Clause 17 introduces Schedule 3 which contains the consequential amendments for the provisions contained within clause 7 to 16.

Fishing opportunities

25. Clause 18 provides that the Secretary of State will set the total UK fishing opportunities (in terms of both the maximum quantity of sea fish and the maximum numbers of days that British fishing boats may spend at sea) only for the purposes of complying with international obligations to determine fishing opportunities in the UK. We are not content with the drafting of Clause 18 which provides broad powers for the Secretary of State to set UK quotas, which could as drafted apply to stocks which are wholly within the waters of one of the devolved administrations. Clause 18(8) allows the Secretary of State to make provision by regulations for determining the number of days a vessel is regarded to have spent at sea.
26. Clause 19 provides that a determination under clause 18 can only be made after consultation with Welsh and Scottish Ministers, Northern Ireland Department and the Marine Management Organisation (MMO).
27. Clause 20 revokes Article 16 of the Common Fisheries Policy Regulation and makes amendments to Article 17 of that Regulation which places duties on the Secretary of State and the MMO in relation to the distribution of fishing opportunities.
28. Clause 21 places a duty on relevant national authorities (which includes the Welsh Ministers), to exercise their fisheries functions so as to ensure that UK fishing opportunities are not exceeded.

Grants and charges

29. Clause 28 introduces Schedule 4 which confers powers on Welsh Ministers in relation to the creation of financial assistance schemes.

30. Schedule 4 – Financial Assistance

Paragraph 1 of Schedule 4 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 4 makes related consequential amendments.

31. Clause 30 amends the Fisheries Act 1981 to remove a reference to Member State.

Powers to make further provisions

32. Clause 31 gives the Secretary of State the power to make certain provisions, in Regulations, regarding fisheries and aquaculture and clause 33 provides the Secretary of State with a Regulation making power in order to make provision regarding aquatic animal disease. Clause 34(3) provides that the Secretary of State cannot make those provisions where they would be within the Legislative Competence of the National Assembly for Wales, however, clause 35(2) provides that such provision can be included with the consent of the Welsh Ministers. The Welsh Ministers must be consulted before the Secretary of State makes any provision under clauses 31 or 33 in any event.
33. Clause 37 introduces Schedule 6 which provides Welsh Ministers with powers to make provision commensurate with clauses 31 and 33.

34. Schedule 6 – Powers to make further provision: Devolved Authorities

Paragraph 4 gives the Welsh Ministers the power, by Regulations, to make provision for the purposes of implementing an international obligation of the UK relating to fisheries, fishing or aquaculture or for conservation or fish industry purposes in relation to specified matters. Paragraph 6 gives the Welsh Ministers the power, by Regulations, to make provision about aquatic animal diseases. Paragraph 7(3) of Schedule 6 limits those Regulation making powers of the Welsh Ministers to making provisions which are within the Legislative Competence of the National Assembly for Wales. Paragraph 8 of Schedule 6 provides that unless those Regulations deal with certain matters (for example, amending primary legislation), they will be subject to negative resolution procedure. Where the circumstances specified at paragraph 8(2) exist, the Regulations are subject to the affirmative resolution procedure. Paragraph 8(1) of Schedule 6 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.

35. Clause 38 introduces Schedule 7 which contains powers for the Welsh Ministers in relation to the exploitation of sea fisheries resources.

36. Schedule 7 – Powers relating to the exploitation of sea fisheries resources

Schedule 7 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 7 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 or 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 13 of Schedule 7 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 14 of Schedule 7 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. Paragraphs 17 to 26 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 negative resolution procedure by virtue of section 316(8) to that Act.

Reasons for making these provisions for Wales in the Fisheries Bill

37. 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.
38. With exit from the EU in March 2019 there is no time for a suitable legislative vehicle to pass through the Assembly. Any such Assembly Bill would also only be able to deal with the necessary administrative arrangements in relation to Wales and the proposed UK Fisheries Bill provides powers for the Welsh Ministers in relation to Wales, the Welsh zone and Welsh fishing boats beyond that zone as appropriate.
39. 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.
40. Welsh Government is generally supportive of the Bill as drafted, other than clause 18. However, there are also two areas which have not been sufficiently addressed. Firstly the Bill does not address our concerns regarding the National Assembly's Legislative Competence for fisheries matters beyond Wales. Welsh Government are seeking to bring the National Assembly's competence in line with the Welsh Ministers' executive competence, which would make the introduction of pan UK frameworks less complex moving forwards.

41. Secondly Welsh Government would like to see the Marine and Coastal Access Act 2009 amended to allow Welsh Ministers to vary from time to time the conditions attached to any permits issued pursuant to the Act. Allowing us to manage our fisheries in a much more flexible and responsive way.

42. We continue to work with UK Government to resolve these and other issues and will bring forward supplementary Legislative Consent Memoranda as necessary.

Financial implications

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

Conclusion

44. It is the view of the Welsh Government that 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 contains a number of provisions which must be completed before the UKs exit from the EU.

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