

# UK Fisheries Bill 2017-19

## Bill Summary

January 2019



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# **UK Fisheries Bill 2017-19**

## Bill Summary

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### **Paper Overview:**

This paper looks at the introduction of the UK Fisheries Bill and the accompanying Legislative Consent Memorandum (LCM) laid by the Welsh Government. It discusses the main elements of the Bill, and responses to the Bill highlighting stakeholder areas of concern.

A summary of the Second Reading is included, along with a summary of the approved amendments within the Bill as amended. A supplementary LCM was laid by the Welsh Government in response to the amendments, and is also discussed in the paper.

This paper will be updated with any developments in the Bill.



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## 1. Introduction

**The UK Fisheries Bill** ('the Bill' hereafter) received its **first reading** in the UK Parliament on 25 October 2018. The Bill supports the process of moving away from the EU's **Common Fisheries Policy** (CFP), and provides the legal framework for the UK to manage its own waters, as an independent coastal state under the **United Nations Convention on the Law of the Sea** (UNCLOS).

It provides a number of powers which will enable UK Ministers and the Devolved Administrations, to introduce secondary legislation. A **delegated powers memorandum accompanying the Bill** provides more detail on the powers being sought.

The House of Commons Library has published a **briefing** on the Bill.

The House of Commons **Environment Food and Rural Affairs Select Committee** launched a short inquiry on the proposed scope, provisions and powers in the Bill. It accepted written evidence up to the 26 November 2018, and has taken oral evidence from a range of stakeholders, and DEFRA.

The Bill was considered by the House of Commons **Public Bill Committee** between 4 and 17 December. The Bill **as amended** was published on 18 December.

### Welsh fisheries legislation

The Welsh Ministers have committed to bring forward Welsh-specific fisheries legislation in the future. This was confirmed by the then Cabinet Secretary for Energy, Planning and Rural Affairs (now Minister for Environment, Energy and Rural Affairs), Lesley Griffiths AM, to the Assembly's Climate Change, Environment and Rural Affairs (CCERA) Committee on **18 July 2018**.

She reiterated this in **written evidence** ahead of her appearance before the CCERA Committee on 4 October for Brexit scrutiny:

... we will need to introduce a Welsh Fisheries Bill following exit from the EU to replace legacy European legislation, most of which will be saved by minimal amendments which make its 'operable' rather than optimal, when any implementation period ends. In particular we will need to take action in relation to the setting of fishing opportunities in Wales, control and enforcement and science and evidence.

We stand ready to work with Defra on their proposals for English fisheries and to ensure any proposals do not adversely impact on devolved priorities.

During **budget scrutiny with the CCERA Committee in November 2018**, the then Cabinet Secretary outlined her intention to launch a 'Brexit and our Seas' consultation in 2019:

I'm going to consult on Brexit and our seas next year. You'll see a bit of a similarity to 'Brexit and our land', but we will obviously be consulting early next year on Brexit and our seas, and that will then influence the Welsh fisheries policy that we'll need post Brexit. Again, once we go out to consultation—it's like 'Brexit and our land'—we'll have to consider a lot of financial implications that come from that.

At the time of writing this briefing, the Welsh Government has not issued any statements on the Bill. Future timings of a Welsh Fisheries Bill, or the 'Brexit and our Seas' consultation, are unknown.

## 2. Legislative Competence

The Bill is the first of the UK-wide **legislative common frameworks** within Welsh devolved competence. The Welsh Ministers have committed to bringing forward Welsh-specific legislation in the future.

### Legislative consent memorandum

On 15 November 2018 the Welsh Government laid a **Legislative Consent Memorandum (LCM)** on the Bill. The LCM outlines the provisions in the Bill for which consent is required. The majority of the Clauses in the Bill relate to Wales (except 22-27).

The Bill creates the primary legislative elements of the UK Framework for fisheries management and support post-Brexit. The Welsh Government states in the LCM that:

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 - which would leave us relying in part on the UK Fisheries Bill and in part on a Welsh Fisheries Bill.

The LCM emphasises the Welsh Government's general support for the Bill, with the exception of Clause 18 which provides broad powers for the Secretary of State to set UK quotas. The Bill states that this is 'only for the purposes of complying with international obligations to determine fishing opportunities in the UK'. The Welsh Government is not content with the Clause as it provides broad powers for the Secretary of State to set UK quotas, which, as drafted, could apply to stocks which are wholly within the waters of one of the Devolved Administrations.

There are two further areas which the Welsh Government does not feel have been sufficiently addressed:

The Bill does not address the Welsh Government's concerns regarding the National Assembly's legislative competence for fisheries matters beyond Wales. The Welsh Government is 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.

The Welsh Government would also like to see the Marine and Coastal Access Act 2009 amended to allow Welsh Ministers to vary from time to time the conditions to any permits issued pursuant to the Act. It says this would allow it to manage Wales' fisheries in a more flexible and responsive way.

The Welsh Government says it will continue to work with the UK Government to resolve these and other issues and will bring forward supplementary LCMs as necessary.

The LCM also sets out that 'there are no direct financial implications for Wales as a result of taking these provisions in the Bill'. No other financial information is provided.

There has been no formal consultation with stakeholders on the LCM - and no impact assessment has been published relating to the provisions as they relate to Wales.

The Assembly's reporting deadline for the LCM is 12 February 2019.

A supplementary LCM has been laid in response to amendments to the Bill, which addressed some Welsh Government concerns concerning the legislative extent of the National Assembly for Wales. These are discussed later on in this paper.

### 3. Main Elements of the Bill

Fisheries is a devolved matter and the Bill contains a number of powers which will be exercisable by the Welsh Ministers and the other Devolved Administrations, as well as by the Secretary of State.

To support a consistent approach to fisheries management across the UK, the Bill contains some powers which are exercisable by the Secretary of State in relation to devolved matters. However these powers are only exercisable with the consent of the Devolved Administrations.

The majority of the Clauses in the Bill apply to Wales, and are within the legislative competence of the National Assembly for Wales. They will therefore require the legislative consent of the Assembly.

#### Fisheries objectives

The Bill sets objectives for fisheries policy authorities, replacing the objectives currently in Article 2 of the CFP. Clauses 1 to 6 of the Bill set out fisheries objectives that the UK Government and Devolved Administrations must aim to achieve when setting out their policies in two new policy documents: a Joint Fisheries Statement (JFS) and the Secretary of State's Fisheries Statement (SSFS). They are:

- the sustainability objective; ensuring 'that fishing and aquaculture activities are environmentally sustainable in the long term'.
- the precautionary objective; 'to apply the precautionary approach to fisheries management'.
- the ecosystem objective; 'to ensure that negative impacts of fishing activities on the marine environment are minimised, and ... that aquaculture and fisheries activities avoid the degradation of the marine environment'.
- the scientific evidence objective; 'to contribute to the collection of scientific data, and ... base fisheries management policy on the best available scientific advice'.
- the discards objective, and 'to gradually eliminate discards, on a case by case basis'.
- the equal access objective. This secures that all UK fishing boats have equal access to UK waters.

The objectives set out in Clause 1 are a reflection of some of the CFP objectives set out in Article 2 of the CFP regulation (**Regulation (EU) No 1380/2013**), which include ensuring that fishing and aquaculture are environmentally sustainable, are managed in a way that is consistent with achieving economic, social and employment benefits, and applying a precautionary principle approach to fisheries management. The scientific evidence and equal access objectives are additional to those in the CFP.

Clause 2 defines a JFS, which must be adopted by the fisheries policy authorities, setting out how their policies will achieve or contribute to the achievement of fisheries objectives defined in Clause 1. It also sets out the requirement for the Secretary of State to prepare a SSFS, to state policies in a number of areas including:

- (i) contributing to the achievement by 2020 of a good environmental status (within the meaning of the Marine Strategy Framework Directive).

This Clause also defines the Welsh Ministers as ‘the fisheries policy authority’ for Wales.

Crucially, Clause 3 sets out that a JFS must be prepared by the fisheries policy authorities acting jointly, and the first JFS and SSFS must be prepared and published before 1 January 2021. The JFS must be laid in draft before each of the legislatures for scrutiny, and consulted on appropriately. Schedule 1 sets out how the JFS and SSFS are to be prepared and published.

Clauses 4 – 6 looks at amendments, review and effect of the statements.

Schedule 1 sets out the process for consulting on draft JFS and SSFS. In the case of the JFS, following consultation a draft must be laid before the appropriate legislature by each fisheries policy authority, which must respond to any resolutions or recommendations from a ‘appropriate legislative committee’. In the case of SSFS the same process applies but the draft is laid before the Houses of Parliament only. Both documents come into effect when published.

## Taking back control

Clause 7 ends the current automatic rights for EU vessels to fish in UK waters. By revoking Article 5 of, and Annex 1 to, the CFP Regulations which provide for mutual access to EU waters by EU Member States’ vessels, the UK will control foreign fishing boats’ access to its waters.

Clause 8 sets out the access arrangements for foreign fishing boats to British fisheries i.e. through a licence or ‘a purpose recognised by international law...’

Clauses 9 – 17 and Schedule 2 broadly consolidate and clarify existing law with regards to the licensing of fishing boats, as well as making some policy changes. They provide changes to the current regime for the licensing of UK vessels, as well as making provisions for the licensing of non-UK fishing boats in UK waters.

Clause 10 provides that it is a matter for each nation of the UK to license their own fishing vessels – Welsh Ministers would be able to grant a fishing licence in respect of a Welsh fishing vessel, and so on.

## Fishing opportunities

Clause 18 sets out the power for the Secretary of State to set ‘fishing opportunities’, which are defined in the Bill as:

- (a) the maximum quantity of sea fish that may be caught by British fishing boats;
- (b) the maximum number of days that British fishing boats may spend at sea.

The maximum quantity determined will be the ‘catch quota’, and the maximum days determined will be the ‘effort quota’.

These functions are reserved to the Secretary of State for the ‘purpose of complying with an international obligation’ of the UK. These purposes could include agreements with the EU or other coastal states, or obligations under UNCLOS.

This Clause replaces the current provision in EU law that allows the European Council to determine fishing opportunities in EU waters.

Clause 19 provides that a determination under Clause 18 can only be made after consultation with ‘the relevant national authorities’, which are the Welsh and Scottish Ministers, Northern Ireland Department and the Marine Management Organisation (MMO).

Clause 20 of the Bill retains, subject to minor amendments, the criteria from **Article 17 of the CFP** to be considered when distributing fishing opportunities. The criteria in Article 17 of the CFP, as revised by Clause 20, read:

When distributing fishing opportunities for use by fishing boats, the relevant national authorities shall use transparent and objective criteria including those of an environmental, social and economic nature. The criteria to be used may include, inter alia, the impact of fishing on the environment, the history of compliance, the contribution to the local economy and historic catch levels. Within the fishing opportunities available for distribution by them, the relevant national authorities shall endeavour to provide incentives to fishing vessels deploying selective fishing gear or using fishing techniques with reduced environmental impact, such as reduced energy consumption or habitat damage. [Amendments are italicised]

For the purpose of clause 20, the 'relevant national authorities' are the Secretary of State (SoS) and the MMO. The Explanatory Notes accompanying the Bill state that Clause 20 does not apply Article 17 to the other Fisheries Administrations (including the Welsh Ministers), **at their request**. This means that the criteria in Article 17, as revised by Clause 20 of the Bill, only apply in England, so only the English fisheries authorities have to apply these criteria.

Clause 21 places a duty on relevant national authorities, including the Welsh Ministers, to exercise their fisheries functions so as to ensure that UK fishing opportunities are not exceeded.

## Funding

Currently under the UK's membership of the EU and CFP, financial assistance is given through the European Maritime Fisheries Fund (EMFF). Clause 28 introduces Schedule 4, which gives the Welsh Ministers powers to give or arrange for financial assistance for any person for certain purposes, including for:

- (a) the conservation, enhancement or restoration of the marine and aquatic environment;
- (b) the promotion or development of commercial aquaculture activities or commercial fish activities;
- (c) the reorganisation of businesses involved in commercial aquaculture activities or commercial fish activities;
- (d) contributing to the expenses of persons involved in commercial aquaculture activities or commercial fish activities;
- (e) the promotion or development of recreational fishing.

Paragraph 2 of Schedule 4 states that financial assistance must be given in accordance with a 'scheme established by regulations made by the Welsh Ministers'. These powers are available in relation to Wales, the Welsh zone, or Welsh fishing boats.

## General powers

Clause 31 gives broad powers to make provisions on matters currently regulated by the EU under the CFP. These are:

- (a) for the purpose of implementing an international obligation of the United Kingdom relating to fisheries, fishing or aquaculture;
- (b) for a conservation purpose; or
- (c) for a fish industry purpose.

A 'conservation purpose' and 'a fish industry purpose' are defined, and the Clause lists the matters that the regulations must be related to.

Clause 33 provides regulation making powers for the Secretary of State in order to make provision regarding aquatic animal diseases. The Welsh Ministers must be consulted before the Secretary of State makes any provisions under these Clauses.

However, Clause 37 introduces Schedule 6, which provides Welsh Ministers with corresponding regulation making powers in relation to both Clauses 31 and 33. 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.

Equally the Welsh Ministers must consult the other fisheries policy authorities, and any other appropriate persons, before making provisions under these Clauses.

## Marine conservation

Clause 7 introduces Schedule 7, which confers powers on the Welsh Ministers to make Orders in relation to the exploitation of sea fisheries, and the impact of fishing on marine conservation.

These provisions replace EU measures for the protection of the marine environment in Member States' offshore zone. By amending the *Marine and Coastal Access Act 2009 (MCAA)*, the Welsh Ministers are able to make Orders in relation to Wales and the Welsh offshore area for conservation purposes.



## 4. Response to the Bill

At the time of writing, the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths AM, is yet to comment on the Bill or publish a written statement. Overall, the Bill has been received positively by stakeholders, including fishing organisations. A recent article in **Fishing News** said that fishing industry leaders were giving ‘a cautious welcome’ to the Bill, but also highlighted that ‘there will be a lot of detail to be worked out in the months ahead’.

The National Federation of Fishermen’s Organisations (**NFFO**), highlights the importance of getting the balance right between an overall UK framework for fisheries and the authority delegated to the Devolved Administrations. Key stakeholder concerns are discussed below:

### Fisheries objectives and statements

Although generally stakeholders are supportive of the Bill, in particular the inclusion of the objectives on the face of the Bill, it has been noted by a number of stakeholders, including **GreenerUK** that a ‘significant omission is the lack of duty placed on authorities to deliver these objectives’. It states:

This risks undermining the government’s aim of delivering truly sustainable fisheries management and with it thriving, healthy stocks, and consumer confidence that UK seafood is sustainably produced.

This is reiterated in written evidence to the Public Bill Committee from **Professor Richard Barnes**, who says that the objectives ‘would be strengthened if they were restated as duties’.

It was highlighted in the **Second Reading** that the objectives are weaker than the current duties under the CFP. However, in response, George Eustice MP said that the wording used in ‘Clause 1 is largely borrowed directly from the EU Regulation’, and that he:

...envisage[s] that the joint fisheries statement that flows from that—it is a legal requirement and details of it are set out in schedule 1 to the Bill—will define how we will deliver those sustainability objectives.

Although the ‘relevant national authority must exercise its functions...in accordance with the policies contained in a JFS’, Clause 2 does not specify the extent to which the policies must achieve the fisheries objectives.

## Commitment to Maximum Sustainable Yield

A number of environmental groups, including GreenerUK and **Wales Environment Link (WEL)** have called for ‘a commitment to ensure that fishing limits cannot be set above the scientifically recommended levels that would deliver the objective to restore fish stocks to a healthy biomass.’

The current target set out in the CFP is to end overfishing by 2020, by ensuring fishing limits cannot be set above the Maximum Sustainable Yield (MSY) - the scientifically recommended levels that would deliver the objective to restore fish stocks to a healthy biomass.

As the UK will no longer be part of the CFP and bound by this commitment, **GreenerUK** argues that its omission in the Bill would ‘represent a regression of environmental standards’. It says a commitment in the Bill:

...is vital to protect against short-term political pressure to set catch limits higher than scientific advice, which would lead to overfishing and damage the health of our oceans.

In written evidence to the Public Bill Committee, the **NFFO**, whilst ‘supportive of MSY’ does not agree with the inclusion of the 2020 target in the Bill:

...if MSY is set as a rigid timebound objective it will, as with the CFP, prove unworkable. Setting quotas in mixed fisheries for sustainable fisheries management must take into account a number of different, and sometimes competing factors. This will not be helped if there is a legal requirement that elevates Maximum Sustainable Yields above all other of these factors.

The NFFO says that the future approach to sustainable fisheries management in the UK must learn from the failings of the CFP.

### Formal scrutiny of secondary legislation

As previously stated, the Bill provides broad provisions for creating secondary legislation, **WEL** asks for a ‘formal consultation procedure to scrutinise secondary legislation’. It says:

Powers provided by the Bill to create secondary legislation could result in major changes to fisheries management measures and should therefore be subject to wider scrutiny, including by stakeholders.

## 5. Summary of Second Reading

The Bill received its **Second Reading** in the House of Commons, on 21 November 2018.

The Secretary of State for Environment, Food and Rural Affairs, Michael Gove MP, paid tribute to the ‘constructive manner’ of negotiations with the Welsh Government, which he said had taken place in good faith. He stated that the legislation will see powers moving to the Devolved Administrations, saying that ‘it will be a diffusion of power and a strengthening of devolution’.

### Delegated powers

The Bill is an ‘enabling Bill’ containing extensive delegated and **Henry VIII powers**. During the Second Reading of the Bill, several Members of Parliament (MPs) referred to a lack of detail in the Bill, and also raised concerns about the proposed use of the negative resolution procedure set out in relation to some of the provisions in the Bill.

MPs recognised the necessity of this approach, yet also expressed concern over the degree of Parliamentary scrutiny afforded to statutory instruments (in particular those with a negative resolution procedure). Angela Smith MP said:

It is also true that this Bill, like the Agriculture Bill, is enabling and contains a number of Henry VIII powers. Like others in this Chamber, I worry about the use of this mechanism given the lack of effective parliamentary scrutiny that accompanies the use of statutory instruments. I therefore hope the Government will think more carefully about this Bill and allow it to be amended to ensure it gives greater clarity on the direction of travel of our fishing industry.

### Common Fisheries Policy (CFP)

In terms the timeframe for the UK becoming an independent coastal state under the UNCLOS and being able to decide on access to its waters and quota, the Secretary of State stated that:

A number of Members of this House hoped that in the transition period, when it was agreed earlier this year, the common fisheries policy would be outside, but there is one very significant departure from the overall transition period, which applies to the common fisheries policy, which is that the European Union acknowledged that from 2021 we will be an independent coastal state. Therefore, when we negotiate in the December 2020 Fisheries Council, although we will still legally be a member of the European Union, we will be negotiating then as an independent coastal state.

MPs asked that ‘no later than 31 December 2020’ be inserted into Clause 42 of the Bill.

Much of the debate featured on the wider EU Withdrawal Agreement and its effect on the CFP, in particular future decisions on whether the UK remains within the Customs Union. MPs cited Sabine Weyand, the Chief EU negotiator’s deputy who leads EU negotiations at a technical level, as saying that Britain would have to ‘swallow a link between access to products and fisheries in future agreements’. There was consensus in the House that the UK ‘must not accept the EU’s attempts to link future trade agreements with automatic access to UK waters’.

### Advisory council

Reference was also made on a number of occasions to the NFFO’s calls for a formal advisory council to guide policy. The NFFO states in its **written evidence** to the Public Bill Committee that:

The inclusion on the Advisory Council of fisheries experts would guarantee that sustainability issues are fully considered.

Mrs Sheryll Murray MP said she:

...would like the Government to establish a formal advisory council to guide policy, promote collaboration between central Government, the devolved Administrations and the industry, and allow an ongoing dialogue in what is a naturally variable industry. An advisory council could play a leading role in the use of secondary legislation to ensure an agile and responsive approach to fisheries management.

This was reiterated by Derek Thomas MP on behalf of the **Cornish Fish Producers’ Organisation**, and Ian Paisley MP highlighted that ‘such bodies have proved most beneficial in Norway and Australia’.

## Dispute resolution mechanism

Liz Saville Roberts MP raised issues over the mechanisms for consulting with the Devolved Administrations and the nature of joint decision making mechanisms. Melanie Onn MP stated that the Bill would ‘allow for a Devolved Administration to walk away simply by stating their reasons’ and called for a dispute resolution mechanism to prevent such joint statements from falling.

In its **written evidence** to the Public Bill Committee, the NFFO also called for a dispute resolution system:

Where agreement between fisheries administrations cannot be reached or where an administration wishes to depart from the statement contrary to the wishes of another administration, a dispute resolution system should be in place to ensure this does not impact on fisheries

MPs also noted the potential for friction if different regulations were introduced by the fisheries policy authorities.

## Licensing fishing vessels

Clause 10 of the Bill provides that it is a matter for each nation of the UK to license its own fishing vessels. This raised concerns that vessels wishing to operate UK-wide would require multiple licences. The Minister for Agriculture, Fisheries and Food said in his closing remarks that:

We have said that, with the consent of the Scottish Government and others, the Marine Management Organisation might issue a single licence for the whole of the UK. Clearly, agreements that are made internationally would be a matter for the UK Government.

No further detail was given on the arrangements for, or nature of, such consent from Devolved Administrations, and no such amendment has been made in the **Bill as amended**.

Deidre Brock MP considered that it ‘should more appropriately be the Devolved Administrations that determine such things.’

## Power of Secretary of State to determine fishing opportunities

As previously outlined, the LCM stated that the Welsh Government is not content with the drafting of Clause 18 (which gives the Secretary of State powers to set catch and effort quotas), as it could apply to stocks which are wholly within the waters of one of the Devolved Administrations. The supplementary LCM (discussed below) says that the UK Government is of the view that Clause 18 relates to international obligations that are reserved functions, and as such a consent requirement is not appropriate. However, the Welsh Government states that the implementation of international agreements in areas of devolved competence is not reserved, and falls within the Legislative Competence of the National Assembly for Wales.

During the Second Reading no further commitments were made in relation to the extent of consultation with the Welsh Ministers. However, Deidre Brock MP stated in her contribution that ‘quotas for Scotland’s waters should be set in Scotland, just as quotas for English waters should be set in England and Welsh waters in Wales. That is devolution’. The Secretary of State did not respond to this concern (around Clause 18) directly, instead he responded saying that:

The hon. Member for Edinburgh North and Leith (Deidre Brock) mentioned the clause in the Bill that covers the selling of quota rights, and said that the tendering and auction processes should be devolved. They are devolved, and the clause is absolutely explicit that it applies only to England.

This appears to refer to Clause 22, the sale of English fishing opportunities for a calendar year, rather than Clause 18.

## Fisheries funding

MPs raised the issue of grant funding, citing the funding previously available through the EMFF (from which the UK has benefited by £190 million between 2014 – 2020 and included spending on data collection), noting that there is no guarantee in the Bill that this will be replaced.

Liz Saville Roberts MP questioned funding for fisheries in the Devolved Administration, asking:

How will maritime and fisheries funding allocations be allocated after 2020 and can he confirm that that will be needs-based?

In a letter dated **10 December 2018**, from George Eustice MP to the Public Bill Committee, the UK Government ‘announced that it has committed £37.2 million of extra funding to boost the UK fishing industry during the Implementation Period’. From this amount there would be £2.4 million available for Wales, and this would be in addition to the existing EMFF.

Additionally, it was announced in the letter dated 10 December 2018 that:

...the Government will put in place new, domestic, long-term arrangements to support the UK’s fishing industry from 2021, through the creation of four new schemes comparable to EMFF to deliver funding for each nation of the UK. The Devolved Administrations will lead their own schemes and details will be agreed at the 2019 Spending Review.

There are no further details on long-term funding arrangements.

## 6. Summary of Public Bill Committee changes

### UK Government amendments

#### Clause 39 – Legislative Competence of the National Assembly for Wales

In a letter to the **Public Bill Committee**, dated **5 December 2018**, Minister of State for Agriculture, Fisheries and Food, George Eustice MP informed the Committee of a number of amendments to the Bill tabled by the UK Government.

One such amendment is a new Clause to amend the Government of Wales Act 2006 to ‘extend the legislative competence of the National Assembly of Wales in relation to fishing, fisheries and fish health in the offshore zone’. He explains that:

The Welsh Assembly does not have legislative competence for sea fisheries in the offshore zone, which is the area of sea outside the territorial seas but within the Exclusive Economic Zone – although the Welsh Government do have executive competence in the offshore zone as these have been devolved previously.

The Minister also highlighted that this technical amendment will amend the current distinction from other devolution settlements, as the Scottish Parliament and Northern Ireland Assembly already have legislative competence for fisheries in their offshore and inshore areas.

This amendment was agreed and appears as Clause 39 – Legislative Competence of the National Assembly for Wales, in the **Bill as amended**. This new Clause applies to Wales only and requires legislative consent.

The **departmental analysis of amendments made at committee stage** document states that:

All other amendments to clauses and schedules, and new clauses, extend and apply to England, Wales, Scotland, and Northern Ireland. None of the amendments have changed the extent or application of the clauses.

## Clause 40 – Fisheries agreement between the UK and the EU

In a letter dated **10 December 2018**, George Eustice MP details a government amendment to the Bill ‘which will enshrine its commitment to secure a fairer share of fishing opportunities for UK fishermen’. It says this will be done by placing a legal obligation on the UK Government to pursue a fairer share of fishing opportunities than the UK currently receives under the CFP, when negotiating a fisheries agreement with the EU.

The Minister stated that this amendment gives legal weight to the commitment to take back control.

The amendment is agreed as Clause 40 – Fisheries agreement between the UK and the EU, and states:

- (1) This section applies if—
- (a) the United Kingdom and the EU enter into a withdrawal agreement, and
  - (b) pursuant to that agreement, the Secretary of State enters into negotiations with the EU, on behalf of the United Kingdom, for an agreement about the management of shared stocks (a “fisheries agreement”).

In the same letter (dated 10 December 2018), the UK Government ‘also announced that it has committed £37.2 million of extra funding to boost the UK fishing industry during the Implementation Period’. From this amount there would be £2.4 million available for Wales, and this is in addition to the existing EMFF.

## Clause 41 – Amendments that could have been made under existing powers

This new Clause was tabled and agreed to alongside a number of amendments to Schedule 3. The purpose of these amendments, according to George Eustice’s letter dated **5 December 2018**, is ‘to amend existing statutory instruments relating to vessel licensing which currently apply to English, Welsh, Scottish, and Northern Ireland boats so that they also apply to foreign boats, and consequential amendments to that.’

The new Clause is as follows, and clarifies these changes:

- (1) Where—
- (a) any provision of this Act amends or revokes subordinate legislation, and
  - (b) the amendment or revocation could have been made under a power conferred by an enactment,
- the amendment or revocation is treated, for the purpose of making further provision under that enactment, as having been made under it.
- (2) In this section—
- “enactment” has the same meaning as in the European Union (Withdrawal) Act 2018;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

In his letter to the Committee, George Eustice states that these amendments are ‘the product of extensive discussions with the Devolved Administrations’.

The date for the next stage of the legislative process, the House of Commons report stage, has not yet been announced.

## Supplementary legislative consent memorandum

On 10 January the Welsh Government published a **supplementary LCM** on the Bill. The supplementary LCM refers to the issues outlined above around the competence of the National Assembly for Wales, amendments to the *Marine and Coastal Access Act 2009*, and *Clause 18 of the Bill*.

*On the issue of the legislative competence of the Assembly, the supplementary LCM refers to the amendments to the Bill outlined above, and the new Clause 39.*

*In relation to the amendments to the Marine and Coastal Access Act, the supplementary LCM says the Welsh Government is in discussion with the UK Government, with a view to securing an amendment at a later stage in the Bill process.*

*As previously outlined, the first LCM stated that the Welsh Government is not content with the drafting of Clause 18 (which gives the Secretary of State powers to set catch and effort quotas). The supplementary LCM says that the UK Government is of the view that Clause 18 relates to international obligations that are reserved functions, and as such a consent is not required. The LCM goes on to say:*

Welsh Government remains of the view that it is appropriate for the UK Government to develop, refine and enter into international agreements, as it is a reserved matter. However, the implementation of international agreements in areas of devolved competence is not reserved, and falls within the Legislative Competence of the National Assembly for Wales [...]. As the term 'International Obligations' (used in the Bill) is broad and may cover the implementation of such an agreement, the Clause does impact on devolved competence and as such Assembly consent is required.

The supplementary LCM says that the exercise of this function will be subject to the Fisheries Management Framework Agreement 'which all of the UK fisheries administrations intend to agree as we exit the European Union'. No further detail is provided on the Agreement.

The supplementary LCM also contains a section on changes to the Bill since the publication of the first LCM for which consent is required. This includes the issue of competence (previously outlined). It also includes:

- A new Clause 41 which makes a technical addition to the Bill by providing that any amendments to secondary legislation made by the Bill, and which could have been made under another enactment, have effect as if made under that enactment;
- Paragraph 5 of Schedule 3 to the Bill has been amended to make further changes to the *Sea Fisheries (Conservation) Act 1967* which provide that references to 'British fishing boat' in that Act and associated subordinate legislation will include a 'foreign fishing boat'. This is to ensure that the 1967 Act and other legislation pursuant to the same will apply equally to both domestic UK and foreign fishing boats; and
- At the request of the Welsh Government, a new paragraph 12 has been added to Schedule 3 of the Bill to amend the *Sea Fishing (Licences and Notices) Regulations 1994*. The regulations still apply in Wales but do not currently allow for changes in licences and notices to be notified to licence holders by publication on a website. The equivalent English, Scottish and Northern Ireland licences and notices legislation has already been amended to this effect. The Welsh Government says this change is essential to the operation of the new fisheries management regime immediately following the coming into force of the relevant Bill provisions and are 'the only practical way to ensure that the amendments to the 1994 Regulations come into force at the necessary time [is] to include these changes in the Bill'.

The supplementary LCM also outlines further amendments to the Bill that the Welsh Government is discussing with the UK Government. These include an amendment to the interim order making power set out in Section 136 of the Marine and Coastal Access Act which would enable interim orders to be made by the Welsh Ministers for fisheries management purposes in situations that are not solely connected to protection of a Marine Conservation Zone (or a zone that may be designated as a Marine Conservation Zone). It says these no procedure orders would allow the Welsh Ministers to act quickly and responsively to 'prevent potential damage to our marine environment while more appropriate measures are developed in the usual way'.

In her **letter to the Chair of the CCERA Committee accompanying the supplementary LCM**, the Minister for Environment, Energy and Rural Affairs says:

I expect to lay a further Supplementary Memorandum at a later stage in the Bill process, following discussions with the UK Government about further amendments and prior to tabling a debate for the Assembly to consider consent to the LCM.

