

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date: 3 December 2018

Meeting time: 14.00

For further information contact:

Rhys Morgan

Committee Clerk

0300 200 6565

SeneddEAAL@assembly.wales

- 1 **Motion under Standing Order 17.22 to elect a Temporary Chair**
(14.00)
- 2 **Introductions, apologies, substitutions and declarations of interest**
(14.00) (Pages 1 – 30)
- 3 **Paper to note**
(14.00–14.05)
 - 3.1 **Paper to note 1 – Correspondence from the Cabinet Secretary for Finance regarding the Interparliamentary forum on Brexit – 29 November 2018**
(Pages 31 – 32)
- 4 **Motion under Standing Order 17.42(vi) to resolve to exclude the public from the remainder of the meeting**
(14.05)
- 5 **Preparing for Brexit – consideration of the draft report on the food sector**
(14.05–14.50) (Pages 33 – 43)
- 6 **Briefing on the UK Fisheries Bill**
(14.50–15.10) (Pages 44 – 55)
Chloe Corbyn, Research Service
Lorna Scurlock, Research Service



7 Briefing on the UK Healthcare (International) Arrangements Bill

(15.10–15.20)

(Pages 56 – 65)

Manon George, Research Service

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Eich cyf/Your ref
Ein cyf/Our ref

Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee
David Rees AM, Chair of the External Affairs and Additional Legislation Committee
National Assembly for Wales

29 November 2018

Dear both,

Thank you for copying to me your letter of 29 October, sent on behalf of the Interparliamentary Forum on Brexit to the Chancellor of the Duchy of Lancaster.

I welcome the Forum's interest in the relations between governments across the UK. The Welsh Government has been in the vanguard of calls for reform of intergovernmental relations; we set these out in 'Brexit and Devolution', which we published almost 18 months ago, and which itself built on positions outlined initially in 'Securing Wales' Future'. I believe our ideas are gaining traction: there is a growing recognition that we need a different way of working, because the current structures are not capable of bearing the weight EU withdrawal is placing upon them.

Our position in these matters is very much aligned with those expressed by a number of committees in recent years, as summarised in the annex to your letter, and I am able to assure you that we are taking careful note of the findings of these committees. Indeed, one of the first products undertaken as part of the IGR review was a review of the evidence from external commentators, including parliamentarians and academics, about the current state of intergovernmental relations, and recommendations for reform.

The need for reform is further demonstrated by our recent experiences in respect of the Ministerial Forum for EU negotiations. We welcomed the creation of the Forum, which is a sub-group of the JMC (EN) and a useful addition to the intergovernmental machinery, with the aim of allowing the views of the Devolved Administrations to feed into the negotiations process.

However, the quality of engagement in that Forum has been below expectations. Whilst some fruitful discussions have now been held on specific topics like cooperative accords, engagement on major elements of the negotiations has been unsatisfactory.

We remain disappointed and frustrated by the lack of meaningful engagement more widely. We were not shown or provided the detail of the draft Withdrawal Agreement or the political declaration before it was published, despite the fact that the UK Government cannot speak for the whole UK on many of the issues covered – many are in areas within the devolved competence of Welsh Ministers and the National Assembly for Wales.

It nevertheless remains essential that we present the Welsh Government's position at every opportunity. We fully expect to be involved in the detailed negotiations with the EU on the future economic partnership on matters within our devolved competence, and have made clear that we believe the model used to prepare for Council negotiations on fisheries in particular is one we should build upon to make sure the views of the devolved administrations are incorporated into the UK negotiating position.

The Welsh Government is keen to see the development of inter-parliamentary relationships through initiatives such as the Forum, and whilst these relationships are a matter for the Assembly and the other legislatures, we would be willing to participate in work to facilitate their development.

I am copying this letter to the Chancellor of the Duchy of Lancaster, and the Cabinet Secretary for Government Business and Constitutional Relations at the Scottish Government.

Best wishes,

A handwritten signature in black ink that reads "Mark". The letters are cursive and slightly slanted to the right.

Mark Drakeford AC/AM

Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

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Agenda Item 6

By virtue of paragraph(s) vi of Standing Order 17.42

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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 UK’s 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.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs
November 2018

Agenda Item 7

By virtue of paragraph(s) vi of Standing Order 17.42

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LEGISLATIVE CONSENT MEMORANDUM

Healthcare (International Arrangements) 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 Healthcare (International Arrangements) Bill (the “Bill”) was introduced in the House of Commons on 26 October 2018. The Bill can be found at: [Bill documents — Healthcare \(International Arrangements\) Bill 2017-19 — UK Parliament](#)

Policy Objectives

3. The UK Government’s stated policy objectives are to enable the Government to respond to the wider range of possible outcomes of EU Exit in relation to reciprocal healthcare including the implementation of new reciprocal healthcare agreements. This Bill forms part of the UK Government’s legislative response to EU Exit. Although the Bill is being introduced as a result of the decision to leave the EU, the legislation could also be used to give effect to healthcare agreements with other third countries.

Summary of the Bill

4. The Bill is sponsored by the Department of Health and Social Care.
5. The Bill makes provision:
 - To provide the Secretary of State with powers to fund and arrange healthcare outside the UK;
 - To make regulations to give effect to healthcare agreements between the UK and other countries, territories or international organisations, such as the European Union (EU); and
 - To enable the designation of authorised persons for the purpose of data processing, which is necessary to underpin these arrangements and agreements.

Provisions in the Bill for which consent is required

6. It is considered that Clauses 1, 2, 4 and 5 require consent on the basis that they are making provision for a purpose that is either partially or

wholly within the Assembly's legislative competence as they relate to health. (Clauses 3 and 6 make provision about interpretation, extent and commencement for the purposes of the other clauses in the Bill for which consent is required.)

7. **Clause 1** – provides the Secretary of State with a power to make payments and to arrange for payments to be made to fund healthcare outside of the UK.
8. Should new reciprocal healthcare arrangements be similar to current EU arrangements this could include, amongst other things, funding healthcare for state pensioners living outside the UK, providing healthcare for UK residents visiting countries outside the UK, funding healthcare for posted workers and funding for UK residents to receive planned treatment in other countries.
9. **Clause 2** – provides the Secretary of State with powers to make regulations in relation to Clause 1, in connection with the provision of healthcare outside the UK, and to give effect to healthcare agreements.
10. It is envisaged that should the UK exit the EU in a deal scenario, this power would enable the implementation of future healthcare arrangements with the EU, individual Member States or third countries from January 2021 onwards. In a no deal scenario, then this would enable the UK Government to give effect to new reciprocal healthcare arrangements on or after exit day.
11. Whilst it is for the UK to make bilateral or multilateral agreements with other territories and international organisations, the Assembly may legislate for the purpose of observing and implementing the UK's international obligations relating to devolved matters, such as healthcare.
12. **Clause 4** – provides powers to enable authorised persons to process personal data to facilitate reciprocal healthcare arrangements.
13. It may be necessary for authorised persons to share personal data, including medical data, with equivalent persons or bodies overseas to facilitate any reciprocal healthcare arrangements. Currently EU law provides the necessary powers to do this. This data processing gateway would support the operation of payments and arrangements for healthcare outside the UK provided for under Clause 1.
14. **Clause 5** – provides a power to amend, repeal or revoke primary legislation, including a Measure or Act of the Assembly, for the purpose of conferring functions on the Secretary of State or any other person, or to give effect to a healthcare agreement.
15. Consent is required for these provisions as they fall within the legislative competence of the National Assembly for Wales in so far as they relate to

health and the observance and implementation of international obligations relating to healthcare.

Reasons for making these provisions for Wales in the Healthcare (International Arrangements) Bill

16. The Welsh Government agrees that following EU Exit, legislation is necessary to make provision for reciprocal healthcare arrangements to give certainty and assurance to UK residents. These arrangements allow individuals to travel, work and receive treatment outside of the UK where this may not be otherwise possible. In the case of a no deal exit from the EU, it will be important to provide assurances for residents as soon as possible. There is, therefore, urgency to the timing of the Bill and the legislation made under it.
17. While the Welsh Government believes that there are benefits to having a UK-wide approach, any healthcare agreement entered into on behalf of the UK will affect the NHS in Wales and this legislation will therefore have a significant impact on a devolved policy area.
18. There are therefore outstanding concerns about the extent to which the Welsh Government will be involved in informing and shaping the healthcare agreements to be delivered under the Bill which will impact on the NHS in Wales. Whether or not legislative consent should be given, therefore, needs to be considered in light of legislative and non-legislative assurances given by the UK Government to ensure that the Welsh Government is involved in matters that affect devolved areas in Wales.
19. Further work to resolve our concerns will continue during the Bill's passage through Parliament and a supplementary Legislative Consent Memorandum will be brought forward if required.

Financial implications

20. There are financial costs associated with reciprocal healthcare arrangements. These costs relate to arranging to pay for the treatment of UK residents abroad and to providing healthcare for non residents in the UK. There could be increased or decreased costs depending on the number of countries with which the UK establishes reciprocal healthcare arrangements and the nature of these agreements.
21. Lord O'Shaughnessy wrote to the Cabinet Secretary for Health and Social Services on 26 October to give assurances that there will be no additional costs to the devolved administrations associated with the Bill. The Welsh Government is seeking clarification as to how this assurance will be provided for.

Conclusion

22. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill due to the urgency of the legislation and the preference for a consistent approach across the UK. However, given the significant impact on devolved areas it is crucial that Welsh interests are appropriately considered in the development of reciprocal health arrangements and that mechanisms are in place to ensure that the Welsh Government contributes to the making of decisions that affect Wales.

Vaughan Gething AM
Cabinet Secretary for Health and Social Services
November 2018