

EU Exit – Marine and Fisheries Legislation update for WMFAG February 2019

For some time officials from across the UK have been working collaboratively on the largest legislative programme we have seen, the amendment of the European Acquis in preparation for the UK's exit from the European Union. The scale of this programme is massive, and has required significant legal resources.

For a number of reasons, not least the time available, the decision was taken to transfer all European legislation onto the UK statute book at the moment the UK leaves the EU to provide a continuation of the legislative arrangements, and then review at a later date. This has been put into effect by the European Union (Withdrawal) Act 2018.

However, this legislation would not function correctly without significant technical amendment. This is a significant task. The Common Fisheries Policy alone is comprised of around 100 EU regulations and the Control Regulation alone has over 800 individual references which needed amending (i.e. References to Member States, Council, Commission etc.). Decisions were also needed to ensure that these amending SIs respect devolution and the functions are transferred to the appropriate government.

As a result the majority of functions are being amended to be exercisable by the relevant fisheries administration.

We have also needed to make changes to domestic Welsh and UK legislation where references are made to European legislation.

Seven UK SIs are currently being prepared, and in preparation for a possible exit on the 28 March the laying of these Statutory Instruments is well underway and they are being considered in line with the appropriate legislative scrutiny.

Importantly this Legislation **can not make policy changes** to the EU regulations. To do that primary legislation is needed. As a result the UK Government has introduced a UK Fisheries Bill to make necessary amendments to the Common fisheries Policy and provide a legislative basis for pan UK fisheries management as appropriate.

However, given the possibility that the UK Fisheries Bill is not enacted by the date of exit we are working on two contingency SIs in relation to both Access and Licensing. We will be in further contact with WMFAG on this matter.

UK Fisheries Bill

What's in the Bill?

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.

The Bill is sponsored by the Department for Environment, Food and Rural Affairs. At the request of Welsh Government, the Bill includes powers for Welsh Ministers.

The Bill sets out key elements of the UK Framework for Fisheries management and support, including the provision of a Joint Fisheries Statement, shared UK fisheries objectives, and a consolidation of the regime for licensing fishing vessels which respects the devolved nature of fisheries management. The Bill also ends shared access to UK waters by EU fishing vessels. Access will be negotiated in the future, where the Secretary of State will set the overall UK fishing opportunities based on the outcome of international agreements. The Bill also deals with a number of English domestic reforms around the sale of quota, charging and landings obligation.

What stage is the Bill at now?

The UK Fisheries Bill was introduced in to UK Parliament on 25 October 2018. The Bill passed second reading in the House of Commons on 21 November 2018, entered committee stage on 4 December, which concluded on 17 December, where a number of amendments were made. The next stage for the Bill is House of Commons Report stage and 3rd reading, which will be followed by the Lords consideration. No date has been set for the next stages of the Bill, at the time of writing. You can follow the Bill's progress through UK Parliament here:

<https://services.parliament.uk/Bills/2017-19/fisheries.html>

Welsh Government position

Welsh Government is working closely with UK Government on the Bill, as it progresses.

We have already successfully worked with UK Government to achieve some changes to the Bill, since introduction. Significantly, it has been amended to allow for the extension of the National Assembly for Wales' legislative competence in relation to fisheries matters in the Welsh zone beyond Wales (clause 39), and also contains provisions on the management of fisheries in relation to marine conservation, grant making powers and powers to make regulations amending enactments for a range of purposes.

Further amendments to the Bill are being discussed with UK Government, including:

- The Welsh Government want to see amendments to the Marine and Coastal Access Act 2009 (“2009 Act”) included in the Bill which would allow Welsh Ministers to vary from time to time the conditions attached to any fishing permits issued by the Welsh Ministers pursuant to the 2009 Act. This will allow the Welsh Ministers to manage Welsh fisheries in a much more flexible and responsive way.
- We also want to see an amendment to the interim order making power set out in section 136 of the 2009 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). These no procedure Orders would allow 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. This need to act quickly will be more acute once we exit the European Union and the Common Fisheries Policy no longer applies in Welsh waters.

Scrutiny by the National Assembly for Wales

In line with the National Assembly for Wales (the Assembly) procedures, when a Bill impacts on devolved competence, a Legislative Consent Memorandum (an LCM) must be laid. An LCM for the UK Fisheries Bill was laid on 15 November. A supplementary Legislative Consent Memorandum was laid on 10 January. You can find these here:

Legislative Consent Memorandum

<http://www.assembly.wales/laid%20documents/lcm-ld11847/lcm-ld11847-e.pdf>

Supplementary Legislative Consent Memorandum:

<http://www.assembly.wales/laid%20documents/lcm-ld12027/lcm-ld12027-e.pdf>

The Assembly is currently scrutinising the UK Fisheries Bill, and information on this process can be found here:

<http://www.senedd.assembly.wales/mgConsultationDisplay.aspx?id=334&RPID=1014111060&cp=yes>

The Assembly will be required to provide their consent to the Bill being made, in relation to areas that impact on Welsh devolved competence.

Want to know more?

If you have any questions on the Bill, please contact Tamsin Brown, UK Fisheries Bill Manager – Welsh Government.

Email: tamsin.brown@gov.wales

Tel: 03000 253225