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The Scottish Parliament  
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Thank you for your letter of 29 January 2019 and for your Committee’s report in relation to the Fisheries Bill. You asked us to explain the UK Government’s view of the devolution position of a number of provisions in the Bill. Defra’s analysis is annexed to this letter addressing the Bill’s provisions to set fishing opportunities, to establish cost recovery and grant making schemes and technical corrections to provide that the Sea Fish Industry Authority (Seafish) must recover the full cost of services provided to vessels from other countries.

I also wanted to take the opportunity to set out why I believe there is a huge opportunity for Scottish fishers if the Scottish Parliament recommends consent for the Fisheries Bill. Leaving the EU means that the Scottish Government and the other Devolved Administrations will see a significant increase in powers when it comes to fisheries management. The UK Government has also made a deeper commitment to collaborative working across the Administrations where possible.

Through the Fisheries Bill, the Scottish Government will receive new powers to regulate its sea fisheries resources to preserve the marine environment. This will allow the Scottish Government to protect its coastal and off shore marine habitats. Further powers in the Bill also allow the Scottish Government to act to tackle aquatic animal diseases, ensuring any threat is dealt with as quickly as possible and protecting the important and valuable Scottish fish farming industry.

In some areas, it makes sense to continue to have a common approach across the UK, to ensure we manage our shared resource - our waters and the natural resources within them - both effectively and sustainability. The Bill proposes ways for the UK Government and the Devolved Administrations to work together to adopt common approaches to fisheries management in certain areas. The Bill preserves UK, and therefore Scotland’s, vessels’ rights to fish across all four zones of UK waters and creates a consistent approach to managing access of foreign vessels. The four fisheries Administrations will set out in a joint statement how they will work together to achieve the Bill’s sustainability objectives.

As you will be aware, the Cabinet Secretary for the Rural Economy has written to me to ask for further powers in the Bill to be given to Scottish Ministers to allow Scottish Ministers to create grant schemes to replace the EMFF, to recover costs for services provided to
industry, and to amend the technical regulations of the CFP. We have already done this at the request of the Welsh Government and the DAERA. It is crucial that together we put Scottish fishers in the best possible position to make the most of the opportunities that leaving the Common Fisheries Policy affords, and put the Scottish Government in the same position to be able to deliver that as the other Administrations.

As these amendments would be within the legislative competence of the Scottish Parliament, we would like to see revised proposals from the Scottish Government to seek to secure the legislative consent of the Scottish Parliament to the Bill.

I hope this clarifies the position but I would be very happy to write again if you require further information.

I am copying this letter to Fergus Ewing MSP, Cabinet Secretary for the Rural Economy.

With every good wish,

Michael Gove
ANNEX: Devolution analysis of clauses 18 to 20 and 28 to 30 of the Fisheries Bill

1. This analysis provides further explanation behind the Department for Environment, Food and Rural Affairs' assessment of the devolution position of the Fisheries Bill.

Clauses 18-20: fishing opportunities

2. The implementation of international agreements in areas of devolved competence is not a reserved matter. The regulation of sea fishing in the Scottish zone and of Scottish boats beyond that zone are devolved matters; but these are not the issues at hand in relation to clause 18.

3. The UK Government's view that the power in clause 18 does not relate to devolved matters is based on the fact that the determination of a UK amount cannot be within devolved competence because the power is not exercisable separately in or as regards Scotland. It could only be after the determination of the UK’s fishing opportunities at a UK level and their division between the UK fisheries administrations that there would be an international obligation that related to Scotland which would then be within the competence of the Scottish Parliament and the responsibility of the Scottish Government to implement.

4. Once the UK leaves the EU and becomes an independent coastal State, the UK Government will be required under the UN Convention on the Law of the Sea (UNCLOS) to cooperate with the EU and other coastal States on shared stocks. It will determine the UK’s fishing opportunities following negotiations with the EU and other coastal states or where the UK is obliged to do so under UNCLOS or other international obligations. This UK function is given statutory effect in clause 18.

5. Determining UK fishing opportunities cannot be a function which is exercisable separately in or as regards Scotland, or any other part of the UK. The scope of the UK function is clear in clause 18(2); the Secretary of State determines the UK’s fishing opportunities to comply with international obligations which fall on the UK, on behalf of the UK. It is not within devolved competence to determine fishing opportunities for the UK as a whole, nor would it be within Scottish devolved competence to determine fishing opportunities for Scotland in advance of or instead of a UK level determination. Under section 29(2)(a) of the Scotland Act 1998, a measure is outside Scottish devolved competence if it would confer or remove functions exercisable other than in or as regards Scotland.

6. Where the UK is subject to an international obligation to achieve a result by reference to a fixed quantity for the UK as a whole, it can only be the UK Government’s function to determine how that quantity is divided between UK authorities. The 'top-level' allocation of UK fishing opportunities cannot be within devolved competence, for the reasons set out above. It is well-established practice which is accepted by all UK administrations in the fisheries Concordat, that the UK Government exercises the function of dividing fishing opportunities between UK authorities.

7. It is only after these UK functions have been carried out that there is an identifiably Scottish function to exercise, which is why the power in this clause cannot relate to devolved matters.

8. Clause 19 relates to duties on the Secretary of State relating to the determination of fishing opportunities and so similarly does not relate to devolved matters.

9. Clause 20 makes retained EU law relating to the distribution of fishing opportunities operable in UK law. The effect of the amendment to Article 17 of the Basic Regulation of the Common Fisheries Policy is to make Article 17 apply to the Secretary of State and the Marine Management
Organisation but not to the Devolved Administrations. Clause 20 does therefore engage the LCM process and we will decouple clause 20 from clauses 18 and 19 in the LCM table and make this clear.

**Clause 28: financial assistance powers of the Secretary of State**

10. This clause provides the Secretary of State with powers to grant financial assistance for certain purposes. Clause 28(3) provides that the powers are only exercisable in relation to England, English waters or English fishing boats. Therefore this clause does not engage the LCM process.

**Clause 29: power of the Marine Management Organisation to impose charges**

11. This clause provides the Secretary of State with the power to make provision for the Marine Management Organisation (MMO) to impose charges in respect of the MMO's relevant marine functions, which are listed in clause 29(2).

12. The MMO exercises a number of fisheries management functions, including vessel licensing, quota management, monitoring fishing activity and enforcing compliance. The MMO has further functions in relation to marine licensing. The extent and application of this clause is UK-wide. As clause 29 relates to a devolved matter and extends and applies to the whole of the UK, the UK Government's view is that the LCM process is engaged.

13. The logic of this is that the MMO may need to charge for functions which it exercises in relation to vessels operating in any part of UK waters. The UK Government thinks this is reasonable given that English vessels fish across UK waters and that where the MMO exercises functions relating to vessels regulated by the Devolved Administrations, then it is right that these vessels are treated in the same way as English vessels.

**Clause 30: Sea Fish Industry Authority: fees for services provided for industry in EU**

14. This clause amends section 3(5) of the Fisheries Act 1981 to extend a requirement that the Sea Fish Industry Authority (Seafish) must recover the full cost of any services it provides to those in other countries. This is a technical correction which arises as a consequence of withdrawal from the EU.

15. The Sea Fish Industry Authority is a UK body that carries out functions in relation to the regulation of sea fisheries across the UK and so to this degree relates to devolved matters. As clause 30 relates to a devolved matter and extends and applies to the whole of the UK, the UK Government's view is that the LCM process is engaged.