

# LEGISLATIVE CONSENT MEMORANDUM

## BIODIVERSITY BEYOND NATIONAL JURISDICTION BILL

### Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister for Agriculture, Environment and Rural Affairs, is:

*“That this Assembly notes the Government amendments made at House of Lords Report Stage on 12 January 2026 to the Biodiversity Beyond National Jurisdiction Bill; and consents, in accordance with Standing Order 42A(9), to the extension to Northern Ireland of the devolved provisions inserted by those amendments, namely Clauses 10, 11 and 12 (relating to regulation-making and consultation in respect of Clause 9), and Clauses 16, 17 and 18 (relating to regulation-making and consultation in respect of renumbered Clause 14).”*

### Background

2. This memorandum has been laid before the Assembly by the Minister of Agriculture, Environment and Rural Affairs under Standing Order 42A(9). The Biodiversity Beyond National Jurisdiction (“BBNJ”) Bill (“the Bill”) was introduced by the UK Government in the House of Commons on 10 September 2025. The Bill is available on the UK Parliament website via this link: <https://bills.parliament.uk/bills/4016>. The Bill is currently at the House of Lords 3<sup>rd</sup> Reading Stage.
3. Amendments were tabled at Report Stage dealing with a devolution matter and consent.
4. The amendments can be found on the Bill’s publication page: <https://bills.parliament.uk/bills/4016/stages/20363/amendments>
5. The Assembly is now asked for consent to the amendments that deal with devolution matters introduced at House of Lords Report Stage. The draft motion is amended to reflect this.

### Summary of the Bill and its policy objectives

6. This Bill provides enabling powers to implement the UN Agreement on

Biodiversity Beyond National Jurisdiction (the High Seas Treaty). The BBNJ Agreement aims to ensure the conservation and sustainable use of marine resources in areas beyond national jurisdiction (“ABNJ”) (i.e., beyond 200 nautical miles (“nm”)).

7. ABNJ is defined in the BBNJ Agreement as the high seas and the seabed and ocean floor beyond the limits of national jurisdiction.
8. The current version of the Bill contains 33 clauses and one schedule, addressing three of the four substantive parts of the BBNJ Agreement, namely: Part II: Marine Genetic Resources, including the fair and equitable sharing of benefits (implemented in Part 2 of the Bill); Part III: Measures such as Area-based Management Tools, including Marine Protected Areas (implemented in Part 3 of the Bill); and, insofar as it relates to marine licensing, Part IV: Environmental Impact Assessments (implemented in Part 4 of the Bill).

The amendments tabled on 5 January 2026 and agreed at Report Stage on 12 January 2026 have inserted six new clauses into the Bill: Clauses 10-12 in Part 2 and Clauses 16-18 in Part 3.

9. Two of the amendments, Clause 10 (Power to make regulations: Scotland and Northern Ireland (Part 2 – Marine Genetic Resources) and Clause 16 (Power to make regulations: Scotland and Northern Ireland (No. 2) (Part 3 – Area-Based Management Tools) ) introduce new functions for the Department of Agriculture, Environment and Rural Affairs by giving concurrent powers previously exercisable only by the Secretary of State. These changes engage devolved competence and therefore require Assembly consent.

## **Provisions which deal with Devolution Matters**

### **Part 2 (Clauses 2 to 12) – Marine Genetic Resources**

10. Part 2 of the Bill (clauses 2-12) establish the UK’s domestic regime for implementing Part II of the BBNJ Agreement, which concerns the marine genetic resources (MGR) and digital sequence information which is generated on these MGR (referred to as “DSI on MGR”) and the equitable sharing of benefits from their collection and use.
11. Part 2 of the Bill specifies the requirements that will apply to persons involved in the collection, storage and utilisation of MGR of ABNJ, and in the storage and utilisation of DSI on these MGR. The policy objective of Part II of the Agreement, which is reflected in the provisions of Part 2 of the Bill, is to enhance the transparency of, and share the benefits of, research undertaken on such MGR and DSI.
12. Clause 2 (Collection) provides for notification requirements of pre-and post-collection information in connection with MGR collected by UK

craft or UK equipment from ABNJ, including that pre-collection information must be provided to the Secretary of State 7 months in advance of collection taking place. This implements Article 12(2) to (5) of the BBNJ Agreement. Information must be provided in accordance with the Schedule to the Bill.

13. Clause 3 (Utilisation) provides for obligations for UK-based projects that use MGR or DSI on such MGR from ABNJ. The person in control of such a project must submit utilisation information to the Secretary of State, deposit physical samples in a publicly accessible repository, and record digital data in a suitable database, all within three years. Repositories and databases must follow current international scientific practices and allow identification of the resources via identifiers of Article 12(3) of the BBNJ Agreement.
14. Clause 4 (Onward Disclosure) governs how the Secretary of State may share information received under Clauses 2 and 3 of the Bill. The provision allows for onward disclosure of information to the Clearing-House Mechanism established under the BBNJ Agreement, unless the information is protected under the National Security Act 2023 or exempt under Article 51(6) of the BBNJ Agreement.
15. Clause 5 (Repositories) governs UK repositories that store MGR samples from ABNJ. Repository controllers must ensure samples are identifiable according to international standards, provide access for utilisation (subject to conditions set out in Clause 7), and report access activity every two years to the Secretary of State. Reports must reference the specific identifiers (Article 12(3)) linked to the MGR involved.
16. Clause 6 (Databases) sets out obligations for UK-controlled, publicly accessible databases that store DSI on MGR from ABNJ. The person responsible for such a database must ensure the DSI is identifiable (by reference to any Article 12(3) identifier and provide access to it under reasonable conditions. The clause also provides for reporting requirements to the Secretary of State in relation to how the DSI has been viewed and downloaded, which must be provided every 2 years. A person controls a database in the UK in case of an individual if the individual is habitually resident in the UK, and in any other case, the person is incorporated or formed under the law of any part of the UK.
17. Clause 7 (Supplementary) sets out supplementary provisions, including: that access to MGR or DSI in the repositories and databases may be subject to conditions consistent with Article 14(4)(a) to (d) of the BBNJ Agreement and in relation to the reporting requirement under Clauses 5 and 6. It also provides that the Secretary of State may alter reporting deadlines by directions to comply with any timetable set by the access and benefit-sharing committee established under Article 15 of the BBNJ

Agreement.

18. Clause 8 (Exceptions) sets out exceptions from the requirements of Part 2 of the Bill with respect to fishing and fishing related activities, military activities and military vessels and aircraft, activities in Antarctica, and the MGR and DSI of Antarctica.
19. Clause 9 (Power to make regulations) contains delegated powers for the Secretary of State to make regulations in subsection (2) covering the following topics:
  - (a) Ensuring the UK's compliance with Part II of the BBNJ Agreement in a manner consistent with Article 5(2) (which concerns the relationship between the BBNJ Agreement and other instruments);
  - (b) Implementing decisions of the BBNJ Agreement's Conference of Parties ("CoP") under Article 14(7) of the BBNJ Agreement (concerning the sharing of monetary benefits). This could include imposition of requirements to make payments or to disclose information relevant to calculation of those payments;
  - (c) Making any changes to Part 2 of the Bill that are necessary due to determinations by the CoP under Article 51(2) of the BBNJ Agreement about the operation of the Clearing-House Mechanism (established by Article 51(1));
  - (d) Limiting application of Part 2 of the Bill to give effect to Article 51(6) of the BBNJ Agreement (which provides that information need not be shared with the BBNJ Clearing-House Mechanism if domestic law protects it from disclosure);
  - (e) Avoiding double regulation by ensuring that a person is not required to comply with both a provision under Part 2 of the Bill and with equivalent provision in the law of another State party to the BBNJ Agreement; and
  - (f) Making provision about the enforcement of requirements under Part 2 of the Bill.
20. The amendments insert Clause 10 (Power to make regulations: Scotland and Northern Ireland) that provides powers for the Department of Agriculture, Environment and Rural Affairs to make regulations that are within the scope of Clause 9(2) for the purposes of implementing the UK's obligations under Part II of the BBNJ Agreement. These powers correspond to those of the Secretary of State, but are limited to matters that are within the legislative competence of the Northern Ireland Assembly.
21. Clause 11 (Procedure for regulations under section 10) is a new clause that sets out the procedure for regulations made under Clause 10. (Regulations that amend a UK Act, Scottish Act or Northern Ireland Legislation, or that create a civil sanction or change the maximum amount of a monetary penalty must follow the affirmative procedure. Subclause (3) gives the option to change the procedure for making

regulations under this clause from the negative procedure to and affirmative procedure to give the Northern Ireland Assembly an option for enhanced scrutiny of any regulations under this provision.

22. Clause 12 (Consultation: Scotland and Northern Ireland) is a new clause that requires the Secretary of State to consult DAERA before exercising powers in Clause 9 that would be within the legislative competence of the Northern Ireland Assembly.

### **Part 3 (Clauses 14, 16 to 19) – Area Based Management Tools**

23. Part 3 of the Bill relates to the implementation of Part III of the BBNJ Agreement. Part III of the Agreement establishes a regime by which Area Based Management Tools (ABMTs) can be established and managed for the purpose of protecting the marine environment in ABNJ.
24. ABMTs are defined in the BBNJ Agreement as “a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives in accordance with this Agreement”
25. Clause 14 (Power to make regulations) empowers the Secretary of State to make regulations to implement ABMTs and related measures, including where the CoP takes a decision under Articles 22(1)(a)–(b) or adopts emergency measures under Article 24(1). These regulations may include enforcement, fees, and (within limits) civil/criminal sanctions, and may amend primary legislation to ensure effectiveness.
26. The amendments insert Clause 16 (Power to make regulations: Scotland and Northern Ireland (No. 2)) that provides power for the Department of Agriculture, Environment and Rural Affairs to make regulations for the purpose of meeting the UK’s obligations under Article 25(1) of the BBNJ Agreement in respect to ABMT decisions. These powers correspond to those of the Secretary of State under Clause 14, but are limited to matters that are within the legislative competence of the Northern Ireland Assembly.
27. Clause 17 (Procedure for regulations under section 16) is a new clause that sets out the procedure for regulations made under the new Clause 16. Regulations that amend a UK Act, Scottish Act or Northern Ireland Legislation, that create a civil sanction or change the maximum amount of a monetary penalty, or that create a criminal offence must follow the affirmative procedure. If regulations relate to

a decision under Article 24(1) of the BBNJ Agreement and the person making the regulations considers that they need to be made urgently to give effect to the measure, then the made affirmative procedure may be used. All other regulations under this power are subject to the negative procedure, although any provision that could be made under the negative procedure may also be included in regulations subject to either the affirmative or made affirmative procedure.

28. Clause 18 (Consultation: Scotland and Northern Ireland) is a new clause that requires the Secretary of State to consult the Department of Agriculture, Environment and Rural Affairs before exercising powers in Clause 14 that would be within the legislative competence of the Northern Ireland Assembly.
29. Clause 19 (Directions) provides for a separate emergency mechanism designed to enable immediate compliance with urgent international obligations, whereas Clauses 14 and 16 govern the making of regulations to implement broader or longer-term measures. Clause 19 empowers the Secretary of State to issue emergency directions to UK craft to implement urgent measures adopted under Article 24 of the BBNJ Agreement, aimed at preventing serious or irreversible harm to marine biodiversity in ABNJ. These directions must be given in writing (or confirmed in writing if delivered orally), laid before the UK Parliament, and may be varied or revoked, ceasing to have effect once the emergency measure ends. Failure to comply without reasonable excuse is a criminal offence, with penalties including fines or imprisonment, and offences committed outside the UK may be prosecuted within the UK. This power provides a means for the UK to comply with binding emergency measures without delay in situations where the urgency or exceptional nature of such measures mean that regulations would not be sufficiently responsive. The power is modelled on existing direction-making powers available to the Secretary of State's Representative under Schedule 3A of the Merchant Shipping Act 1995, which are used to respond to maritime emergencies.

## Part 5 General

30. A consequential amendment has been made to clause 29 to state that this regulation making procedure does not apply to regulations made under clauses 10 and 16. -making powers under Part 3 are properly commenced and integrated into the Bill.

## Reasons for making the Provisions

31. The Bill will provide the legal framework for the United Kingdom to fully implement fully its international obligations under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable

## Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (the BBNJ Agreement).

32. The BBNJ Agreement has been ratified by over 60 countries meaning it will enter into force on 17 January 2026. The first Conference of Parties must take place within one year of entry into force.
33. The three new clauses associated with Clause 9 (Clauses 10-12), provide a duty that ensures that the Department of Agriculture, Environment and Rural Affairs is consulted before UK regulations are made in devolved areas and confer concurrent powers on Department of Agriculture, Environment and Rural Affairs to make regulations under Part 2 (Marine Genetic Resources). This will ensure that Northern Ireland can implement Part II of the BBNJ Agreement effectively and exercise equivalent powers to the Secretary of State in devolved matters.
34. The three new clauses associated with Clause 14 (Clauses 16-18) provide powers for the Department of Agriculture, Environment and Rural Affairs corresponding to those of the Secretary of State to implement decisions under Part 3 (Area-Based Management Tools) of the BBNJ Agreement. These powers allow the Department of Agriculture, Environment and Rural Affairs to legislate independently on devolved matters if required.
35. In a scenario where the Department of Agriculture, Environment and Rural Affairs does not agree with the UK Government's approach to implementing requirements under Part 2 or 3 of the BBNJ Agreement, which impact on devolved matters, the concurrent powers provided by Clauses 10 and 16 mean the Department of Agriculture, Environment and Rural Affairs could legislate independently. This will require early engagement between governments before decisions are taken under Part 2 and/or Part 3 of the Bill to agree an approach on what regulations will be made at a UK or Northern Ireland level.

## **Reasons for utilizing the Bill rather than an Act of the Assembly**

36. The provisions of the Bill extend and apply to England, Wales, Scotland and Northern Ireland, apart from clauses that apply only to Scotland (Clauses 23 and 25). The new clauses inserted at Lords Report Stage (Clauses 10–12 and Clauses 16–18) extend to Northern Ireland to provide concurrent powers for DAERA and consultation duties.
37. The Bill amends the Marine and Coastal Access Act 2009 and the Marine Works (Environmental Impact Assessment) Regulations 2007 to align the marine licensing regimes with the BBNJ EIA process in respect of activities in areas beyond national jurisdiction. This legislation operates on a UK-wide basis and therefore it is appropriate for a Westminster Bill to

introduce the provisions rather than an Assembly Bill.

## **Consultation**

38. The Natural History Museum and the National Oceanography Centre, as the organisations holding the main collections of MGR of ABNJ in the UK, were consulted both during the negotiation of the Agreement and in the development of the UK's approach to its implementation.

## **Human Rights and Equality**

39. The Secretary of State for Foreign, Commonwealth and Development Affairs, the Right Honourable Yvette Cooper MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998: "In my view the provisions of the Biodiversity Beyond National Jurisdiction Bill are compatible with the Convention rights".
40. In accordance with its duty under section 75 of the Northern Ireland Act 1998, it is the Department's assessment that there are no equality, human rights or good relations issues associated with the provisions in the Bill.

## **Financial Implications**

41. The UK Government has assessed the public sector financial costs to be low on the basis that there will be no significant costs to the public sector above business as usual. There are no financial implications for the Northern Ireland Departments arising directly from the draft Bill (as introduced).

## **Summary of Regulatory Impact**

42. The UK Government has assessed the overall regulatory impact to be neutral. The impact assessment indicates there will be minimal impacts on businesses. There is a possibility that as a result of access and benefit sharing under the BBNJ Agreement, greater dissemination of information enables the development of new and improved solutions in the pharmaceutical, life sciences, agri-tech, cosmetics, nutraceuticals and bulk chemical sectors. This could have significant benefits to UK businesses and households. However, due to long lead-times for research, any impacts are likely to be negligible to begin with.

## **Engagement to date with the Committee for Agriculture, Environment and Rural Affairs**

43. The Agriculture, Environment and Rural Affairs Committee has been notified and will be provided with briefing as part of the legislative



consent process.

## **Conclusion**

44. The view of the Minister of Agriculture, Environment and Rural Affairs is that, in the interest of good government, the provisions of the Bill dealing with devolutions matters should extend to Northern Ireland.

**Department of Agriculture, Environment and Rural Affairs**  
**20 January 2026**