

# LEGISLATIVE CONSENT MEMORANDUM

## FISHERIES BILL

### Introduction

1. The Fisheries Bill was introduced into the House of Lords on 29<sup>th</sup> January 2020. It grants a range of powers to the UK Government and Devolved Administrations in order to manage fisheries directly, manage the impact of fisheries on the marine environment, and manage some elements of aquaculture.

2. This includes powers to amend retained EU law, to regulate how vessels conduct fishing operations, to manage foreign fishing vessels in UK waters and to set limits on fishing quota and effort (known as days-at-sea).

3. The Scottish Government considers that it is a relevant Bill under Rule 9B.1 of the Parliament's Standing Orders and the UK Government has also indicated that it considers this Bill requires legislative consent from the Scottish Parliament. This memorandum has been lodged by Fergus Ewing, Cabinet Secretary for Rural Economy and Tourism, in accordance with Rule 9B.3.1(a). The Bill and supporting documents can be found at: <https://services.parliament.uk/bills/2019-20/fisheries.html>. This memorandum relates to the Bill as introduced.

4. The Scottish Government deeply regrets the withdrawal of Scotland, as part of the UK, from the EU on 31 January 2020. This action was taken with no democratic mandate for withdrawal in Scotland. However, the Scottish Government accepts the need to make preparations for the exceptional circumstances which arise as a result of that withdrawal, including ensuring continuity for Scotland's fisheries and seafood sector.

5. While the introduction of this Bill has been necessitated by the UK leaving the EU, there are aspects which go beyond EU exit. The Bill also legislates for licensing of fishing vessels and sets penalties for breaches of licence conditions; for the Secretary of State to sell English fishing opportunities for a calendar year; for the Secretary of State to establish discard prevention charging schemes for English vessels; to allow the Marine Management Organisation (MMO) to impose charges for the provision of its services; and to amend the legislative competence of the Senedd Cymru (Welsh Assembly).

### Level of Scottish Government Engagement With the Bill

6. The Bill is broadly similar to that introduced into the House of Commons on 25 October 2018. However, the intervening period has seen intensive discussion between officials of all four administrations. Those discussions resolved a number of points of disagreement and designed new approaches to fisheries management within the UK. These revamped structures recognise the powers and competencies of the various administrations and allow them to work co-operatively or independently as is necessary.

7. Further, additional powers will be extended to the Scottish Ministers through this Bill, including the ability to make regulations on the management of fishing in the Scottish zone<sup>1</sup> (for example where, when and how any vessel can fish), marine conservation in the offshore zone<sup>2</sup>, and extension of charging and funding powers.

8. Due to the constructive four party discussions on the drafting of this Bill, the recognition of the Scottish Parliament's competence over sea fishing in the Scottish zone and Scottish fishing boats wherever they are, and the extension of new powers to the Scottish Ministers, the Scottish Government intends to lodge a legislative consent motion in support of all the relevant provisions of the Bill.

## **Contents of the Bill**

9. The Explanatory Notes<sup>3</sup> accompanying the Bill set out the UK Government's views of the Bill's main purpose and functions which operate alongside the powers conferred by the European Union (Withdrawal) Act 2018. The main purpose of the Bill is to provide the legal framework for the UK to operate outside of the Common Fisheries Policy (CFP), and to create common approaches where required to fisheries management between the Secretary of State and the Devolved Administrations. The main provisions of the Bill are as follows:

### **Fisheries objectives, fisheries management plans and fisheries statements (clauses 1-11 and Schedule 1)**

These provisions establish joint sustainability objectives for the 4 UK Fisheries Administrations (UKFAs) covering England, Scotland, Wales and Northern Ireland, in relation to their fisheries and aquaculture functions. The UKFAs are required to publish a Joint Fisheries Statement (similar to the Marine Policy Statement required under the Marine and Coastal Access Act 2009) that sets out the policies they intend to apply in order to achieve these objectives. The Bill also provides for Fisheries Management Plans which will detail the steps the UKFAs will take to recover stocks to and maintain them at sustainable levels. There is also provision for the Secretary of State to produce a fisheries statement in the event the UKFAs are unable to reach agreement on a matter of reserved competence. The UKFAs are required to pursue the policies set out in the Joint Fisheries Statement unless relevant considerations indicate otherwise.

### **Access to British fisheries and regulation of foreign fishing boats (clauses 12-13 and Schedule 2)**

These provisions establish that a foreign vessel may not fish in UK waters unless it has been licensed to do so under the subsequent provisions of the Bill, replacing section 2 of the Fishery Limits Act 1976. The amendments to domestic legislation in

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<sup>1</sup> "The Scottish zone" is defined in the Scotland Act 1998 and S.I. 1999/1126. It is the sea within British fishery limits that is adjacent to Scotland, i.e. the area of sea adjacent to Scotland up to 200 nautical miles from baselines.

<sup>2</sup> "The offshore zone" is the area of sea adjacent to Scotland 12 to 200 nautical miles from baselines. It is a term used in relation to the marine environment to refer to the area of sea adjacent to Scotland over which the Scottish Ministers do not have legislative competence (as opposed to the inshore area, 0-12nm, which forms part of "Scotland" as defined in the Scotland Act 1998 and in relation to which the Scottish Ministers have legislative competence for the marine environment).

<sup>3</sup> <https://publications.parliament.uk/pa/bills/lbill/58-01/071/5801071en01>

Schedule 2 ensure that foreign fishing vessels are subject to the same regulations as British fishing boats when fishing in UK waters.

### **Licensing of fishing boats (clauses 14-18 and Schedule 3)**

Clause 14 deals with the circumstances in which a licence is required for British fishing boats. The prohibitions and exemptions under this clause apply UK wide and ensure that the basic licensing requirement is consistent throughout UK waters. This will replicate the effective *status quo*; that a licence issued by the Devolved Administrations or the MMO will be effective throughout UK waters.

However, the Bill also develops that *status quo* by clarifying the powers of the Devolved Administrations to issue their own licences and to attach their own conditions to all fishing which occurs in their waters, enhancing Devolved Administrations' control over their waters.

### **Access and licensing: offences (clauses 19-22 and Schedule 4)**

These clauses set out the penalties for breaching licensing conditions, for individuals and bodies corporate, and the jurisdiction of courts in the United Kingdom to try offences.

### **Fishing opportunities (clauses 23-27 and Schedule 5)**

Clause 23 gives the Secretary of State the power to determine the UK's maximum fishing opportunities (quota and days at sea, known as 'effort') in accordance with the UK's international obligations. The Secretary of State is required to consult with the Devolved Administrations before exercising this function. Clause 25 pertains to the domestic distribution of fishing opportunities by all Fisheries Administrations. It amends Article 17 of the Common Fisheries Policy Basic Regulation<sup>4</sup> to maintain the existing requirements in UK law and to apply them to the UKFAs and the MMO. Clause 26 also requires the UKFAs to ensure that fishing opportunities are not exceeded as far as is possible. Clause 27 and Schedule 5 provide a mechanism for the Secretary of State and the Welsh Ministers to sell English and Welsh quota, respectively, during a calendar year.

### **Discard Prevention Charging Schemes (clauses 28-32)**

These clauses allow the Secretary of State to make regulations to establish a charge for fishing over quota for English vessels in order to incentivise discard reduction practices.

### **Grants and Charges (clauses 33-35 and Schedules 6 and 7)**

These provisions give the four UKFAs and the MMO various powers to provide financial assistance to the fishing and aquaculture industries and to impose charges for carrying out certain functions.

### **Powers to make further provision (clauses 36-42 and Schedule 8)**

Clause 36 gives the Secretary of State the power to make regulations for certain listed fisheries and aquaculture matters and for listed purposes. When exercising these powers, the Secretary of State can amend existing legislation, including retained EU

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<sup>4</sup> [Regulation \(EU\) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy.](#)

law. Clause 38 gives powers to the Secretary of State to make regulations about aquatic animal diseases. Clauses 39 and 40 provide that regulations under clauses 36 and 38 cannot be made in relation to matters which would be within the legislative competence of the Scottish Parliament (or other Devolved Legislatures), unless the Scottish Ministers so consent. Clause 42 introduces Schedule 8, which confers equivalent powers on the three Devolved Administrations.

### **Legislative competence for Welsh Assembly (clause 43)**

Clause 43 extends the legislative competence of the Welsh Assembly beyond the limit of its territorial sea to cover the full extent of the Welsh Exclusive Economic Zone (EEZ).

### **Amendments to the Marine and Coastal Access Act 2009 in order to regulate fisheries for the purpose of marine conservation (clause 44 and Schedule 9)**

Clause 44 introduces Schedule 9, which contains amendments to the Marine and Coastal Access Act 2009 to extend the order-making powers of the Scottish and Welsh Ministers and the byelaw making powers of the MMO in relation to the exploitation of sea fisheries resources for marine conservation purposes. These provisions replace certain EU measures and give the Scottish Ministers additional powers for the protection of the marine environment in the offshore (12-220nm) region.

### **Final Provisions (clauses 45-51)**

These clauses contain various standard provisions, such as procedure for regulations, interpretation and commencement.

### **Requirement for Legislative Consent**

10. The Explanatory Notes to the Bill set out that the UK Government believes that large parts of the Bill require the Scottish Parliament's consent. The UK Government regards the following provisions as requiring legislative consent due to their impact on devolved competence in relation to fisheries, the Scottish zone or the licensing and management of Scottish vessels: clauses 1-3, 6-22, 25-26, 28-42 and 44-51 and Schedules 1-4 and 6-10. The Scottish Government agrees with the UK Government's assessment of the provisions requiring the Scottish Parliament's consent.

### **Scottish Government View**

11. The legislative consent memorandum on the European Union (Withdrawal) Bill,<sup>5</sup> lodged with the Scottish Parliament on 12 September 2017, set out the Scottish Government's position that policy responsibility and expertise for matters within devolved competence lie with the Scottish Government,<sup>6</sup> accountable to the Scottish Parliament.

12. The Fisheries Bill as drafted respects these points by explicitly requesting the Scottish Parliament's consent to legislate in devolved areas. Further the Bill grants additional powers through clauses 12-13, 14-18 and 19-20 and Schedules 2, 3, 4 and 9 to the Scottish Ministers.

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<sup>5</sup> <http://www.parliament.scot/S5ChamberOffice/SPLCM-S05-10-2017.pdf>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/1998/46/schedule/5/part/I/crossheading/foreign-affairs-etc>

13. Substantial additional powers to manage fisheries are also granted to the Scottish Ministers through Schedule 8, which replicates Clauses 36-42 (which apply to the Secretary of State only), allowing the Scottish Ministers to more effectively manage the routine business of fisheries in line with devolved competence. None of these powers are time limited.

14. The Bill consolidates and replaces certain existing provisions in UK fisheries legislation, but there are no new financial or resource implications beyond the Scottish Governments existing commitments to the management of fisheries within Scottish waters.

15. The Bill also explicitly recognises the Scottish Government's competence in fisheries and will only allow the Secretary of State to legislate for Scotland when the Scottish Ministers consent to do so. Specifically, this covers:

- vessels which do not require a fishing licence – clause 14(4)(a);
- changes in licensing requirements for foreign vessels – clause 16(4)(a);
- the powers to make provision on fisheries and aquaculture by regulation – clause 39(3)(a) and clause 40(4)(a).

16. Scottish Ministers anticipate that the powers in the Bill will be used to ensure the sustainable management of the Scottish zone. This will allow different approaches to be taken by the four administrations in the UK as necessary, given the particular nature of their waters, fleets and socio-economic circumstances. This reflects the current situation where different management measures are used for different stocks, sea areas and parts of the fleet around the UK.

17. The Joint Fisheries Statement is envisaged to be the core part of a UK Common framework on fisheries, setting out a set of shared objectives (whilst recognising that Administrations may diverge in how they meet them given the differences in biology and socio-economics in different parts of the UK). This will ensure that the UK can collectively meet international obligations and ensure sustainable management of common resources (shared fish stocks).

18. The administrations will also cooperate on the development of common frameworks on issues such as licencing, compliance, quota management and data gathering to ensure that, where necessary, systems are compatible and the UK is able to meet international obligations (for example provision of fisheries data to ICES).

19. Under Rule 9B.3.3(c) of the Parliament's Standing Orders, if a member of the Scottish Government intends to lodge a legislative consent motion, it sets out a draft of the motion and explain why they consider it appropriate for that provision to be made and for it to be made by means of the Bill.

20. On this basis of the additional powers granted to Scottish Ministers and the recognition of the Scottish Parliament's competence, for the purposes of complying with Rule 9B.3.3(c), the Scottish Government can recommend to the Parliament that it gives consent to the Bill as currently drafted.

## **Draft legislative Consent Motion**

21. The draft motion, which the Cabinet Secretary for Rural Economy and Tourism intends to lodge is:

“That the Scottish Parliament agrees that the relevant provisions of the Fisheries Bill 2020 introduced in the House of Lords 29<sup>th</sup> January 2020 relating to provisions on fishing, aquaculture and marine conservation and connected purposes so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

## **Conclusion**

22. It remains a matter of regret to the Scottish Government that the UK has withdrawn from the EU. The Scottish Government considers this will have widespread detrimental effects on the UK and Scotland, and has deep concerns over the harm that will be inflicted on Scotland by withdrawal from the European Union.

23. However, the Scottish Government accepts that proper, responsible preparations have to be made to respond to the circumstances which arise as a result of that withdrawal in order to support Scotland’s fisheries and seafood sector.

24. As noted above, due to the constructive four party discussions on the drafting of this Bill, the recognition of the Scottish Parliament’s competence in this area and the extension of new powers to the Scottish Parliament, the Scottish Government is of the view that so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, they should be considered by the UK Parliament.

Scottish Government  
June 2020



*This Legislative Consent Memorandum relates to the Fisheries Bill (UK legislation) and was lodged with the Scottish Parliament on 15 June 2020*

# **FISHERIES BILL – LEGISLATIVE CONSENT MEMORANDUM**

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