

Rural Affairs, Islands and Natural Environment Committee

**2nd Meeting, 2023 (Session 6), Wednesday
25 January**

Legislative consent memorandum – Shark Fins Bill

Introduction

1. This paper supports the Committee's consideration of the legislative consent memorandum (LCM) for the [UK Shark Fins Bill](#). [The Legislative Consent Memorandum was lodged by the Scottish Government on 30 November and is available on the Scottish Parliament website](#). Further information on the process for considering LCMs is provided in **Annexe A**.
2. The Shark Fins Bill was introduced as a private member's bill by Christina Rees MP on 15 June 2022. The Bill prohibits the import and export of detached shark fins or parts of shark fins, except in certain cases related to shark conservation. Only fins that are naturally attached to the body of the shark can be imported or exported.
3. [The Bill and supporting documentation are available on the UK parliament website](#).

Background

4. The global trade in shark fins is estimated to be 16-17,000 tonnes per year, resulting in the death of 97 million sharks annually¹. The EU, including the UK, banned the landing of fins not attached to sharks in 2003.
5. The UK imported 60 tonnes of shark fins per year between 2013 and 2017, and exported 5 tonnes in 2020². Following a campaign to ban the trade in fins in the UK, the Government issued a call for evidence in December 2020 and published a summary of responses in August 2021, setting out their intention to ban the export and import of shark fins into Great Britain, including the existing 20kg personal allowance.
6. [More detailed information regarding shark finning and the scale of the trade in shark fins is provided in the House of Commons Library research briefing on the Bill](#).

¹ [House of Commons Library, Research Briefing, Shark Fins Bill, Published 14 July 2022](#)

² [House of Commons Library, Research Briefing, Shark Fins Bill, Published 14 July 2022](#)

The Bill

7. The Bill consists of three clauses and a schedule. Clause 1 prohibits the import and export of detached shark fins or things containing them in to or from the UK. The Customs and Excise Management Act 1979 provides the enforcement regime and specifies offences and penalties for those who import, export or knowingly possess these goods. It also makes provision for the forfeiture of such goods.
8. The schedule of the Bill provides for an exemption from these import and export prohibitions where certain conditions are met, including that the shark fins (or things containing them) are to be used for purposes connected with the conservation of sharks. The schedule goes on to make further provision in relation to the administration of this exemption and alters the executive competence of the Scottish Ministers (who the schedule provides are the “appropriate authority” in relation to the entry into, or removal from, Scotland of shark fins or things containing them) by:
 - imposing duties on the appropriate authority, where certain conditions are met, to grant applications for exemption certificates and to issue such certificates and by imposing duties on the appropriate authority, where those conditions are not met, to refuse such applications and inform the applicant why the application has been refused;
 - imposing a duty on the appropriate authority, where certain conditions are met, to revoke an exemption certificate before the import or export takes place and by conferring a discretionary power on the appropriate authority, where certain conditions are met, to revoke or issue a revised exemption certificate before the import or export occurs;
 - imposing a duty on the appropriate authority, where it revokes an exemption certificate, to inform the applicant why the certificate has been revoked;
 - conferring a discretionary power on the appropriate authority to impose a monetary penalty not exceeding £3,000 on an applicant who, in connection with an exemption certificate application, has provided inaccurate or incomplete information or documentation containing an inaccuracy, where certain other conditions are also met, and imposing related duties and conferring related discretionary powers on the appropriate authority in connection with the issuing of initial and final penalty notices; and
 - conferring a regulation-making power on the appropriate authority to amend paragraph 4(3) of the schedule so as to substitute a different maximum monetary penalty amount for the amount for the time being specified there. Regulations made by the Scottish Ministers under this power are subject to the affirmative procedure.
9. An amendment to the Bill was passed on 16 November 2022, allowing appeals against certain decisions of the Scottish Ministers to be made to the First-tier Tribunal for Scotland. The First-tier Tribunal for Scotland is one of the Scottish Tribunals established by the Tribunals (Scotland) Act 2014.
10. Clause 2 extends the prohibitions of Council Regulation (EC) No 1185/2003 on removing, retaining, transshipping, and landing shark fins on board vessels, as well as purchasing, offering for sale, and selling shark fins, to non-UK fishing vessels in

UK waters. Currently, these prohibitions only apply to UK fishing vessels in any maritime waters.

11. The retained Regulation 1185/2003 also prohibits purchasing, offering for sale or selling shark fins which have been removed on board, retained on board, transhipped or landed in contravention of the Regulation. The amendment to the retained Regulation 1185/2003 will extend these prohibitions on purchasing, offering for sale and selling shark fins so that they will also apply to shark fins removed on board, retained on board, transhipped or landed by non-UK fishing vessels in UK waters in contravention of the Regulation.
12. Clause 3 specifies the extent, commencement and short title of the Bill. Clause 1 of the Bill will come into force when the relevant regulations are made. Clause 2 will come into force following Royal Assent.

Consultation

13. The UK Government conducted a call for evidence on the import and export of shark fins. The summary of responses published on 15 August 2021 showed that the majority of respondents were in favour of stricter controls on trade in shark fins, with no opposition to the proposals. It was also perceived that the impact on businesses would be minimal. No Scottish Government consultation has been conducted on this private member's bill.

Financial Implications

14. The LCM states that the amendment passed on 16 November 2022 (see paragraph 9) will have financial implications, including costs for developing new regulations, recruiting new tribunal members and staff, training new and existing staff, and implementing additional IT and/or administrative processes. The LCM goes on to explain that there will also be additional on-going operational costs, though these are difficult to quantify.

Provisions which relate to Scotland

15. Legislative consent is required for clauses 1 to 3 and the schedule. They make provisions applying to Scotland for purposes within the legislative competence of the Scottish Parliament and alter the executive competence of Scottish Ministers. This is because it is within the legislative competence of the Scottish Parliament –
 - to prohibit and regulate the movement into and out of Scotland of (among other things) food, animals and animal products for the purposes of (among other purposes) protecting animal welfare or the environment;
 - to regulate the sea fishing activity of Scottish fishing boats wherever they are and to regulate all sea fishing activity in the Scottish zone; and
 - to confer functions on the First-tier Tribunal for Scotland that relate to matters within devolved competence. The First-tier Tribunal for Scotland is one of the Scottish Tribunals established by the Tribunals (Scotland) Act 2014.

Reasons for seeking a legislative consent motion

16. The Scottish Government is recommending the parliament agree to the legislative consent motion. It states the Bill is aligned with the Scottish Government's

emphasis on animal welfare and supports the Scottish Government's position against shark finning practices.

17. The LCM also explains the need for a UK-wide date for the import and export prohibitions to come into force.

Call for evidence

18. [The Committee launched a call for views on the Shark Fins Bill LCM on 16 December 2022, receiving six responses.](#) All those who responded to the call for views were supportive of the legislation.

Consideration by the Delegated Powers and Law Reform Committee

19. The role of the DPLR Committee in relation to an LCM is to consider and report on the provisions in the UK Bill that gives Scottish Ministers the powers to make subordinate legislation.
20. At its meeting on 10 January 2023, the Delegated Powers and Law Reform Committee considered the delegated powers that are exercisable within the Scottish Parliament's legislative competence in the Shark Fins Bill as described in the Legislative Consent Memorandum.
21. [The DPLRC agreed to write to the Scottish Government for further clarification,](#) regarding –
 - the appropriateness of including a power to adjust a civil penalty in the Bill; and
 - what the Scottish Government might consider in relation to the variation of the penalty, determined in accordance with the relevant power under paragraph 4(4) of the schedule, to ensure it is consistent across the UK.
22. The Scottish Government's [response](#) cites both UK and Scottish primary legislation (section 44 of the Childcare Payments Act 2014 and section 23 of the Regulatory Reform (Scotland) Act 2014) as precedents for including a power in the Shark Fins Bill to amend the civil penalty amount.
23. The Scottish Government does not anticipate this power to amend the maximum monetary penalty amount will be used frequently, however, this power would provide the Scottish Ministers with the ability to respond to material future changes, such as increased risks to highly sensitive shark species. The response also notes that the value of detached shark fins and products containing them are determined by market forces and can fluctuate. This power would, therefore, enable Scottish Minister to respond to a material increase in that market value and provide sufficient deterrent should the value of detached shark fins and products containing them change.
24. Finally, the response confirms that the UK administrations are aiming to maintain consistency in shark conservation, with guidance on the exemption certificate process to be agreed by the Secretary of State, Scottish and Welsh Ministers. The

Scottish Government does not anticipate that these fines will vary in amount across Great Britain.

For decision

25. The Committee is invited to—

- take evidence from the Cabinet Secretary and Scottish Government officials on the LCM (agenda item 3); and
- discuss how it wishes to report on the LCM (agenda item 6).

**Rural Affairs, Islands and Natural Environment Committee clerks
January 2023**

What is a legislative consent memorandum?

26. The UK Parliament does not normally legislate on matters devolved to the Scottish Parliament without its consent (previously referred to as the Sewel Convention). Where it does seek to legislate in devolved competence, the Scottish Government is required under Standing Orders to lodge a legislative consent memorandum which explains how the Bill will affect Scotland and how, for example, the Bill may—

- change the law on a “devolved matter” (an area of policy which the UK Parliament has devolved to the Scottish Parliament); or
- alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).

27. Chapter 9B of the Parliament’s Standing Orders sets out the rules and procedures for seeking legislative consent.

28. The Shark Fins Bill falls under Rule 9B.1.1 of the Standing Orders, as it will impact on areas devolved to the Scottish Parliament and on the executive competence of the Scottish Ministers (as explained in more detail above).

Does the Scottish Parliament have to give legislative consent?

29. It is up to the Scottish Ministers to decide whether to recommend the Scottish Parliament consent to the UK Parliament legislating on matters that fall within the legislative competence of the Scottish Parliament.

30. Where the Scottish Government recommends that legislative consent be given, a motion, known as a legislative consent motion, will be taken in the Chamber.
31. If, however, the Scottish Government does not recommend consent be given, a motion is not laid, although a debate on the LCM may be scheduled in the Chamber.
32. In relation to the Shark Fins Bill, the Scottish Government intends to lodge the following draft motion —

“That the Parliament agrees that the relevant provisions of the Shark Fins Bill, introduced in the House of Commons on 15th June 2022, and as amended at Committee Stage on 16th November 2022, relating to shark finning, 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.”

What is the role of committees when scrutinising an LCM?

33. Like other legislation that passes through the Parliament, an LCM is considered by both the Delegated Powers and Legislative Reform (DPLR) Committee and a lead committee.
34. It is the role of the lead committee to consider the LCM and report its views to the Scottish Parliament. The report usually includes a recommendation the Parliament should agree, or not, with the motion but it does not need to if the Committee does not come to a view.
35. As part of its consideration, it is usual to take evidence from the responsible Scottish Minister for the LCM, and in the case of this Bill, the Committee will hear from Mairi Gougeon, Cabinet Secretary for Rural Affairs and Islands.
36. For any views expressed by the Scottish Parliament to be considered during the passage of the Bill in the UK Parliament, the lead committee must conclude its considerations before the last amending stage (report stage in the second house). It is best practice, however, for the lead committee to report ahead of the last amending stage in the first house, where possible.
37. The Shark Fins Bill is currently at the reporting stage in the House of Commons, so this Committee should report before the last amending stage in the first house.