

Legislative Consent Memorandum

Shark Fins Bill

Background

1. This memorandum has been lodged by Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs and Islands, under Rule 9B.3.1(b) of the Scottish Parliament's Standing Orders. The Shark Fins Bill was introduced in the House of Commons on 15 June 2022. The Bill passed at Committee Stage on 16 November 2022 and can be found at [Shark Fins Bill - Parliamentary Bills - UK Parliament](#).

Content of the Shark Fins Bill

2. The Bill is a Private Members' Bill introduced by Christina Rees MP and consists of three Clauses and a schedule. The Explanatory Notes to the Bill set out the UK Government's view of its purpose and main functions. The UK Government describes the principal aims of the Bill as being to make provision to prohibit the import and export of detached shark fins, with an exemption where the import or export is for purposes connected with the conservation of sharks and to amend retained EU law on the removal of shark fins on board vessels. What follows is a broad summary of the content of the Bill.

3. Clause 1 prohibits the import into the UK (as a result of entry into Great Britain (GB)) or the export from the UK (as a result of removal from GB) of detached shark fins or things containing them. The Customs and Excise Management Act 1979 (the 1979 Act) provides the enforcement regime for these import and export prohibitions. The 1979 Act specifies offences and corresponding penalties in connection with the import, export or knowingly-acquired possession of goods subject to a statutory prohibition on their import or export and the 1979 Act makes provision in respect of the forfeiture of such goods.

4. 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:

- (a) 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;

- (b) 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;
- (c) imposing a duty on the appropriate authority, where it revokes an exemption certificate, to inform the applicant why the certificate has been revoked;
- (d) 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
- (e) 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.

An amendment to the Bill was passed at Committee Stage on 16 November 2022, which has the effect of amending the schedule so that it provides that appeals against certain decisions of the Scottish Ministers (as the appropriate authority as defined above) may be made to the First-tier Tribunal for Scotland.

5. Clause 2 extends prohibitions contained within retained EU legislation (*Council Regulation (EC) No 1185/2003 on the removal of fins of sharks on board vessels* (the retained Regulation 1185/2003)) on removing shark fins on board vessels and on retaining on board, transshipping or landing shark fins, so that these apply to non-UK fishing vessels in UK waters. Currently these prohibitions only apply to UK fishing vessels in any maritime waters. 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.

6. Clause 3 specifies the extent, commencement and short title of the Bill.

Provisions which relate to Scotland

7. Clauses 1 to 3 and the schedule of the Bill all extend to Scotland and, to the extent that they extend to Scotland, these provisions relate to matters within the legislative competence of the Scottish Parliament.

Reasons for seeking a legislative consent motion

8. The Bill is a relevant Bill within Rule 9B.1.1 of the Standing Orders, as it makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament and alters the executive competence of the Scottish Ministers. Legislative consent is required for Clauses 1 to 3 and the schedule of this Bill.

9. The provisions of this Bill relate to matters within the legislative competence of the Scottish Parliament as it is within devolved legislative competence:- 1) 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; 2) 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 3) 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.

10. This Bill alters the executive competence of the Scottish Ministers in the manner explained in paragraph 4 above.

11. A legislative consent motion is recommended, because the Bill is aligned with the Scottish Government's emphasis on animal welfare and supports the Scottish Government's position against shark finning practices. As noted above, the principal aims of the Bill are to make provision to prohibit the import and export of detached shark fins and things containing them, subject to the exemption explained above, and to amend retained EU law on the removal of shark fins on board vessels. Given that the import and export prohibitions established by Clause 1 apply in relation to entry into or removal from GB, there is a clear policy interest in ensuring that these GB-wide prohibitions come into force at the same time in Scotland, England and Wales, to avoid possible diversion of the trade in detached shark fins and things containing them to circumvent a prohibition in force in England and/or Wales but not in Scotland or vice versa. Given the need for a uniform GB-wide entry into force date for the prohibitions created by Clause 1 and for the regime for administering the exemption to these prohibitions, as provided for in the schedule to the Bill, it has been agreed that including this provision in a UK Private Members' Bill (PMB) will most efficiently facilitate the required single GB-wide commencement date for these provisions. In addition, as explained in paragraph 5 above, the prohibitions contained in the retained Regulation 1185/2003 and which are being widened by this PMB extend UK-wide and to the entirety of UK waters. A consistent entry into force date is therefore required for the extension of these prohibitions across the Scottish, English, Welsh and NI zones and in all jurisdictions in the UK, to prevent the prohibited activities from being displaced should the extended prohibitions not come

into force at the same time in all parts of UK waters and in all UK jurisdictions. It has been agreed that the required single entry into force date across all zones within UK waters and all jurisdictions in the UK will be most efficiently achieved by including these provisions in a UK PMB which also makes provision for the commencement of such provisions. The Scottish Government will continue to work with the UK Government to agree pragmatic commencement and lead in times for Clause 1 and the schedule of this PMB.

Consultation

12. The UK Government conducted a call for evidence on the scale and impacts of the import and export of shark fins, which closed on the 4 January 2021. The Summary of Responses¹ was published on the 15 August 2021 and outlines that the majority of respondents were clearly supportive of stricter controls on trade in shark fins, and no respondents highlighted their 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 Members Bill.

Financial implications

13. As the amendment tabled for consideration at the Committee Stage on 16 November 2022 was passed, there will be financial implications arising from the function being conferred on the First-tier Tribunal for Scotland to hear appeals against decisions of the Scottish Ministers, as provided for in the schedule of the Bill, which will have to be considered.

14. The extent of the financial implications of this amendment are difficult to predict with certainty at this stage, but costs are expected to be incurred during implementation in relation to—

- (a) developing new regulations to deal with this additional function in the Scottish Tribunals,
- (b) recruiting new tribunal members and administrative staff,
- (c) training new and existing tribunal members and staff, and
- (d) implementing additional IT and/or administrative processes in the Scottish Tribunals.

Once established, there will also be additional on-going operational costs, though again these are difficult to quantify.

Conclusion

15. This Bill confirms Scotland and the wider UK's firm commitment to animal welfare, and ensures that we speak with greater credibility when advocating for shark conservation on the global stage. The Bill aligns with key Scottish Government priorities, including reversing biodiversity loss and enhancing marine environmental

¹ [Shark fin trade: call for evidence - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/calls-for-evidence/shark-fin-trade)

protection. The Bill affirms Scotland's commitment to play no part in the trade of fins obtained through shark finning.

16. It is the view of the Scottish Government that it is in the interests of the Scottish people and of good governance that this Bill, as outlined above and which, to the extent that its provisions extend to Scotland falls within the legislative competence of the Scottish Parliament and alters the executive competence of the Scottish Ministers, should be considered by the UK Parliament.

Draft Legislative Consent Motion

17. The draft motion, which will be lodged by the Cabinet Secretary for Rural Affairs and Islands is:

“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.”

Scottish Government
November 2022

This Legislative Consent Memorandum relates to the Shark Fins Bill (UK legislation) and was lodged with the Scottish Parliament on 30 November 2022

Shark Fins Bill – Legislative Consent Memorandum

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