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Rural Affairs and Islands Committee

Legislative consent memorandum: Shark Fins Bill



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Rural Affairs and Islands Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Rural Affairs and Islands; and on matters relating to rural land use, wildlife crime and animal welfare falling within the responsibility of the Cabinet Secretary for Net Zero, Energy and Transport.



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Shark Fins Bill

1. The Shark Fins Bill was introduced as a private member's bill by Christina Rees MP on 15 June 2022. [The Bill and supporting documentation are available on the UK parliament website.](#)
2. 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 global trade in shark fins is estimated to be 16-17,000 tonnes per year, resulting in the death of 97 million sharks annually. The EU, including the UK, banned the landing of fins not attached to sharks in 2003.ⁱ
4. The UK imported 60 tonnes of shark fins per year between 2013 and 2017 and exported 5 tonnes in 2020ⁱⁱ. Following a campaign to ban the trade in fins in the UK, the UK Government issued a call for evidence in December 2020 and published a summary of responses in August 2021, also setting out its intention to ban the export and import of shark fins into Great Britain, including the existing 20kg personal allowance.
5. 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.
6. 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;

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

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

- 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.
7. 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.
 8. 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.
 9. 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.
 10. 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.

Legislative consent memorandum

11. [The Legislative Consent Memorandum was lodged by the Scottish Government on 30 November 2022.](#)
12. 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.
13. The Scottish Government recommends the parliament agree to the legislative consent motion. The Scottish Government states the Bill is aligned with the its emphasis on animal welfare and supports its position against shark finning practices. The LCM also explains the need for a UK-wide date for the import and export prohibitions to come into force.

Rural Affairs and Islands Committee consideration

14. The Committee issued a call for views on the LCM and received 6 responses. [The responses are available on the Committee's webpages.](#)
15. The Committee considered the LCM on 25 January 2023, when it took evidence from the Cabinet Secretary for Rural Affairs and Islands.
16. In evidence with the Cabinet Secretary, the Committee asked about the extent to which shark fins have previously been fished or traded in Scotland and whether there should be some exemptions to allow shark fin fishing. In response, the Cabinet Secretary highlighted that active shark finning has been banned in the UK since 2003 but the legislation would close loopholes associated with the personal 20kg allowance import of shark fins. The Cabinet Secretary also clarified, with regards to exemptions, that they would only apply in cases when the act of importing a product that contains shark fins or a shark fin is for the benefit of conservation of the species and that is the only case in which such products would be permitted to enter the country.
17. The Committee also asked about the potential financial costs set out in the LCM. In particular, the LCM states that there will be “on-going operational costs” but says that those will be difficult to quantify. When the Committee asked the Cabinet Secretary about these operational costs, she explained that these relate to the additional powers afforded to the First-Tier Tribunal for Scotland and that, at this stage, it was difficult to quantify potential costs without knowing the volume of future cases.
18. Finally, the Committee asked for further information about fins being used as part of other products i.e. where they might be incorporated into other products. In response, the Cabinet Secretary stated that the Bill not only covers shark fins but also prohibits the import of products that contain shark fins, such as tinned shark fin soup.

Delegated Powers and Law Reform

Committee consideration

19. The Delegated Powers and Law Reform Committee (DPLRC) considered the delegated powers that are exercisable within the Scottish Parliament's legislative competence at its meeting on 10 January 2023.
20. 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.
21. 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.
22. 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.
23. 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.
24. In its report on the LCM, the DPLRC confirmed that it was content with the explanation provided by the Scottish Government to its questions. The DPLRC accepted the power in principle and agreed it was content that the power would be subject to the affirmative procedure.

Conclusion

25. The Committee agrees with the Scottish Government's position to recommend consent to the Bill.

