

## LEGISLATIVE CONSENT MEMORANDUM

### SHARK FINS BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Private Members’ Bill makes relevant provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Shark Fins Bill (“the Bill”), a Private Members' Bill, was introduced into the UK Parliament, the House of Commons, on 15 June 2022. House of Commons Committee Stage took place on 16 November. All references to provisions in this legislative consent memorandum are as they appear in the Bill as agreed at Commons Committee stage and published on 16 November. The Bill, both as introduced and as amended at Commons Committee Stage, can be found at: [Shark Fins Bill publications - Parliamentary Bills - UK Parliament](#)

#### Policy Objective(s)

3. The stated policy objective of the Bill is to protect sharks against unsustainable fishing practices by prohibiting the import and export of shark fin products which have been obtained through unethical fishing practices. The Bill does not prohibit the sale or consumption of shark fins, only the import and export of detached shark fins, i.e., those obtained through the practice of shark finning.

#### Summary of the Bill

4. The Bill is a Private Members’ Bill, introduced by Christina Rees MP, and is sponsored by the Department for Environment, Food and Rural Affairs (Defra).
5. The Bill follows attempts to bring in similar provisions in the Animals Abroad Bill which was subsequently paused by the UK Government in 2021.
6. The Bill makes provision for the following areas:
  - a) Clause 1 prohibits the import and export of detached shark fins;
  - b) Clause 2 amends Council Regulation (EC) No. 1185/2003 on the removal of fins of shark on board vessels (the “Shark Finning Regulation”);
  - c) Clause 3 provides for the extent, commencement and short title of the Bill;

- d) Schedule outlines the process for applicants to apply for an exemption certificate from the prohibition in clause 1, as well as the Welsh Ministers power as the appropriate authority to refuse and revoke such certificates, and to impose monetary penalties on applicants for providing misleading information.

### **Provisions in the Bill for which consent is required**

7. Consent is required for the following provisions of the Bill because they make provision within the legislative competence of the Senedd, notably animal welfare and conservation.

#### Clause 1: prohibition on the import/export of detached shark fins

8. Clause 1 prohibits the import and export of shark fins or parts of shark fins, or things containing them, into/from the United Kingdom following their entry into/removal from Great Britain (clause 1(1)). The prohibition does not apply where the shark fins are naturally attached to the body of the shark and the body is substantially intact (clause 1(2)).
9. The Bill defines “shark fins” as “any fins or parts of fins of a shark, other than the pectoral fins or parts of pectoral fins of a ray” and “sharks” are defined as “*any fish of the taxon Elasmobranchii*” (clause 1(4)).
10. It is the Welsh Government’s view that consent is required for clause 1, as it makes provision in relation to Wales within the legislative competence of the Senedd notably animal welfare and conservation.

#### Clause 2: amendment to the Shark Finning Regulation

11. Clause 2 amends the Shark Finning Regulation by correcting a drafting error in the Common Fisheries Policy and Aquaculture (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/753) (the “UK Transposing Regulations”), which transposed the Shark Finning Regulation into UK law. The Bill will amend the Shark Finning Regulation to prohibit the detachment of shark fins by UK fishing vessels in any maritime waters, and non-UK fishing vessels operating in UK waters.
12. Prior to being transposed, the Shark Finning Regulation prohibited EU fishing vessels from shark finning in any maritime waters and from any fishing vessel from shark finning in EU maritime waters. However, the drafting error in the UK Transposing Regulations meant that, currently, the prohibition on shark finning under the Shark Finning Regulation does not apply to fishing vessels that are both non-UK and non-EU in UK maritime waters. The Bill will correct this error by extending the prohibition to “UK fishing vessels in any maritime waters” and “other fishing vessels in United Kingdom waters”.

13. It is the Welsh Government's view that consent is required for clause 2, as it makes provision in relation to Wales within the legislative competence of the Senedd notably animal welfare and conservation.

Clause 3: commencement powers, and powers to make transitional / savings provisions

14. The Bill extends to England and Wales, Scotland, and Northern Ireland, and grants powers to the Secretary of State alone to make regulations for the commencement of the prohibition in clause 1 and the Schedule to the Bill clause 3(1) and (2)). Clause 2 of the Bill will come into force two months after the date on which the Bill is passed.
15. The Bill grants power to the Secretary of State alone to make regulations for savings and transitional provisions (clause 3(5)).
16. Clause 3 (except clause 3(5)) is a non-operative clause and has no legal effect outside of commencing the Bill and confirming the extent, scope of regulations and title, and as such, the Welsh Government considers a legislative consent memorandum is not required to be laid for the purposes of SO29.
17. It is the Welsh Government's view that consent is required for clause 3(5) as it makes provision in relation to Wales within the legislative competence of the Senedd notably animal welfare and conservation.

Schedule

18. The Schedule to the Bill makes the following provision:
  - a) Exemption certificates (paragraphs 1 and 2): the import and export of shark fins is exempt from the prohibition in clause 1 if the "appropriate authority" (the Welsh Ministers in Wales per paragraph 9) has issued an exemption certificate for that import / export. Applicants must provide the information requested by and paid any fee required by the Welsh Ministers as part of the application for an exemption certificate. The Welsh Ministers must refuse an application unless it is satisfied the shark fins concerned are to be used for conservation purposes.
  - b) Revocation and revision of exemption certificates (paragraph 3): the Welsh Ministers may revoke or revise the exemption certificate before the import/export if it appears that the applicant supplied inaccurate information in their application (paragraph 3(1)). The Welsh Ministers must revoke an exemption certificate if, before the import/export has taken place, it is no longer satisfied that the import/export is for the purposes of conservation (paragraph 3(2)).
  - c) Power to impose monetary penalty on applicants for an exemption certificate (paragraph 4): The Welsh Ministers may impose monetary penalties on applicants for exemption certificates if they

have supplied, for example, inaccurate information in their application (paragraphs 4(1) and (2)). It also grants the Welsh Ministers power to make regulations to change the maximum sum of the financial penalty from the current £3,000 (paragraphs 4(3) and (4)). Such regulations must be made using the affirmative procedure (paragraph 4(6)).

- d) Penalty notice process (paragraphs 5 and 6): Before the Welsh Ministers impose a monetary penalty, they must issue an initial penalty notice outlining the proposed penalty and grounds for it; offering the applicant the chance to pay a sum to reduce its liability for a monetary penalty; offering the applicant the chance to make written representations within a 28-day period from date of the initial penalty notice (paragraphs 5(1) to (3)). The Welsh Ministers must decide whether to impose a final penalty notice but not before 28 days after the date of the initial penalty notice (clause 5(4)). Both notices can be withdrawn at any time and both must set out certain specified information such as the applicant's right of appeal (paragraphs 5(7) and 6(1)). Unpaid penalties will be recoverable in England and Wales as if it were payable under an order of the county court (paragraph 8).
- e) Right of appeal (paragraph 7): provides a right of appeal to the First-tier Tribunal of England and Wales (**First-tier Tribunal**) against a decision of the Welsh Ministers to refuse or revoke an exemption certificate or give a final penalty notice (paragraph 7(1)). On appeal, the First-Tier Tribunal may confirm the Welsh Ministers' decision to revoke or refuse an exemption certificate, or require the Welsh Ministers to issue one or cancel a decision to revoke one, or require the Welsh Ministers to reconsider their decision (paragraph 7(4)). The First-tier Tribunal may also vary, quash, or confirm the amount of the penalty notice (paragraph 7(5)).

- 19. It is the Welsh Government's view that consent is required for the Schedule because it makes provision in relation to Wales within the legislative competence of the Senedd notably animal welfare and conservation.

### **UK Government view on the need for consent**

- 20. Defra shared a copy of the Bill with the Welsh Government on 11 July ahead of Second Reading in the House of Commons which took place on 15 July. The Bill as introduced in the UK Parliament on 15 June was prepared without any input from the Devolved Governments. On 19 August, the Rt Hon the Lord Goldsmith of Richmond Park, wrote jointly to myself and the Minister for Rural Affairs and North Wales, and Trefnydd detailing the UK Government's devolution analysis of the Bill. This letter acknowledged the Bill made provision in devolved areas and asked if we would agree, in principle, to laying a legislative consent memorandum before the Senedd.

21. As set out in paragraphs 7 to 18 above, our own analysis of the impact of the provisions in the Bill for Wales is in agreement with the UK Government's assessment as detailed in this section.

### **Reasons for making these provisions for Wales in the Shark Fins Bill**

22. The Welsh Government supports the aims and objectives of the Bill, recognising the need for these provisions to prohibit shark fins obtained through unethical "shark finning" practices from entering UK markets. Shark conservation, and more widely marine conservation, is a key policy for the Welsh Government and it is my view that this Bill helps deliver on these aims at a global level. The Bill as currently drafted sends a key message that shark finning is unacceptable and that Wales would like to distance itself from it.
23. The Welsh Government recognises the benefit in taking this UK Bill forward so the provisions will apply at the same time across the UK. There is no comparable Senedd Bill planned in the short or medium term and, if the Bill proceeded without Wales or on different timescales, there is a risk of a regulatory gap between the Bill coming into force in the rest of the UK and a comparable Senedd Bill coming into force. This could see Welsh ports targeted for import, with onward distribution into the rest of the UK difficult to prevent. The Welsh Government also acknowledge that a UK-wide Bill is the most effective and proportionate legislative vehicle to deliver consistent regulation of the import and export of detached shark fins and the shark finning practice in Wales.
24. Defra has offered a Memorandum of Understanding for the use of the commencement powers in clause 3, whereby the UK Government and the Devolved Governments agree to a timetable for the Secretary of State to make regulations to commence the relevant provisions in the Bill. In this context, while this is a devolved area, the Welsh Government is content for the Bill to make provision for Wales and for the Secretary of State to retain the commencement powers.
25. The Welsh Government acknowledge paragraph 7 of the Schedule to the Bill provides a right of appeal to the First-tier Tribunal in a devolved area that could, theoretically, be heard by a devolved tribunal. However, there is currently no appropriate devolved tribunal to hear appeals under the Bill and primary UK legislation would be required to make provision for such a devolved tribunal. In this context, the Welsh Government is content for the Bill to make such provision, noting that a future Senedd Bill could amend the Bill to bring such appeals to a devolved Welsh tribunal.

### **Financial implications**

28. Officials in Defra have conducted a Regulatory Triage Assessment (RTA) examining the potential impacts of the provisions within the Bill for the whole of the UK. A link to the RTA can be found [here](#).

29. The data used was obtained largely from the Marine Management Organisation (MMO) and relates to landings in UK ports from UK and foreign vessels. Landings data is important as it outlines the potential internal/external market for shark fins. This data is only available at a UK level, therefore, it has not been possible to quantify an impact specifically to Welsh businesses.
30. The RTA has identified 125 ports across the UK reportedly handling 'shark and dogfish' (found within the elasmobranchii taxon) with Milford Haven and Swansea in the top ten ports with 2019 landings worth £59,641 and £20,708 respectively. Since 2018, records indicate that the UK exported a maximum of 12 tonnes of shark fins valued at £216,000 predominantly to Spain and other countries within Europe.
31. In the majority of cases these landings are incidental rather than a targeted catch and the provisions within the Bill are unlikely to severely impact these businesses in Wales. Furthermore, it is likely the whole animal was landed as the rest of the carcass is commonly used for bait in other fisheries.
32. Data for shark fins imported to the UK is unverified due to the Fins Naturally Attached (FNA) policy which largely prohibited the importation of shark fins except for a personal allowance of up to 20kg.
33. Defra have concluded the cost to UK businesses are estimated to be £216,000 per annum (based on HMRC import/export data). It is not possible to provide a figure for Wales due to insufficient data.

## **Conclusion**

34. In my view it is appropriate to deal with these provisions in this UK Private Members' Bill to prevent any risk of legal ambiguities involving the import and export of shark fins in the UK and the formation of illegal trades of shark fins within the UK. I, therefore, recommend the Senedd grants its consent to the inclusion of the relevant provisions in the Bill.

**Julie James MS**  
**Minister for Climate Change**  
**25 November 2022**