

# **The Welsh Government's Legislative Consent Memorandum on the Shark Fins Bill**

January 2023



# 1. Background

## The UK Government's Shark Fins Bill

1. The Shark Fins Bill<sup>1</sup> (the Bill) was introduced into the House of Commons on 15 June 2022 as a Private Member's Bill by Christina Rees MP. It is sponsored by the Department for Environment, Food and Rural Affairs (Defra).

2. According to its Explanatory Notes, the Bill:

*"... prohibits the import and export of detached shark fins. There is an exemption if the import or export of a detached shark fin is for purposes connected with the conservation of sharks.*

*It also includes amendments to retained EU law, in particular to Regulation 185/2003, on the removal of shark fins on board vessels."*<sup>2</sup>

3. The Explanatory Notes clarify that the Bill "does not prevent the sale or consumption of shark fins in the UK, but the measure provides assurances that the whole shark has been landed and traded rather than fins obtained through shark finning practices."<sup>3</sup>

4. The Bill completed committee stage in the House of Commons on 16 November 2022. Commons report stage has been scheduled for 20 January 2023.<sup>4</sup>

## The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a Bill under consideration in the UK Parliament makes provision in relation to Wales for any purpose within the legislative competence of the Senedd, or which modifies the Senedd's legislative competence (relevant provision). Standing Order 29.2(ii) provides that a memorandum must be laid in respect of a relevant Private Member's Bill after it has completed the first amending stage in the House in which it was introduced.

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<sup>1</sup> [Shark Fins Bill, as introduced](#) (Bill 191 2022-23)

<sup>2</sup> [Shark Fins Bill: Explanatory Notes](#), paragraphs 1–2

<sup>3</sup> [Shark Fins Bill: Explanatory Notes](#), paragraph 4

<sup>4</sup> [Shark Fins Bill: Stages](#)

**6.** On 25 November 2022, Julie James MS, Minister for Climate Change (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.<sup>5</sup>

**7.** The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Economy, Trade, and Rural Affairs Committee should report on the Memorandum by 16 January 2023.<sup>6</sup>

### **Provisions for which the Senedd's consent is required**

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**8.** The Minister states that consent is required for clauses 1, 2, and 3(5) of the Bill, and its Schedule, as they make relevant provision for the purposes of animal welfare and conservation:

- clause 1 prohibits the import and export of detached shark fins or things containing shark fins;
- clause 2 amends the Council Regulation (EC) No. 1185/2003 on the removal of fins of shark on board vessels;
- clause 3(5) grants a power to the Secretary of State alone to make regulations for saving and transitional provisions in connection with the coming into force of any provision of the Bill; and
- the 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.<sup>7</sup>

**9.** The Minister states that the remainder of clause 3 does not require consent as it is a “non-operative clause and has no legal effect outside of commencing the Bill and confirming the extent, scope of regulations and title”.<sup>8</sup>

**10.** The UK Government is of the view that the Senedd's consent is required for all of the Bill's three clauses and its Schedule.<sup>9</sup>

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<sup>5</sup> Welsh Government, [Legislative Consent Memorandum, Shark Fins Bill](#), November 2022

<sup>6</sup> Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Shark Fins Bill](#), December 2022

<sup>7</sup> Memorandum, paragraphs 7–19

<sup>8</sup> Memorandum, paragraph 16

<sup>9</sup> Shark Fins Bill: Explanatory Notes, Annex – Territorial extent and application in the United Kingdom

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## The Welsh Government's position

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**11.** The Minister believes it is appropriate for the Bill to make provision for Wales for the following reasons:

*"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."*<sup>10</sup>

**12.** The Minister states that 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."*<sup>11</sup>

**13.** The Minister believes 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."<sup>12</sup>

**14.** The Minister explains that Defra has offered a Memorandum of Understanding on the use of the commencement powers within clause 3 of the Bill, within which the UK Government and the devolved governments would agree a timetable for the Secretary of State to make commencement regulations. The Minister states that the Welsh Government is content for the Secretary of State to retain these powers.<sup>13</sup>

**15.** The Minister also states that a future Senedd Bill could amend the Bill, if enacted, to make provision in respect of devolved Welsh tribunals:

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<sup>10</sup> Memorandum, paragraph 22

<sup>11</sup> Memorandum, paragraph 23

<sup>12</sup> Memorandum, paragraph 23

<sup>13</sup> Memorandum, paragraph 24

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*"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."*<sup>14</sup>

**16.** According to the Minister, although Defra has concluded that the Bill's costs to UK businesses are estimated to be £216,000 per annum, is it "not possible to provide a figure for Wales due to insufficient data."<sup>15</sup>

**17.** The Minister concludes that is appropriate to include relevant provision in the 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."<sup>16</sup>

**18.** The Minister recommends that the Senedd grants its consent to the inclusion of the relevant provisions in the Bill.<sup>17</sup>

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<sup>14</sup> Memorandum, paragraph 25

<sup>15</sup> Memorandum, paragraph 33

<sup>16</sup> Memorandum, paragraph 34

<sup>17</sup> Memorandum, paragraph 34

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## 2. Committee consideration

**20.** We considered the Memorandum at our meeting on 12 December 2022, and agreed our report on 16 January 2023.<sup>18</sup>

### **Our view**

**21.** We note the Minister's assessment that clauses 1, 2, and 3(5) of the Bill, and its Schedule, require the Senedd's consent. We also note her reasons as to why, in her view, making provision for Wales in the Bill is appropriate.

**Conclusion 1.** We agree with the Minister's assessment that clauses 1, 2 and 3(5) of the Bill, and its Schedule include provisions which fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29.1(i).

**22.** We note the Minister's assessment that the remainder of clause 3 of the Bill does not require consent as it is "non-operative" and "has no legal effect outside of commencing the Bill and confirming the extent, scope of regulations and title". However, we also note that this assessment appears to be in contrast with the Welsh Government's assessment of similar provisions within the Retained EU Law (Revocation and Reform) Bill, which the Committee is currently considering.<sup>19</sup> We believe that, to the extent that provisions relating to the extent, scope of regulations and title of the Bill relate to other clauses within the Bill which require consent, these provisions should also require consent.

**Recommendation 1.** The Welsh Government should seek the Senedd's consent for clause 3 of the Bill in its entirety.

**23.** We note the Minister's statement that the Welsh Government is content for the Secretary of State to retain the commencement powers, subject to no parliamentary procedure, within clause 3 of the Bill. We also note that a Memorandum of Understanding between the UK Government and the Welsh Government will be used to agree a timetable for the Secretary of State to use these powers.

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<sup>18</sup> [Legislation, Justice and Constitution Committee, 12 December 2022](#) and [Legislation, Justice and Constitution Committee, 16 January 2023](#)

<sup>19</sup> Welsh Government, [Legislative Consent Memorandum: The Retained EU Law \(Revocation and Reform\) Bill](#), 3 November 2022

**Recommendation 2.** The Welsh Government should make available to this Committee the Memorandum of Understanding between it and the UK Government on the use of the commencement powers within clause 3 of the Bill.

**24.** We also note, and bring to the Senedd's attention, that the Welsh Government is content for the Secretary of State to make regulations for saving and transitional provision in a devolved area, by virtue of the powers within clause 3 of the Bill.

**25.** We acknowledge the Minister's statement that the Bill presents 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." While we accept that this Bill has a discrete purpose, it is our principled view that the Welsh Government should be introducing its own legislation on matters in relation to animal welfare, as this is a policy area which is a self-stated priority for the Welsh Government.<sup>20</sup>

**Conclusion 2.** As animal welfare is a priority area for the Welsh Government, should it wish to legislate in this area in the future it should do so by introducing legislation in the Senedd, rather than use a UK Bill through the legislative consent process.

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<sup>20</sup> See LJC Committee, [The Welsh Government's Legislative Consent Memorandum on the Animal Welfare \(Kept Animals\) Bill](#), October 2021

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