

FISHERIES BILL

BRIEFING FOR THE AGRICULTURE, ENVIRONMENT AND RURAL AFFAIRS COMMITTEE



Department of
**Agriculture, Environment
and Rural Affairs**

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PART 1 OVERVIEW OF THE FISHERIES BILL

1. The Fisheries Bill (the Bill) will provide the legal framework for the United Kingdom to operate as an independent coastal state under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) after the UK has left the European Union (EU) and the Common Fisheries Policy (the CFP). The Bill creates common approaches to fisheries management between the Secretary of State for Environment, Food and Rural Affairs (the "Secretary of State") and the Devolved Administrations, known collectively as the Fisheries Administrations, and makes reforms to fisheries management in England. It also confers additional powers on the Marine Management Organisation ("the MMO") to improve the regulation of fishing and the marine environment in the UK and beyond.
2. The Bill was first introduced in the Commons in the previous Parliament where, in the 2017-2019 session, it reached Report stage after completing a Public Bill Committee. Government amendments were tabled at Committee, but the Bill fell when Parliament was prorogued ahead of the December 2019 General Election.
3. Since the Bill was most recently considered in the last Parliament, the Government has included additional provisions: a single set of UK-wide fisheries objectives (including a new climate change objective); a duty to create fisheries management plans to fish at sustainable limits for all stocks; and a broadening of the grant making power. The Bill also provides further powers for the Welsh and Scottish Governments that reflect a number of those granted to the Secretary of State, and a change to the commencement provisions.
4. The Bill contains the following provisions:
 - **Fisheries objectives, fisheries statements and fisheries management plans:** the Bill replaces the objectives currently in Article 2 of the Basic Regulation of the Common Fisheries Policy (Regulation

(EU) 1380/2013), with a new set of objectives for the Fisheries Administrations. These set out the priorities for the Fisheries Administrations once the UK leaves the CFP. The Fisheries Administrations are required to publish a joint fisheries statement setting out the policies which would achieve or contribute to the achievement of those objectives. The Secretary of State may publish a separate statement setting out policies on non-devolved matters if these are not included in the joint fisheries statement. The Fisheries Administrations must include a statement on fisheries management plans in the joint fisheries statement and must publish fisheries management plans setting out policies for restoring fish stocks to, or maintaining them at, levels capable of producing maximum sustainable yield where that is the appropriate measure. The Fisheries Administrations are required to pursue the policies contained in the statements and plans unless there is a relevant change in circumstances which would indicate a different approach is necessary.

- **Access:** when the UK leaves the EU, any access for EU and other foreign vessels to UK waters will be a matter for negotiation. The Bill revokes the EU legislation which currently provides for automatic rights for vessels registered in the EU to access UK waters. By revoking provisions in the Fishery Limits Act 1976, it removes the need to designate which countries' vessels are able to fish in UK waters and introduces a new requirement that foreign fishing in UK waters must be licensed by the MMO or one of the Fisheries Administrations to fish in UK waters or be for a purpose recognised under international law (for example, freedom of navigation).
- **Fishing boat licensing:** the Bill revokes, replaces existing powers for licensing authorities to license fishing in UK waters. For the most part, this is a consolidation of existing powers but the Bill makes several significant changes. It provides for equal access for UK vessels in UK waters by clarifying that licences issued by one of the licensing

authorities are effective throughout UK waters. It also prohibits foreign vessels from fishing in UK waters unless they have a licence issued by a UK licensing authority.

- **Fishing opportunities:** the Bill revokes EU legislation which currently sets UK fishing opportunities and provides for the Secretary of State to determine the UK's fishing opportunities. Before doing so she must consult the Devolved Administrations and the MMO. The Secretary of State must also make certain notifications, including a notification to Parliament. The Bill also introduces powers to enable annual fishing opportunities to be sold to those in the English and Welsh fishing industries by the Secretary of State and the Welsh Ministers respectively.
- **Discard prevention charging scheme:** The Bill contains a regulation-making power to set up a scheme for charging English fishing licence holders that land fish in excess of their authorised quota. This will support compliance with the landing obligation (which requires all species under quota to be landed) by encouraging the uptake of more sustainable fishing practices.
- **Marine environment:** the Bill extends marine conservation powers to regulate fishing for the purposes of protecting the marine environment. The MMO, Scottish Ministers and Welsh Ministers will be able to regulate fishing outside territorial waters and outside marine protected areas. It extends the MMO's existing byelaw making powers and confers equivalent order making powers on the Scottish Ministers and Welsh Ministers. The Bill also enables the MMO to exercise certain research, training and advisory functions outside UK waters (e.g. to support the development of marine protected areas in the waters of an Overseas Territory as part of the "Blue Belt" programme).

- **Cost recovery:** the Bill extends the cost recovery powers of the MMO and the Devolved Administrations to enable them to charge for services they provide to the fishing industry.
- **Financial assistance:** the Bill provides powers for the Fisheries Administrations to introduce schemes of financial assistance for the fish and aquaculture industries, to improve the marine and aquatic environment, to develop areas in which fish or aquaculture activities are carried out, to promote the health and safety of fishers and to promote recreational fishing. The powers replace and broaden existing domestic funding powers and will allow new funding schemes to match the breadth of what is currently funded under the European Maritime and Fisheries Fund (EMFF).
- **Power to amend UK law** (including primary legislation and retained EU law) related to fisheries: the Bill provides a power, by regulations, to make provision in relation to listed fisheries matters and for listed purposes. The power is exercisable by the Secretary of State and the Devolved Administrations. The Secretary of State could also introduce UK-wide measures with the consent of the Devolved Administrations.
- **Power to amend UK law (including primary legislation and retained EU law) related to aquatic animal health:** the Bill provides a power, by regulations, to make provision in relation to listed matters related to the control of aquatic animal diseases and for listed purposes. The power is exercisable by the Secretary of State and equivalent powers are provided for the Devolved Administrations. The Secretary of State could also introduce UK-wide measures with the consent of the Devolved Administrations.
- **Extension of the legislative competence of the National Assembly for Wales:** this enables the National Assembly for Wales to make

primary legislation on fishing, fisheries and fish health matters in the Welsh zone.

PART 2 LEGISLATIVE CONSENT

1. The Fisheries Bill was introduced in the House of Lords on 28 January 2020 and most of the provisions in the Fisheries Bill which are devolved issues cannot be implemented in Northern Ireland without the approval of the Assembly.

2. It would be usual for Legislative Consent to be considered by the Assembly prior to Second Reading in Parliament but this was not possible in this case. The Bill is currently at Committee Stage in the House of Lords.

3. Officials in DEFRA's Fisheries Bill Team have advised that DEFRA would require a decision from DAERA on the Legislative Consent Motion before the Bill completes its final amending stage in the first House. It is expected that the third reading of the Fisheries Bill in the House of Lords will be as soon as possible after the Easter recess.

4. In order to be sure that the Department can be prepared for potentially shifting deadlines as the Fisheries Bill makes its progress at Westminster, it is important that the AERA Committee has considered the Legislative Consent Memorandum.

PART 3 TERRITORIAL EXTENT OF THE FISHERIES BILL

Provision	Extends and applies to NI?	Legislative Consent Sought?
Clauses 1-3 (Fisheries objectives and joint fisheries statements and fisheries management plans)	Yes	Yes
Clauses 4-5 (Secretary of State fisheries statement)	Yes	No
Clauses 6-9 (fisheries management plans)	Yes	Yes
Clauses 10-11 (Effect of statements and plans and reporting)	Yes	Yes
Clause 12-13 (Access to British fisheries by foreign boats)	Yes	Yes
Clauses 14-18 (Licensing of fishing boats)	Yes	Yes
Clauses 19-22 (Access and licensing: offences and consequential amendments)	Yes	Yes
Clauses 23-24 (Secretary of State to determine fishing opportunities)	Yes	No
Clause 25 (Distribution of fishing opportunities)	Yes	Yes
Clause 26 (Duties to ensure fishing opportunities not exceeded)	Yes	Yes
Clause 27 (Sale of English fishing opportunities for a calendar year)	No	No
Clauses 28-32 (Discard prevention charging schemes)	No	No
Clause 33 (Financial Assistance)	Yes	Yes
Clause 34 (Power for MMO to impose charges)	Yes	Yes
Clause 35 Sea Fish Industry Authority	Yes	Yes
Clauses 36-41	Yes	Yes

Provision	Extends and applies to NI?	Legislative Consent Sought?
(Power to make provision about fisheries, aquaculture, aquatic animal diseases and scope)		
Clause 42 (Powers of Scottish Ministers, Welsh Ministers and Northern Ireland Department to make provision about fisheries, etc.)	Yes	Yes
Clause 43 (Legislative competence of the National Assembly for Wales)	No	No
Clause 44 (Amendments to the Marine & Coastal Access Act 2009)	No	No
Clause 45 (CFP Regulation: minor consequential amendments):	Yes	Yes
Clauses 46—51 (Final provisions)	Yes	Yes
Schedule 1 (Fisheries statements and management plans)	Yes	Yes
Schedule 2 (Regulation of foreign fishing boats)	Yes	Yes
Schedule 3 (Sea fishing licences: further provision)	Yes	Yes
Schedule 4 (Access and licensing: consequential provisions)	Yes	Yes
Schedule 5 (Sale of Welsh fishing opportunities for a calendar year)	No	No
Schedule 6 (Financial assistance: devolved authorities)	Yes	Yes
Schedule 7 (Imposition of charges: powers of devolved authorities)	Yes	Yes
Schedule 8 (Powers to make further provision: devolved authorities)	Yes	Yes
Schedule 9 (Amendments to the Marine & Coastal Access Act 2009)	No	No
Schedule 10	Yes	Yes

Provision	Extends and applies to NI?	Legislative Consent Sought?
CFP Regulation: minor and consequential amendments)		

PART 4 SUBSTANTIVE CONTENTS OF THE FISHERIES BILL

1. **Clauses 1 to 11 and Schedule 1 (Fisheries Objectives, Fisheries Statements, and Fisheries Management Plans)** commit the Government and the devolved administrations to sustainable fisheries objectives. The objectives originate in the Common Fisheries Policy but have been strengthened to suit our specific needs as a country. The objectives are: **the sustainability objective, the precautionary objective, the ecosystem objective, the scientific evidence objective, the bycatch objective, the equal access objective, the national benefit objective, and the climate change objective.**
2. Together with the Devolved Administrations, a **Joint Fisheries Statement** will set out how these objectives will be achieved, allowing for divergence within a joint approach. The Secretary of State may then choose to set out further policies in a Secretary of State Fisheries Statement, although this is not a requirement. Once published, the government would be required to meet the policies in the statements.
3. Beyond the Joint Fisheries Statement, the Bill also requires the production of **fisheries management plans**. These plans will be developed on a stock by stock, or fishery basis, and will set out the actions that the Secretary of State and the Devolved Administrations, where appropriate, will take to ensure those stocks recover to levels consistent with their maximum sustainable yield. These plans will also be legally binding.
4. **Clauses 12 and 13 and Schedules 2 and 3 (Access to British Fisheries by foreign fishing boats)** allows the UK to control access of foreign boats by licensing individual boats, rather than managing access by country. **Foreign boats have to be licensed by a UK authority to fish in UK waters**, and the clauses and schedules update domestic legislation to allow for licensing of UK boats by all relevant administrations.

5. Licensing foreign vessels will mean that the same rules can be applied to foreign vessels as to UK boats. Schedule 2 allows technical SIs (such as restrictions on the size of velvet crab that can be caught) which currently only bind UK boats to be extended to foreign boats, providing further parity.
6. **Clauses 14 to 22 (Licensing of fishing boats) and Schedule 4** updates the existing domestic legislation system, to set out the process for the licensing of foreign fishing boats and preserving the right of UK fishing boats to fish across UK waters. It also updates existing law to make it an offence to breach access and licensing rules.
7. **Clauses 23 to 26 (Fishing Opportunities)** creates a new **power for the UK to set fishing opportunities**, which are fishing limits measured by quotas or according to fishing effort. As an independent coastal State, the UK will be responsible for negotiating with other coastal States, such as the EU, Norway, Iceland and the Faroe Islands, to agree the Total Allowable Catch and shares for stocks that are shared across each other's waters.
8. **Clause 27 and Schedule 5** allows for the **sale of English fishing opportunities to the English fishing fleet**, which will allow a portion of the additional quota that the UK will have after EU Exit to be sold or tendered. Schedule 5 provides equivalent powers to the Welsh Ministers in relation to Welsh fishing opportunities.
9. **Clauses 28 to 32 (Discard Prevention Charging Scheme)** allows for a new scheme to be created through regulations, to help English fishing-licence holders manage the impact of the landing obligation, particularly relevant given the UK's mixed fisheries. The scheme would allow those that register under the scheme to pay a charge where they land fish in excess of their authorised quota rather than being prosecuted.
10. In order to apply to the scheme, English fishers would have to adopt more sustainable fishing practices. This would help to reduce unwanted catch by

incentivising more sustainable fishing practices such as more selective fishing gear.

11. **Clauses 33 to 35 and Schedules 6 and 7 (Grants and Charges).** Clause 33 creates updated powers to introduce schemes of financial assistance to the fish and aquaculture industries in England, matching the breadth of what is funded under the European Maritime and Fisheries Fund. Schedule 6 creates equivalent powers for the Devolved Administrations.
12. Clause 34 extends the cost-recovery powers of the MMO to enable it to charge for services it provides to the fishing industry. Schedule 7 creates equivalent powers for the Devolved Administrations.
13. Clause 35 makes a technical correction connected to EU exit by extending a requirement that the Sea Fish Industry Authority (known as Seafish) must recover the full cost of any services it provides to those in other countries, including the EU.
14. **Clauses 36 to 42 and Schedule 8 (Powers to make further provision)** contain two delegated powers that will enable legislative changes to be made on technical fisheries matters for the **purposes of implementing international agreements, conserving the marine environment and for the management of the fishing industry**, as well as for aquatic animal health purposes.
15. Schedule 8 creates equivalent powers for the devolved administrations. The powers for the Welsh Government, the Northern Ireland Executive, and the Scottish Government correspond exactly to the new powers for the UK government (though there is also a power for the UK government to make regulations in devolved areas with the consent of the devolved administrations).
16. **Clause 43** enables the National Assembly for Wales to make primary legislation in areas in which they already have executive competence. These are areas in relation to fishing, fisheries, and fish health, for the Welsh zone.

17. **Clause 44 and Schedule 9 (Amendments of the Marine and Coastal Access Act 2009)** create new measures to help the Marine Management Organisation (MMO) **and the Devolved Administrations in Scotland and Wales** to protect our precious marine ecosystems. This is done by extending marine conservation powers to regulate fishing for the purposes of protecting the marine environment outside territorial waters and marine protected areas. Schedule 9 also ensures the MMO, at the request of the Secretary, can undertake research and provide training and assistance to persons outside the UK marine area, supporting delivery of the Blue Belt programme.
18. **Clause 45 and Schedule 10 (Common Fisheries Policy Regulation: minor and consequential amendments)** make technical amendments to what will become retained EU law after IP completion day. This means, for example, that the parts of retained EU law that relate to equal access to waters for EU fishing vessels, and the setting of fishing opportunities by the EU, will be revoked.