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UK Fisheries Bill

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This briefing considers the UK Fisheries Bill from a Scottish perspective. The Bill was introduced to the House of Commons on 25 October 2018. It will provide the legal framework for the UK to operate as an independent coastal state after the UK has left the European Union and the Common Fisheries Policy. Many parts of the Bill apply in Scotland. There is debate as to whether some clauses require legislative consent from the Scottish Parliament.



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Executive Summary

The UK Fisheries Bill was introduced to the House of Commons on 25 October 2018. It will provide the legal framework for the United Kingdom to operate as an independent coastal state after the UK has left the European Union (EU) and the Common Fisheries Policy (CFP). This briefing considers clauses relevant to Scotland.

Fisheries is generally a devolved matter - Devolved Administrations regulate fisheries in their waters and regulate their vessels wherever they fish.

The first clause of the Bill sets out fisheries objectives once the UK is out of the CFP. These largely mirror current objectives in Article 2 of the CFP.

Clause 2 of the Bill requires two fisheries statements to be published by 1 January 2021: A Joint Fisheries Statement must be prepared by all fishery policy authorities acting jointly; a Secretary of State Fisheries Statement must set out policies relevant to England.

Clause 8 requires that a foreign boat must not enter British fisheries limits unless it has a licence. Foreign vessels do not currently require such a licence. British fishing boats must also have a licence under Clause 9 to fish in British waters. These licences may impose conditions on both British and foreign boats. Allocation of quota is managed separately.

Clause 18 gives the Secretary of State the power to determine the quantity of fish that may be caught by British fishing boats. The Secretary of State must consult Scottish Ministers in determining this. The UK Government views determination of fishing opportunities as a reserved function. The Scottish Government disagrees.

The Bill (as introduced) does not address international fisheries negotiations directly. However, Defra have stated that the UK Government will table an amendment which will enshrine its commitment to secure a fairer share of fishing opportunities for UK fishermen.

Clause 20 amends Article 17 of the CFP Regulation that requires Member States to distribute fishing opportunities domestically according to transparent and objective criteria. The Scottish Government argue that this requires legislative consent.

Clause 29 creates new powers for the Secretary of State to impose charges on the fishing industry in England or to English boats. At introduction there were no similar powers for Scotland. However, the Scottish Government say that officials are working on an amendment that will provide Scottish Ministers with equivalent powers.

Clause 31 provides a broad power to make provision on matters currently regulated by the EU under the CFP. At introduction there were no similar powers for Scotland. However, the Scottish Government say that officials are working on an amendment that will provide Scottish Ministers with equivalent powers.

Clause 38 refers to Schedule 7 which confers powers on Scottish Ministers to make orders relating to the impact of fishing on marine conservation. This is to replace EU measures for the protection of the marine environment in the offshore zone.

Both the UK and Scottish Government agree that legislative consent is required for this Bill - although there is disagreement on some clauses. However, the Scottish Government states that it is not in a position to recommend consent.

The Scottish Government have requested a number of amendments to the Bill regarding quota and effort limits, seafood levies, and funding for coastal communities.

Is fisheries management devolved?

Fisheries is generally a devolved matter: the Devolved Administrations regulate fisheries in their waters and regulate their vessels wherever they fish. The current UK-wide approach to fisheries is achieved because all the Fisheries Administrations are required to comply with EU law – including the [Common Fisheries Policy](#).

As UK vessels fish throughout UK waters, the UK Fisheries Administrations work together to ensure a common or consistent approach to fisheries management where necessary or appropriate.

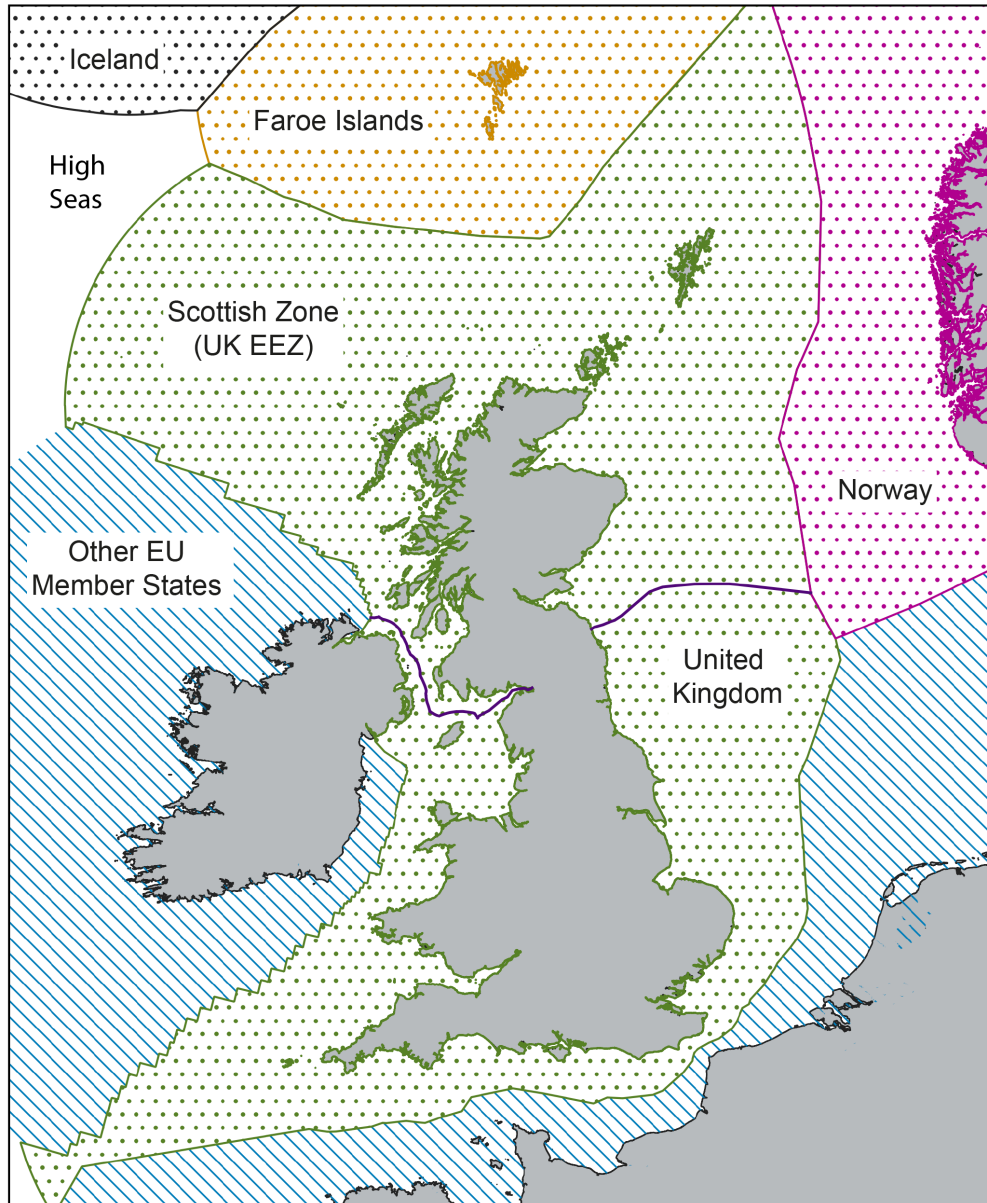
Subject to certain exceptions, the Devolved Administrations have devolved competence in relation to marine licensing (including fishing vessel licensing) in their inshore area (out to 12 nautical miles) and the Scottish Ministers and the Welsh Ministers have executive competence in relation to marine licensing (including fishing vessel licensing) in respect of their offshore area (12-200 nm).

The Devolved Administrations have executive competence in relation to marine planning in their offshore area as well as competence over marine planning in their inshore area.

According to schedule 5 of the [Scotland Act 1998](#), the following are reserved. Other fisheries related activity is therefore devolved.

- Regulation of sea fishing outside the Scottish zone (except in relation to Scottish fishing boats). (section C6)

The Scottish Zone



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UK Fisheries Bill

The [UK Fisheries Bill](#) was introduced to the House of Commons on 25 October 2018.

According to the Explanatory notes 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 UK Government and the Devolved Administrations, known collectively as the Fisheries Administrations, and makes reforms to fisheries management in England."

The [second reading of the Bill](#) took place on 21 November 2018.

The House of Commons Environment, Food and Rural Affairs Committee launched an [inquiry](#) into the Fisheries Bill on 25 October 2018.

The House of Commons [Public Bill Committee](#) on the Fisheries Bill [launched a call for evidence](#) on 22 November 2018.

The House of Commons Scottish Affairs Committee will hold a [one-off evidence session](#) on 9 January 2019.

Prior to publication of the Bill

The Fisheries White Paper, Sustainable Fisheries for a Future Generation, was published for consultation in July 2018 ¹. On 25 October 2018 the UK Government published a summary of responses to the White Paper at the same time the Bill was published ². It includes some commentary on the Bill in the context of responses.

SPICe published a blog on the white paper - [The future for fish – issues in the UK White Paper](#).

Fisheries objectives

Currently, fisheries policy in the UK is set via the [Common Fisheries Policy \(CFP\)](#). Objectives of CFP are set out in [Article 2](#) .

The first clause of the Fisheries Bill sets out fisheries objectives once the UK is out of the CFP. These largely mirror current objectives in [Article 2 of the CFP](#) . A comparison of the objectives in the Bill and in Article 2 can be found in the Box below.

The objectives of the Bill, which will apply to the whole of the UK, including Scotland, via the joint fisheries statement (Clause 2), are the:

- sustainability objective,
- precautionary objective,
- ecosystem objective,
- scientific evidence objective,
- discards objective, and
- equal access objective.

The Scottish Government have proposed an amendment to Clause 1 to "to ensure aquaculture is appropriately incorporated into the drafting of the joint fisheries objectives" ³ .

Other objectives set out in Article 2(5) are also excluded, including the requirement for the CFP to be coherent with EU environmental legislation, particularly with the objective of achieving good environmental status by 2020 as set out in [Article 1\(1\) of the Marine Strategy Framework Directive](#).

The lack of a specific duty with regards to sustainability of fish stocks was raised during the [second reading](#) in the House of Commons on 21 November 2018 ⁴ . Specifically, Article 2(2) of the CFP states -

“ the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks. ”

This is not mentioned in the fisheries objectives in the Bill.

Also raised during the second reading is that the Bill does not include a **duty** to meet these objectives. This may reflect the [The New Economics Foundation](#)'s response to the Bill ⁵ . They state that it is laudable that the Fisheries Bill includes an ecosystem based approach to fisheries management as a top-level objective, but this should be amended to include a clear legal duty on all authorities to exercise their functions in accordance with these objectives.

The Fisheries Bill and the Common Fisheries Policy

The objectives in the Fisheries Bill and the CFP (key differences in bold)

UK Fisheries Bill (Clause 1)	Common Fisheries Policy (Article 2)
<p>(2) The “sustainability objective” is to ensure that fishing and aquaculture activities are—</p> <p>(a) environmentally sustainable in the long term, and</p> <p>(b) managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.</p>	<p>1. The CFP shall ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.</p>
<p>(3) The “precautionary objective” is—</p> <p>(a) to apply the precautionary approach to fisheries management, and</p> <p>(b) to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above biomass levels capable of producing maximum sustainable yield.</p>	<p>2. The CFP shall apply the precautionary approach to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.</p> <p>In order to reach the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing maximum sustainable yield, the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks.</p>
<p>(4) The “ecosystem objective” is—</p> <p>(a) to implement an ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and</p> <p>(b) to ensure that aquaculture and fisheries activities avoid the degradation of the marine environment.</p>	<p>3. The CFP shall implement the ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and shall endeavour to ensure that aquaculture and fisheries activities avoid the degradation of the marine environment.</p>
<p>(5) The “scientific evidence objective” is—</p> <p>(a) to contribute to the collection of scientific data, and</p> <p>(b) to base fisheries management policy on the best available scientific advice.</p>	<p>4. The CFP shall contribute to the collection of scientific data.</p>
<p>(6) The “discards objective” is to gradually eliminate discards, on a case-by-case basis, by—</p> <p>(a) avoiding and reducing, as far as possible, unwanted catches, and</p> <p>(b) gradually ensuring that catches are landed.</p>	<p>5. The CFP shall ... gradually eliminate discards, on a case-by-case basis, taking into account the best available scientific advice, by avoiding and reducing, as far as possible, unwanted catches, and by gradually ensuring that catches are landed.</p> <p>There are also provisions in 5) on use of unwanted catch, economic viability, aquaculture, standard of living of coastal communities etc.</p>

Fisheries statements

Clause 2 of the Bill requires two fisheries statements to be prepared and published by 1 January 2021. The statements will set out policies for achieving, or contributing to the achievement of the fisheries objectives.

1. A Joint Fisheries Statement (JFS) must be prepared by all fishery policy authorities **acting jointly**. The fishery policy authorities are the Secretary of State, Scottish Ministers, Welsh Ministers and the Northern Ireland department. Scottish Ministers must then exercise fisheries functions in accordance with the policies contained in the JFS - as must the other fisheries authorities.
2. A Secretary of State Fisheries Statement (SSFS) where the Secretary of State prepares a statement of policies relevant to England.

Although not in the Bill, it may be possible for Scotland to prepare its own fisheries statement in addition to the JFS, for policies relevant to Scotland.

Access to British fisheries and fishing licences

Whilst in the EU, EU vessels have equal access to UK waters to fish and vice versa. Clause 7 revokes this.

Foreign boats access to UK waters while in the Common Fisheries Policy

0-6 Nautical Miles - Foreign vessels do not have access to the 0-6 nm area

6-12 Nautical Miles - fishing by non-UK vessels is restricted to those with historic rights, subject to quota, under Common Fisheries Policy exemptions

12-200 Nautical Miles - EU vessels and vessels from countries with which the EU has agreements, have access subject to quota.

Clause 8 sets out that a foreign boat is prohibited from entering British fisheries limits unless it has a licence. Foreign vessels do not currently require such a licence. This will enable foreign vessels to be required to comply with equivalent licence conditions to domestic vessels when fishing within British fishery limits⁶.

British fishing boats must also have a licence (as is the case currently) under Clause 9 to fish in British waters.

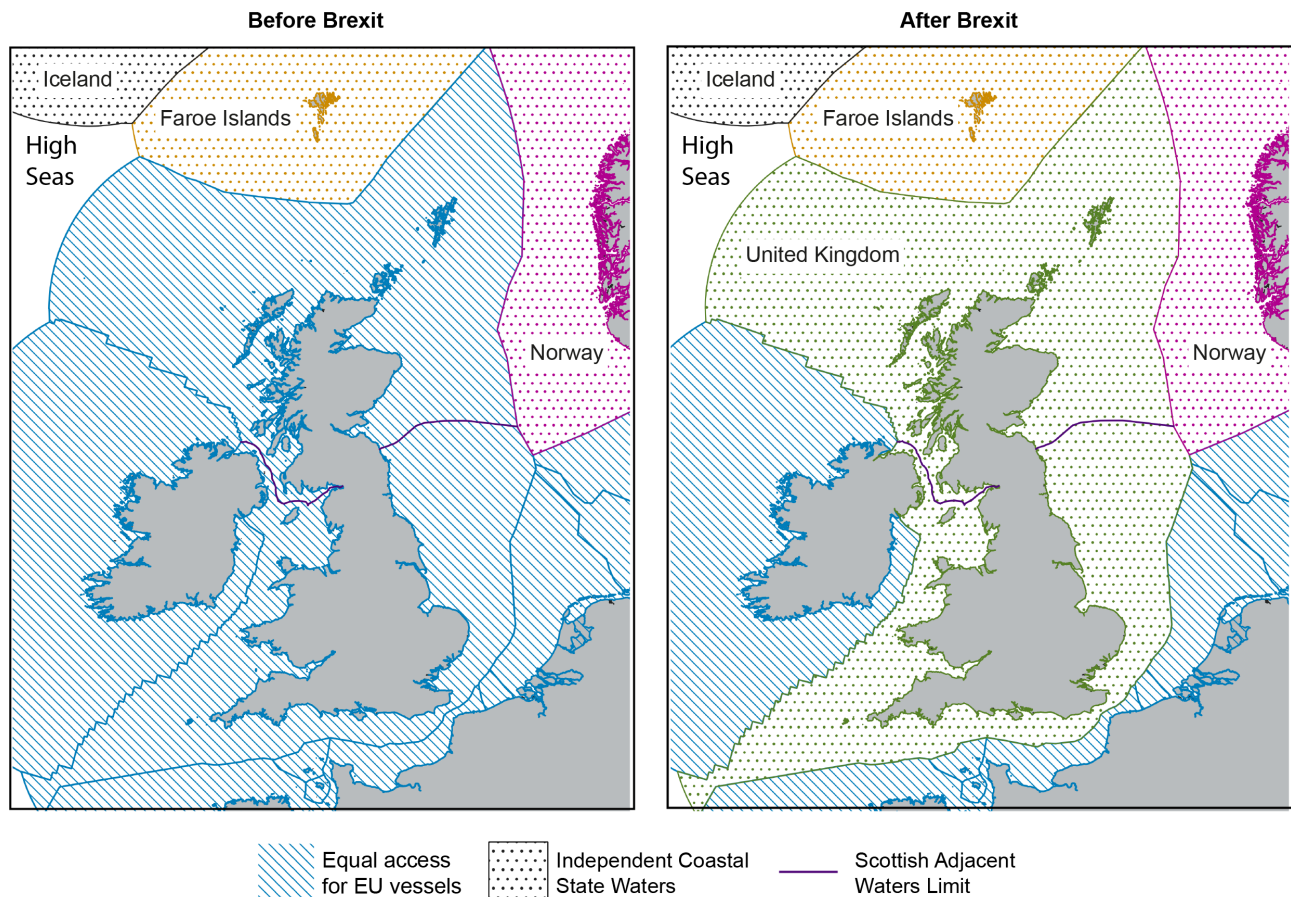
Scottish Ministers may grant a licence to Scottish fishing boats to fish in any UK waters and to foreign fishing boats to fish in Scottish waters. And likewise for the other UK fisheries administrations.

British and foreign licences are different, but they may impose conditions such as:

- where a boat may fish
- periods of time a boat may fish
- the type and quantity of fish that may be caught
- the method of fishing that can be used.

Allocation of quota is managed separately.

Governance of vessel access before and after Brexit



EEZ boundaries from the UK Hydrographic Office available at: <https://www.gov.uk/guidance/inspire-portal-and-mediterranean-bathymetry-data-archive-centre>. Contains public sector information licensed under the Open Government Licence v3.0.

Fishing opportunities for UK boats

Clause 18 gives the Secretary of State the power to determine:

- the quantity of fish that may be caught by British fishing boats (catch quota)
- the number of days that British fishing boats may spend at sea (effort quota), each year.

The Secretary of State must **consult** Scottish Ministers in determining this.

The Bill states "A determination under subsection (18(1)) may be made only for the purpose of **complying with an international obligation** of the United Kingdom to determine the fishing opportunities of the United Kingdom." (bold added)

The explanatory notes say "The provisions set out the Secretary of State reserved function of determining the UK's fishing opportunities, in accordance with the UK's international obligations. These might arise under an agreement with the EU or with another coastal state. They might also arise because of the UK's obligations under UNCLOS (United Nations Convention on the Law of the Sea) or as a member of an RFMO (Regional Fisheries Management Organisation)."

Clause 21 imposes a duty on national authorities (i.e. Scottish Ministers) to ensure that fishing opportunities are not exceeded.

Fishing opportunities for foreign boats

The Bill does not address fishing opportunities for foreign boats in UK and Scottish waters. A SPICe blog series discusses international fisheries negotiations in more detail.

- [How are fishing quotas set? Stage 1: Scientific advice](#)⁷
- [How are fishing quotas set? Stage 2: coastal State negotiations](#)⁸
- How are fishing quotas set? Stage 2: EU Agriculture and Fisheries Council (to be published soon on the [SPICe blog](#))

Fishing opportunities and legislative consent

The UK Government views determination of fishing opportunities as a reserved function. However, it has not provided an explanation of why it takes this view.

The Scottish Government disagrees and has explained its view. In the legislative consent memorandum, the Scottish Government states -

“ Whilst the United Kingdom is responsible in international law for compliance with its international obligations, it does not follow that it is the UK Government alone which is responsible for the measures required to implement and comply with those obligations in domestic law. Paragraph 7(2) of Schedule 5 to the Scotland Act 1998 explicitly provides that observing and implementing international obligations are not reserved matters. ...it would appear that clause 18 is a provision which legislates with regard to devolved matters and for a purpose which is within the legislative competence of the Scottish Parliament – namely, in this case, the regulation of sea fisheries inside the Scottish zone and the regulation of Scottish fishing boats, whilst observing the UK’s international obligations in that regard...⁶ ”

Giving evidence to the Environment Climate Change and Land Reform Committee on 4 December, Mike Palmer, a Scottish Government official, explained the Scottish Government's view that -

- making an international agreement is reserved, but
- complying with and implementing an international agreement is devolved.

In a [letter to the UK Government](#), Fergus Ewing, Cabinet Secretary for Rural Economy and Connectivity, states -

"...this clause, as drafted, will have an unacceptable impact on the existing powers of Scottish Ministers. Therefore, to ensure that devolved competence is respected, I would ask that an amendment be made to Clause 18 to provide that any decisions made under Clause 18, insofar as they relate to Scotland, should only be taken with the **consent** of the Scottish Ministers."(bold added)

[Schedule 5, Part 1, of the Scotland Act 1998](#) contains the following reservation (and exception) -

7(1) International relations, including relations with territories outside the United Kingdom, the European Union (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.

(2) Sub-paragraph (1) does not reserve—

(a) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under EU law,

(b) assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applies.

Distribution of fishing opportunities

Clause 20 (3)-(6) corrects [Article 17 of the Common Fisheries Policy](#) Regulation to make it operable in UK law. Article 17 requires that Member States distribute fishing opportunities domestically according to transparent and objective criteria.

Currently, domestic fishing opportunities (quota) are allocated by the UK Fisheries Concordat. This will not change under the Bill.

- The [UK Concordat on Fisheries Management](#) is an agreement between the UK Administrations that sets out a number of arrangements for UK fisheries management. This includes which UK fishing vessels each Administration will license and how UK quotas are allocated to the four UK countries.
- After receiving quota from the UK, each of the four UK Fisheries Administrations allocates quota to its fishermen.

Legislative consent

The Scottish Government argue that this clause requires the legislative consent of the Scottish Parliament. They state -

"If Article 17 remained unamended, the obligation imposed by it would fall within a devolved area in relation to Scotland, and would be for the Scottish Ministers and the Scottish Parliament to implement.

The changes made by the UK Fisheries Bill to Article 17, while not expressly applying to the Scottish Ministers, affect Scottish Ministers ability to determine their own criteria for distributing fishing opportunities in Scotland (a devolved competence). The Scottish Government's view is that this therefore triggers the need for an LCM." ⁶ .

Clauses not applicable to Scotland

Some clauses are **not** applicable to Scotland. They are mentioned here for completeness.

- Clause 22 on the sale of English fishing opportunities
- Clause 23-27 on discard prevention charging schemes in England

Grants

Clause 28 creates new powers for the Secretary of State to make grants to the fishing industry in England or to English boats.

Schedule 4 gives Wales and Northern Ireland equivalent grant making powers.

This will allow England, Wales and Northern Ireland to make grants that replace those currently provided by the [European Maritime and Fisheries Fund \(EMFF\)](#).

At introduction there were no powers for Scottish Ministers to make grants in the Bill. However, in a letter to the UK Government, the Scottish Government say that officials are working on an amendment that will provide Scottish Ministers with a power equivalent to that given to the Secretary of State to provide financial assistance (grants or loans) to the fisheries, recreational fishing and aquaculture sectors ³.

This clause creates powers to make grants, but does not address the issue of funding, where funds will come from, and how it will be allocated. The Scottish Government have proposed an amendment to address this (see below).

European Maritime and Fisheries Fund

The Common Fisheries Policy provides funding to support a transition to more sustainable fisheries and support for coastal communities through the [European Maritime and Fisheries Fund \(EMFF\)](#). This runs from 2014 to 2020 and covers fisheries and aquaculture. The UK investment package for this period is €309m with an EU contribution of €243m ⁹. This funding had been allocated as follows ¹⁰ -

- Scotland - €108 million
- England - €97 million
- Northern Ireland - €24 million
- Wales - €15 million.

The Scottish Government say that the Bill should be used to honour promises made during the EU referendum campaign regarding future funding.

The Scottish Government propose an amendment which would "insert a new clause after clause 30 to require the Secretary of State to make available to the Scottish Ministers sums which are at least equivalent to the sums made available to the Scottish Ministers under the European Maritime and Fisheries Fund (EMFF) in the year prior to Exit Day. ³ "

In an announcement on 10 December 2018, Defra said -

“ Mr Gove has ... committed that the Government will put in place new, domestic, long-term arrangements to support the UK’s fishing industry from 2021, through the creation of four new schemes comparable to EMFF to deliver funding for each nation. The Devolved Administrations will lead on their own schemes. ¹¹ ”

Charges

Clause 29 creates new powers for the Secretary of State to allow the Marine Management Organisation (MMO) to impose charges on the fishing industry in England or to English boats. Scottish boats would be subject to the charges when in jurisdiction of MMO.

Schedule 4 gives Wales and Northern Ireland equivalent powers.

At introduction there were no powers for Scotland to impose charges in the Bill. However, in a letter to the UK Government, the Scottish Government say that officials are working on an amendment that will provide Scottish Ministers with a power equivalent to that given to the Secretary of State to impose charges in respect of the operation of relevant marine functions relating to -

- fishing quotas
- the operation of commercial fish and aquaculture activities
- the registration of buyers and sellers of first-sale fish
- catch certificates for the import/export of fish ³ .

Power to make provision about fisheries

The explanatory notes state "Clause 31 provides a power for the Secretary of State, by regulations, to make provision on matters currently regulated by the EU under the CFP. The purpose of this power is to allow the UK to meet its international obligations, conserve the marine environment and to adapt fisheries legislation, including the c.100 regulations of the CFP incorporated into UK law by the EU (Withdrawal) Act 2018."

The regulation making powers are very broad and make provision for -

- implementing an international agreement or arrangement relating to fisheries
- fishing or aquaculture
- a conservation purpose, or
- a fish industry purpose.

The Secretary of State can make regulations for the whole of the UK - with consent. This may be relevant, for example, on control issues where a level playing field is needed.

At introduction clause 31 did not apply to Scotland. However, in a letter to the UK Government, the Scottish Government say that officials are working on an amendment that will provide "Scottish Ministers with a power, equivalent to the power given to the Secretary of State under clause 31 of the Bill, to amend and replace retained EU law for fisheries and aquaculture."

Power to make provision about aquatic animal diseases

Clause 33 provides an equivalent power to that in Clause 31 for the Secretary of State to make regulations about aquatic animal diseases. This is to allow for amendments to be made to retained EU law and other UK law by secondary legislation.

Schedule 6 gives Scotland (as well as Wales and Northern Ireland) equivalent regulation making powers.

Powers relating to the exploitation of sea fisheries resources

Clause 38 refers to Schedule 7 which confers powers on Scottish Ministers (as well as the Marine Management Organisation and Welsh Ministers) to make orders relating to the impact of fishing on marine conservation. This is to replace EU measures for the protection of the marine environment in the offshore zone.

This area is executively devolved. The bill provides powers for Scottish Ministers to make orders relating to the exploitation of sea fisheries resources in the Scottish offshore region for conserving -

- marine flora or fauna
- marine habitats
- geological features.

Under the [Marine \(Scotland\) Act 2010](#), Scottish Ministers have powers to make [Marine Conservation Orders \(MCOs\)](#) to further the objectives of [Marine Protected Areas \(MPAs\)](#) in Scottish territorial waters (0-12 nautical miles). This can include prohibiting, restricting or regulating certain activities such as:

- vessel movements and activity
- interference or disturbance/damage to the seabed
- the use of certain equipment and exploration activities.

The powers conferred to Scottish Ministers under Clause 38 would extend existing powers to prohibit or restrict the exploitation of sea fisheries for conservation purposes to the offshore zone (12-200 nautical miles). It replaces the current process for establishing conservation measures in MPAs as required under [Article 11 of the CFP](#).

Article 11 of the Common Fisheries Policy

Article 11 of the CFP sets out two scenarios for introducing conservation measures for the conservation of marine biological resources in offshore waters.

Scenario 1 (Article 11(1)): If measures to be adopted exclusively affect vessels of the Member State, the Member State can adopt measures under conditions set out in Article 11(1) of the CFP.

Scenario 2 (Article 11(2)-11(3)): If measures to be adopted affect a fishery where more than one Member State has a management interest, the Member State must submit a joint recommendation to the European Commission.

The joint recommendation should include the proposed measures, their rationale, scientific evidence in support and details of their practical implementation and enforcement.¹²

The current process for establishing conservation measures under the CFP is lengthy due to the requirement for consultation and approval from other Member States. There are currently [proposals for 18 offshore sites](#), published by Marine Scotland in April 2017. Development of these proposals began in 2013 and are currently awaiting approval from other Member States before the 6 month period for formal negotiation (Article 11(3)) can begin. A [timeline for the proposals](#) published in June 2017 anticipated the measures would be in place by 31 January 2018.¹³

Outside the CFP there is no requirement to seek approval from other Member States. Therefore, the new process under Clause 38 will likely facilitate measures to be adopted on shorter timescales, similar to those implemented under the Marine (Scotland) Act 2010.

Second reading

[Second Reading](#) of the Bill took place in the House of Commons on 21 November 2018. Much of the debate was about the withdrawal agreement and the political declaration, which had just been published at the time of the debate.

The [House of Commons library briefing - The Fisheries Bill 2017-19](#) has been updated to include a section on the second reading debate ⁹. Here, some of the issues raised are summarised.

Duties and Maximum sustainable yield

A number of MPs talked about the "light-touch approach to the duties" related to the fisheries objectives, and especially related to sustainability.

Speaking for the Opposition, [Sue Hayman MP \(Workington\) \(Lab\)](#), Shadow Secretary of State for Environment, Food and Rural Affairs talked about there being "only a vague reference to MSY [maximum sustainable yield] in the Bill, and no clear roadmap as to when and how this can be achieved. We would like to know whether Ministers are still committed to it as we leave the EU. We believe that stocks should at least meet this standard by 2020 [as set out in the CFP] and will seek to bring that into the Bill if the Government do not."

[Angela Smith MP \(Penistone and Stocksbridge\) \(Lab\)](#) talks about the "the light-touch duties placed on the authorities potentially undermine the delivery of ... aspirations. For example, while the Bill rightly contains an ambitious objective to ensure that all harvested stocks are recovered to, or maintained at, a biomass above that capable of producing maximum sustainable yield, the Bill places no duty on regulatory authorities to ensure that fishing pressure is managed in a way that delivers on that objective."

Opportunities for the under 10 metre fleet

There was much discussion about how the Bill addressed the under 10 metre fleet. With many MPs saying that the Bill did not address the redistribution of quota to the under 10 metre fleet. For example, Sue Hayman MP referred to measures relating to quota in the Bill stating that "the clear lack of proposals to redistribute existing and future quota can be seen only as an endorsement of the current unfair system. Labour will bring in amendments to improve that situation".

In response to this the Minister referred to "a 13% uplift for the under-10 metre fleet under this Government" and stated that "the Bill explicitly allows us to ensure that new quota can be allocated to the under- 10 metre fleet" ⁹.

Trade and fish landings

[Sue Hayman MP](#) pointed out that there is no provision for dealing with future trade uncertainty, nor any mention of customs or border arrangements.

[Neil Parish MP \(Tiverton and Honiton\) \(Con\)](#), Chair of the Environment Food and Rural Affairs Select Committee, talked about landings. He expressed concern that once the UK has left the EU, UK vessels will no longer have an automatic right to land fish in any EU ports.

Setting quotas in Scotland

[Deidre Brock MP \(Edinburgh North and Leith\) \(SNP\)](#), talked about determining fishing opportunities. She said "Quotas for Scotland's waters should be set in Scotland, just as quotas for English waters should be set in England and Welsh waters in Wales. That is devolution. ... The same applies to foreign vessels in our waters. We know that the Secretary of State has been a little free with his pledges of access to our waters, but it should more appropriately be the devolved Administrations that determine such things... Matters determined on an EU platform but not written into [schedule 5 of the Scotland Act 1998](#) are devolved and should go straight to Holyrood."

Governance gap

[Angela Smith MP \(Penistone and Stocksbridge\) \(Lab\)](#) talked about a potential governance gap. "The fisheries White Paper ... suggested ... that a new independent environmental regulator should have a role in relation to the marine environment. As things stand, this Bill is opaque about how the forthcoming environment Bill will protect our marine environment, and how the "governance gap" will be closed."

Aquaculture and shellfish

[Angus Brendan MacNeil \(Na h-Eileanan an Iar\) \(SNP\)](#) talked about the wider fisheries sector, including aquaculture and the shellfish sector. He said "We must also think about aquaculture and about salmon, which accounts for a huge part of our industry. We have to be sure that nothing is stopped at borders. Once, at Prime Minister's questions, I asked the Prime Minister about shellfish exports being stopped on lorries—she, too, was like a rabbit in the headlights. She did not quite understand that the catch goes live to France and Spain, because they pay the top prices. If we do not get to those markets, we will not replace them in the United Kingdom, because people here will not pay the price that is paid elsewhere for crab and shellfish, so we will see a loss."

European Maritime and Fisheries Fund

Members raised the issue of grant funding, and whether the funding from the European Maritime and Fisheries Fund will be replaced ([Alan Campbell \(Tynemouth\) \(Lab\)](#)).

Legislative Consent

The UK and Scottish Government agree that legislative consent is required for this Bill - although there is disagreement on some clauses (see below). However, as set out in its [legislative consent memorandum](#) the Scottish Government states that it is not in a position to recommend consent to the Bill. They explain this as follows -

"following events concerning the European Union (Withdrawal) Act, the Scottish Government does not believe it should currently seek consent from the Scottish Parliament to UK legislation related to withdrawal from the EU, except in exceptional circumstances. During the passage of that Bill, the UK Government sought consent from the Scottish Parliament, in line with the Sewel Convention. The Scottish Parliament voted (by 93 votes to 30) to refuse consent. The UK Government then decided to continue with the Bill and legislate for matters within or affecting the responsibilities of the Scottish Parliament without its agreement...

... The UK Government has, however, made clear that it is prepared to proceed with any future legislation relating to the UK's withdrawal from the EU without the consent of the Scottish Parliament when that consent is required and sought. The UK Government has, in the view of the Scottish Government, effectively suspended the established legislative consent process in relation to legislation concerning EU withdrawal. In these circumstances, the Scottish Government will continue to work to develop and to improve UK legislation related to EU withdrawal. The Scottish Government does not, however, believe there is a practical purpose in bringing forward legislative consent motions when the UK Government has made clear any decision of the Scottish Parliament is liable to be set aside. The Scottish Government believes it is unacceptable for the deliberations and decisions of the Parliament to be treated in this way." ⁶

Scottish Government's Legislative Consent Memorandum

The UK Government have said that they will seek legislative consent on the Bill. The Scottish Government laid a [legislative consent memorandum](#) (LCM) in the Scottish Parliament on 7 December 2018⁶. No legislative consent motion was attached.

The Scottish Government agrees that legislative consent is required for the Bill. However, they argue that legislative consent is needed in relation to clauses 18-20, where the UK Government does not. In addition, the LCM suggests that Scottish Government also consider consent is required for clauses 29 and 30, stating “Defra’s reasoning as to why they do not believe consent is required for clauses 20, 29 [on power of Marine management to impose charges] and 30 [fees for services provided for the industry] is also awaited.”

Clauses 18-19 provide for the Secretary of State to set the UK’s fishing opportunities (quota and effort) for a calendar year in order to comply with an international obligation of the UK to determine the maximum fishing opportunities of the UK. The Scottish Government explains in the LCM -

“ Whilst the United Kingdom is responsible in international law for compliance with its international obligations, it does not follow that it is the UK Government alone which is responsible for the measures required to implement and comply with those obligations in domestic law. Paragraph 7(2) of Schedule 5 to the Scotland Act 1998 explicitly provides that observing and implementing international obligations are not reserved matters. The regulation of sea fishing inside the Scottish zone (and the regulation of Scottish fishing boats outside the Scottish zone) is not a reserved matter by virtue of section C6 of Schedule 5 to the Scotland Act 1998. On this basis, it would appear that clause 18 is a provision which legislates with regard to devolved matters and for a purpose which is within the legislative competence of the Scottish Parliament.”

This is also discussed [above](#).

Clause 20 corrects Article 17 of the Common Fisheries Policy Regulation to make it operable in UK law to make it operable in UK law. The Scottish Government argues that -

“ while not expressly applying to the Scottish Ministers, [the change will] affect the devolved competence of the Scottish Ministers to determine their own criteria for distributing fishing opportunities in Scotland. The Scottish Government’s view is that this therefore triggers the need for an LCM.”

Scottish Government's proposed amendments

On 4 December 2018 the [Scottish Government wrote to the UK Government](#) to request a number of amendments to the UK Fisheries Bill, regarding -

1. quota and effort limits -
2. seafood levies
3. funding for coastal communities, and
4. a number of other amendments.

Quota and effort limits

Clause 18 relates to the determination of quota and effort limits. Contrary to the view of the UK Government, the Scottish Government believes that legislative consent is required. Mr Ewing's letter states -

“...this clause, as drafted, will have an unacceptable impact on the existing powers of Scottish Ministers. Therefore, to ensure that devolved competence is respected, I would ask that an amendment be made to Clause 18 to provide that any decisions made under Clause 18, insofar as they relate to Scotland, should only be taken with the consent of the Scottish Ministers.”

Seafood levies

In a letter to the UK Government, Mr Ewing says that the Scottish Government believes that the sea fish levy is not fit for purpose because it provides "an inadequate level of support to the sector in Scotland [which results in] insufficient marketing and promotion of Scottish seafood."

More information on the current levy is provided by the Sea Fish Industry Authority ([Seafish](#)) website -

"Seafish levy is due on all first-hand purchases of sea fish, shellfish, and sea fish products including fishmeal landed in the United Kingdom. A first-hand purchase takes place when product is purchased from:

A fisherman or boat owner - however when such a purchase is made through or via a fish salesman/auctioneer, payment of levy due to Seafish is made by them but is recoverable from the purchaser. It will normally be charged by the fish salesman/auctioneer as a separate item on their customer's sales invoices.

A foreign supplier - including direct imports, purchases made from UK cold stores, goods delivered duty paid and purchases from EU countries, including the Channel Islands and the Isle of Man."

The Scottish Government's amendments propose -

- to give Seafish greater flexibility to exercise its functions separately and differently in different parts of the UK. This would also require Seafish to report how income received from the levies has been applied in respect of each part of the UK
- to devolve control of the Scottish aspects of levies to the Scottish Ministers to ensure that levies require confirmation by the Scottish Ministers, and that Scottish Ministers may increase the rate of such levies.

Funding for sustainable fisheries and coastal communities

The Scottish Government believes the Bill should be used to honour promises made during the EU referendum campaign regarding future funding. They propose an amendment which inserts a new clause -

“ to require the Secretary of State to make available to the Scottish Ministers sums which are at least equivalent to the sums made available to the Scottish Ministers under the European Maritime and Fisheries Fund (EMFF) in the year prior to Exit Day.
”

More information on the EMFF is provided [above](#).

Other amendments

The Scottish Government seek a number of other amendments that Scottish and UK officials are working to deliver, including -

- Clause 1 to ensure aquaculture is incorporated into the joint fisheries objectives
- Clause 28 to provide Scottish Ministers with a power equivalent to that given to the Secretary of State to provide financial assistance (grants or loans) to the sector
- Clause 29 to provide Scottish Ministers with a power equivalent to that given to the Secretary of State to make regulations to impose charges relating to fishing quotas, commercial fish and aquaculture activities, the registration of buyers and sellers of first-sale fish, and catch certificates for the import/export of fish
- Clause 31 to provide Scottish Ministers with a broad power, equivalent to that given to the Secretary of State to amend and replace retained EU law for fisheries and aquaculture
- an amendment to the Scotland Act 1998 to adjust the definition of “Scotland” in that Act to ensure that the competence of the Scottish Parliament and Scottish Ministers over the Scottish Zone post-EU exit is retained ³.

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