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## **Rural Economy and Connectivity Committee Comataidh Eaconomaidh Dùthchail is Co- cheangailteachd**

# **Legislative Consent Memorandum on the UK Fisheries Bill (LCM(S5)41)**



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# Rural Economy and Connectivity Committee

Remit: To consider and report on matters relating to the rural economy within the responsibility of the Cabinet Secretary for Rural Economy and Tourism and matters falling within the responsibility of the Cabinet Secretary for Transport, Infrastructure and Connectivity.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/rural-committee.aspx>



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# Committee Membership



**Convener**  
**Edward Mountain**  
Scottish Conservative  
and Unionist Party



**Deputy Convener**  
**Maureen Watt**  
Scottish National Party



**Peter Chapman**  
Scottish Conservative  
and Unionist Party



**John Finnie**  
Scottish Green Party



**Emma Harper**  
Scottish National Party



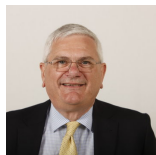
**Richard Lyle**  
Scottish National Party



**Angus MacDonald**  
Scottish National Party



**Oliver Mundell**  
Scottish Conservative  
and Unionist Party



**Mike Rumbles**  
Scottish Liberal  
Democrats



**Colin Smyth**  
Scottish Labour



**Stewart Stevenson**  
Scottish National Party

# Executive summary

1. This report details the Rural Economy and Connectivity Committee's consideration of the [Legislative Consent Memorandum](#) on the [UK Fisheries Bill](#).

The Committee recommends that the Parliament agrees the associated legislative consent motion lodged by the Cabinet Secretary for Rural Economy and Tourism.

# Committee membership changes

2. The membership of the Committee changed immediately prior to the publication of this report. Rachael Hamilton was a member of the Committee until 20 August 2020, when she was replaced by Oliver Mundell.

# Background

3. The [UK Fisheries Bill](#) ("the Bill") was introduced in the House of Lords on 29 January 2020.
  4. The Committee considered a Legislative Consent Memorandum (LCM) on a previous UK Fisheries Bill on 23 January 2019. At that time, the Scottish Government did not recommend consent to the Bill chiefly due to different opinions between the UK and Scottish Governments over whether certain clauses were in competence. The Committee at that time made no [recommendation](#) to Parliament on the Bill but agreed to note both the memorandum and the Scottish Government's reasons for not lodging a motion and to seek further information updates. The previous UK Fisheries Bill fell when the UK Parliamentary session was dissolved in November 2019.
  5. The Cabinet Secretary for Rural Economy and Connectivity, Fergus Ewing MSP, lodged a [Legislative Consent Memorandum](#) (LCM(S5)41) on 15 June 2020. This included a draft motion, to be lodged by the Cabinet Secretary for Rural Economy and Tourism, as follows:
    - ” That the Scottish Parliament agrees that the relevant provisions of the Fisheries Bill 2020 introduced in the House of Lords 29th January 2020 relating to provisions on fishing, aquaculture and marine conservation and connected purposes so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.
  6. The memorandum was referred to the Rural Economy and Connectivity Committee as lead committee by the Parliamentary Bureau on 23 June 2020. The Bill was also considered by the Delegated Powers and Law Reform Committee and the Environment, Climate Change and Land Reform Committee, in so far as it affected their remits.
  7. The LCM sets out the purpose of the Bill as follows:
    - ” The main purpose of the Bill is to provide the legal framework for the UK to operate outside of the Common Fisheries Policy (CFP), and to create common approaches where required to fisheries management between the Secretary of State and the Devolved Administrations.
- The Bill also grants Scottish Ministers additional powers to legislate in devolved areas.
8. The first clause of the Bill sets out fisheries objectives. These set out priorities for the Fisheries Administrations once the UK is out of the CFP. These partly mirror the objectives of the CFP. Two new objectives - the 'national benefit' objective and 'climate change' objective - have been added to the revised Bill, and the 'discards' objective has been changed to a 'bycatch' objective.
  9. Clauses 2-11 of the Bill create a Common UK Framework requiring the four UK Fisheries Administrations to develop a 'Joint Fisheries Statement' detailing policies for contributing to the achievement of the fisheries objectives. The revised Bill



contains new clauses requiring the development of 'Fisheries Management Plans' setting out policies for restoring or maintaining fish stocks at sustainable levels.

10. Clauses 12-13 revoke EU legislation allowing the automatic right of foreign vessels registered in the EU to access UK waters. It requires foreign vessels fishing in UK waters to be licensed by one of the UK's Fisheries Administrations.
11. Clauses 14-20 detail the powers and provisions for Ministers to license UK and foreign vessels fishing in UK waters and the powers available to Ministers to punish vessels for committing offences. Since the Bill's introduction, a new clause 18(1) on a National Landing Requirement has been added. New clause 18(1) requires the Secretary of State, within 18 months of the Bill being passed, to make regulations establishing a national landing requirement which automatically applies to any licensed British or foreign fishing boat unless exempted.
12. Clauses 23-27 provide 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.
13. Clauses 28-32 grant the Secretary of State powers to introduce regulations for a scheme to charge English vessels for unauthorised catches. The purpose is to set charges to deter overfishing and to incentivise more sustainable fishing practices and avoid unwanted catches.
14. Clauses 33-35 provide Ministers with powers to make grants to the industry and to charge the industry for services provided. Clause 33 aims to provide for a scheme to replace grants that were previously available through EU funding via the European Maritime Fisheries Fund (EMFF).
15. Clauses 36-42 provide broad powers to make provision through secondary legislation on matters currently regulated by the EU under the CFP. Not all of these powers were conferred on Scottish Ministers in the previous version of the Fisheries Bill but have now been extended to Scotland under Schedule 8 of the Bill.
16. Since the Bill's introduction a new clause 48 (1) has been inserted into the Bill. This requires the Secretary of State by regulations to require all fishing vessels over 10 metres of whatever nationality fishing within the UK Exclusive Economic Zone ("EEZ"), and all UK vessels over 10 metres fishing outside the UK EEZ, to be fitted with remote electronic monitoring systems.
17. Schedule 9 provides powers for 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 region.
18. Further information on the contents of the Bill and implications for Scotland can be found in the [SPICe briefing](#) on the Revised UK Fisheries Bill.

# Consideration by other committees

## Environment, Climate Change and Land Reform Committee

19. The Environment, Climate Change and Land Reform (ECCLR) Committee considered the implications of the UK Fisheries Bill, on the environment in Scotland and on devolved competence relating to its remit.
20. The ECCLR Committee sought clarification from the Scottish Government in writing and considered this response on 17 March 2020. Subsequently, the ECCLR Committee wrote to the REC Committee on 14 August 2020 providing their comments (the letter is attached as Annexe C in the REC [Committee papers](#)).
21. The ECCLR Committee raised a number of points and questions for REC Committee to consider:
  - the environmental considerations or protections when exercising powers under the Bill;
  - the Scottish Government's approach to agreeing catch limits when there is insufficient data;
  - whether the Scottish Government's intention to align with EU standards and regulations also applies to fisheries;
  - to what extent the Scottish Government can set different policy on fisheries within the context of a UK internal market;
  - arrangements for managing disagreements between fisheries policy authorities;
  - lack of clarity on what will replace EU funding by the UK Government;
  - arrangements for managing disagreements should be included in the UK Common Framework on fisheries and should be scrutinised in the UK Fisheries Bill;
  - The Scottish Government should be involved in International negotiations on fisheries given the impact on devolved competence.

## Delegated Powers and Law Reform Committee

22. The Delegated Powers and Law Reform (DPLR) Committee considered the delegated powers in the LCM at its meeting on [11 August 2020](#) and has asked the Scottish Government for [further information](#) (the reply from the Scottish Government can be found in the REC [Committee papers](#)). The DPLR Committee considered the reply on [18 August 2020](#) and published its recommendations in its [report](#).

23. The DPLR Committee raised a general concern about delegated powers within the Bill delegated solely to the Secretary of State (some of which are only to be exercised with the consent or consultation of Scottish Ministers) that there is no formal means for the Parliament to scrutinise any ensuing regulations:

” The Committee reiterates its view, as previously expressed in relation to other legislation arising from EU Withdrawal, that the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.

The Committee considers it appropriate, as a minimum, that all consent decisions of the Scottish Ministers in respect of powers under the Bill exercisable by UK Ministers in devolved areas are subject to the process set out in the proposed new SI Protocol covering powers exercised by UK Ministers in devolved areas arising from EU withdrawal.<sup>1</sup>

24. The DPLR Committee also made recommendations on specific powers which can be found in its [report](#).

# Consideration by Rural Economy and Connectivity Committee

25. The Committee took evidence on the LCM from the Cabinet Secretary for Rural Economy and Tourism and his officials on 19 August 2020. The Committee questioned the Cabinet Secretary on the lack of legally binding fisheries targets in the Bill. The Cabinet Secretary replied that the starting point for this would be the Scottish Government's consultation paper on the Future of Fisheries Management and the analysis of responses to this would be shared with the Committee. Officials detailed that each administration would be required by the Bill to produce a Fisheries Management Plan and work was being carried out on indicators. The Committee asked how progress would be monitored on sustainability of fisheries. The Cabinet Secretary stated that Fisheries Bill contains a climate change objective but that Scottish Ministers were also obliged to meet the requirements of existing climate change legislation.
26. Members asked whether the Fisheries Management Plan would be laid in Parliament. The Cabinet Secretary indicated that there was a legal obligation for the Joint Fisheries Statement to be laid before each legislature and this must contain a list of Fisheries Management Plans. It will be up to each administration to consult as appropriate but that the Scottish Government would wish to consult the Scottish Parliament.
27. Questions were raised on the DPLR Committee's concerns about the delegation of powers being devolved to the Secretary of State rather than to Scottish Ministers. The Cabinet Secretary stated that no legal powers were being delegated to the UK Government, rather functions were being passed to the UK Government where it made sense to do so and nothing will be done without consent.
28. The Cabinet Secretary was asked whether all UK administrations would continue to have access to the same data for international negotiations and he replied that this would be the case.
29. Other questions covered the impact of Brexit in terms of resources, access by third countries to Scottish fishing waters, a UK Common Framework on Fisheries and arrangements for the Scottish Government to participate in International negotiations on fisheries. The Cabinet Secretary indicated that representations had been made to the UK Government on these matters, requesting that the Scottish Government to be directly involved in talks.
30. Members asked for clarification about how the Bill will interface with inshore fisheries legislation. The Cabinet Secretary detailed that the Bill would set out principles which would apply to all fisheries. Members also asked about the practical ability for the devolved administrations to set different policies from the UK Government against the backdrop of a UK-wide internal market. The Cabinet Secretary clarified that there was a ability to diverge where the four administrations were satisfied. He reiterated that no decisions would be taken on the exercise of powers without consent from both the Scottish Government and Scottish Parliament and that the Parliament and the Government should work together on a technical process to ensure effective scrutiny.

31. The Cabinet Secretary also agreed to write to the Committee on a number of points including dispute resolution, the impact on the marine environment legal framework and progress on recent amendments where the Scottish Government had concerns on the current drafting. The Committee agreed to write to the Cabinet Secretary on these points and on other matters the Committee was unable to ask due to time constraints.
32. Full details of the Committee's discussion of the LCM on 19 August 2020 can be viewed in the [Official Report](#) of its meeting.

## Conclusions and recommendations

33. After considering the LCM on the Fisheries Bill, the Committee agreed that it was content to recommend that the Parliament should agree the associated draft motion.

The Committee recommends that the Parliament agrees the associated legislative consent motion lodged by the Cabinet Secretary for Rural Economy and Tourism.

- [1] Delegated Powers and Law Reform Committee. (2020, August 18). Legislative Consent Memorandum: Fisheries Bill. Retrieved from <https://sp-bpr-en-prod-cdnep.azureedge.net/published/DPLR/2020/8/18/Legislative-Consent-Memorandum--Fisheries-Bill/DPLRS052020R40.pdf> [accessed 19 August 2020]

