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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)22)**



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# Rural Economy and Connectivity Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for the Rural Economy and the matters falling within the responsibility of the Cabinet Secretary for Transport, Infrastructure and Connectivity.



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# Background

1. The [UK Fisheries Bill](#) ("the Bill") was introduced to the House of Commons and given its First Reading on 25 October 2018. The Second Reading took place on 21 November 2018. A legislative consent memorandum has been lodged by the Scottish Government on the Bill.
2. The Bill seeks to provide a range of powers for the UK Government and, in places, the Devolved Administrations, to manage fisheries upon exit from the EU. This includes powers to amend retained EU law, manage foreign vessels in UK waters and set limits on quota and days at sea (known as effort). The main purpose of the Bill is to provide the legal framework for the UK to operate as an independent coastal state under the UN Convention on the Law of the Sea (UNCLOS) once the UK has left the EU and thus the Common Fisheries Policy (through which the EU has exclusive competence in fisheries negotiations)
3. The Bill includes a variety of provisions. For example, it includes:
  - Policy objectives in relation to fisheries, fishing and aquaculture.
  - Access to British fisheries.
  - Licensing of fishing boats.
  - The determination and distribution of Fishing opportunities.
  - Enabling schemes to be established for charging for unauthorised catches of sea fish.
  - Grants in connection with fishing, aquaculture or marine conservation.
  - Powers to make further provision in connection with fisheries, aquaculture or aquatic animals.
  - Byelaws and orders relating to the exploitation of sea fisheries; and for connected purposes.

## Devolved competence

4. The UK and Scottish Government agree that legislative consent from the Scottish Parliament is required for this Bill - although there is disagreement on some clauses.
5. The UK Government regard the following clauses as requiring legislative consent due to their impact on devolved competence on fisheries, the Scottish zone or the licensing and management of Scottish vessels: 1-17, 21, 35-43. The Scottish Government agrees with the UK Government's assessment that consent is needed in respect of these clauses.
6. However, the Scottish Government is also of the view that consent is also required in relation to clauses 18-19, whereas the UK Government does not believe consent is required for these clauses. The Scottish Government is also awaiting Defra's reasoning as to why they do not believe consent is required for clauses 20, 29 and 30.
7. Clauses 18-20 provide for the Secretary of State to set the UK's fishing opportunities (quote and effort) and duties for a calendar year. The UK Government does not believe consent is required for these clauses as they consider that they relate to reserved matters. Sections 29 and 30 relate to Grants and Charges, specifically giving the Secretary of State, MMO, Welsh Government Ministers, and Northern Ireland Executive Ministers various powers to make grants and introduce charges.
8. The Scottish Government highlights further concerns in the LCM in relation to Clause 18 as follows:
  - 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 – 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 and therefore consent of the Scottish Parliament is required.
  - This Bill changes Article 17 of the Common Fisheries Policy Regulation. (Article 17 requires that Member States distribute fishing opportunities domestically according to transparent and objective criteria, including those of an environmental, social and economic nature.) The Scottish Government believes that whilst not expressly applying to the Scottish Ministers, the changes 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.
9. The Committee notes that the Cabinet Secretary for the Rural Economy wrote to the Secretary of State on 4 December 2018 seeking an amendment to clause 18 so

that any determination made under clause 18, insofar as they relate to Scotland, should only be taken with the consent of the Scottish Ministers.

10. A [SPICe briefing on the Bill](#) sets out the detail on how the respective views of the Scottish and UK governments differ

## Scrutiny of the LCM

11. The Cabinet Secretary for the Rural Economy and Connectivity, Fergus Ewing MSP, lodged the LCM on 7 December 2018. The memorandum was referred to the Rural Economy and Connectivity Committee as lead committee following agreement of a Parliamentary Bureau motion on 12 December 2018.
12. The Delegated Powers and Law Reform (DPLR) Committee reported to the REC Committee, as lead committee, on its consideration of each of the relevant delegated powers contained within the UK Fisheries Bill.
13. In its report, the DPLR Committee highlighted its concern that, in relation to certain delegated powers in the Bill (namely clauses 9(3), 11(2), 31(1), and 33), the Scottish Parliament does not have any scrutiny function in relation to the Scottish Ministers providing consent to the Secretary of State to make provision in areas which would be within the Scottish Parliament's legislative competence.
14. It therefore recommended that the REC Committee, as lead committee, considered what role is envisaged for the Scottish Parliament in scrutinising the decision of the Scottish Ministers to consent to any regulations being made by the Secretary of State which relate to devolved powers.

## Conclusion

15. At its meeting on 23 January 2019, the Committee considered the LCM in relation to the Fisheries Bill. It made no recommendation but agreed to note both the memorandum and the Scottish Government's reasons for not lodging a motion. The committee further agreed to:
- write to the UK Government seeking a position statement on those issues of devolved competency highlighted in the LCM on which its view differs from that of the Scottish Government.
  - request that the Scottish Government keep it updated on the progress of its proposed amendments to the Bill; and on its discussions with the UK Government on the operation of legislative consent convention as these relate to the Bill.
  - call on the Scottish Government to provide its response to the issues raised by the DPLR Committee its report, in relation to the role that is envisaged for the Scottish Parliament in scrutinising the decision of the Scottish Ministers to consent to any regulations being made under the Bill by the Secretary of State which relate to devolved powers.

