

# SHARK FINS BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Shark Fins Bill as brought from the House of Commons on 23 January 2023 (HL Bill 93).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs with the consent of Baroness Jones of Whitchurch in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.



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## Overview of the Bill

- 1 The Shark Fins Bill (“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.
- 2 It also includes amendments to retained EU law, in particular to Regulation 1185/2003, on the removal of shark fins on board vessels.

## Policy Objectives

- 3 The Government published their Action Plan for Animal Welfare in May 2021, which set out a range of legislative and non-legislative reforms to solidify and enhance the UK’s policy on animal welfare and to reduce the decline in global biodiversity.
- 4 The UK has pressed for stronger international action to protect sharks against unsustainable fishing practices, with shark finning having been banned in UK waters for nearly 20 years. The Department published a call for evidence in December 2020 to gather evidence on the extent of trade in shark fins in the UK and the potential impact of stricter trade measures. The Bill bans imports and exports of detached shark fins or parts of shark fins, or things containing them, except in limited circumstances (i.e. in connection with the conservation of sharks), so that only fins naturally attached to the body of the shark can be imported or exported. 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.

# Legal background

## Trade in endangered species

- 5 The UK is party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) which regulates international trade in over 35,000 species of wild animals and plants, their products (such as animal skins) and derivatives (such as food or medicine). All import, export, and re-export of species covered by CITES—including all types of animal products—is regulated through a permitting and certification system, which aims to ensure that international trade in listed species is sustainable, lawful and traceable.
- 6 The species which are covered by CITES are reviewed every three years at the Conference of the Parties. They are contained in three Appendices to the agreement. Species are afforded differing levels of protection, depending on the Appendix in which they are listed:
  - Appendix I includes species threatened with extinction. Trade is permitted only in exceptional circumstances;
  - Appendix II includes species that are not necessarily threatened with extinction, but in which trade must be controlled to avoid utilization incompatible with their survival; and
  - Appendix III includes species which are already subject to trade restrictions in at least one country, where that country has requested the cooperation of other CITES parties to prevent unsustainable or illegal exploitation.
- 7 An animal product from a species listed on one of the CITES Appendices may only be imported into or exported (or re-exported) from a state which is party to the Convention if the appropriate documentation is presented for clearance at the port of entry or exit.
- 8 The UK currently meets its obligations under CITES through the EU Wildlife Trade Regulations (EUWTRs) which continue to apply in Northern Ireland and the Wildlife Trade Regulations (WTRs) which apply in GB as retained direct EU legislation. The EUWTRs and WTRs both comprise:
  - Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein (known as “the Principal Wildlife Trade Regulation”);
  - Commission Regulation (EC) No. 865/2006 laying down detailed rules concerning the implementation of Council Regulation No. 338/97;
  - Commission Implementing Regulation (EU) No 792/2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation No. 338/97; and
  - Commission Implementing Regulation (EU) No. 1587/2019 prohibiting the introduction into the Union of specimens of certain species of wild fauna and flora in accordance with Council Regulation No. 338/97.
- 9 Similar to the Convention, the Principal Wildlife Trade Regulation lists all CITES (and some non-CITES) species in four Annexes with varying levels of protection.
  - Annex A lists the most endangered species (which is broadly equivalent to CITES Appendix I);

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- Annex B lists species threatened by commercial trade (broadly equivalent to CITES Appendix II); and
  - Annexes C and D contain CITES Appendix III-listed species and some non-CITES listed species.
- 10 The Control of Trade in Endangered Species Regulations 2018 provides for the enforcement of the EU Wildlife Trade Regulations in the UK.
  - 11 The Endangered Species (Import and Export) Act 1976 enables the Secretary of State to implement CITES in the UK. However, it is largely redundant because CITES has been implemented in the UK using powers under the European Communities Act 1972, which has now been repealed. The Principal Wildlife Trade Regulations and other directly applicable EU regulations on trade in animal products have been made operable using powers under the European Union (Withdrawal) Act 2018.

### Shark finning and the trade in shark fins

- 12 Council Regulation (EC) No 1185/2003, which forms part of retained direct EU legislation, banned the practice of the removal on board, retention on board, transshipment and landing of shark fins, by UK-registered fishing vessels regardless of whether they are operating in UK waters or elsewhere. The Regulation prohibits the purchase, offering for sale or sale of shark fins which have been removed on board, retained on board, transhipped or landed in contravention of the prohibition in the Regulation. The version of Regulation 1185/2003 which was retained in UK law includes the amendments made by Regulation 605/2013.
- 13 Trade in shark fins and other shark products must adhere to trade controls that are in place for certain species of sharks under CITES. Currently there are 46 species of sharks and rays listed on CITES.
- 14 For species that are not CITES listed, shark fins can be legally imported to and exported from the UK without a permit. There is also retained Commission Delegated Regulation 2019/2122, which allows individuals travelling to the UK to carry 20kg of dried shark fins for personal consumption.

### The Customs and Excise Management Act 1979

- 15 The Customs and Excise Management Act 1979 makes it an offence to export or import goods with intent to evade a prohibition or restriction on those goods. Goods which have been imported or exported in breach of a prohibition or restriction are liable to forfeiture. A contravention of the prohibition in section 1 will activate the provisions in the Customs and Excise Management Act (CEMA) 1979.

## Territorial extent and application

- 16 Clause 3 sets out the territorial extent of the Bill, which describes the jurisdictions in which the Bill forms part of the law. The provisions of the Bill extend to England and Wales, Scotland and Northern Ireland. Clause 1 makes it clear that the prohibition relating to the import and export of detached shark fins applies to goods entering into Great Britain, or being removed from Great Britain only.
- 17 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

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# Commentary on provisions of Bill

## Shark fins

### Clause 1: Prohibition on import and export of detached shark fins

- 18 Subsections (1) and (2) of this clause prohibit the import of shark fins or items containing shark fins into the United Kingdom as a result of their entry into Great Britain. They also prohibit the removal of such items from the United Kingdom as a result of their removal from Great Britain. The prohibition does not apply if a shark fin is naturally attached to the body of a shark and the body is substantially intact.
- 19 Subsection (2)(b) further explains the meaning of ‘substantially intact’. This means that the head and internal organs of a shark can be removed (and some damage may have occurred to the body in transit), but the body should still be substantially intact. This is to prevent permitting trade for fins which are attached to small parts of the shark body, while the rest of the body could have been discarded – which still poses ethical and sustainability concerns.
- 20 Subsection (3) refers to the Schedule which contains provisions for exemption certificates relating to the prohibition in Subsection (1).
- 21 Subsection (4) defines, for the purposes of this clause and the Schedule, “shark fins” as meaning any fins or part of fins of a shark other than the pectoral fins or parts of pectoral fins of a ray and “shark” as meaning any fish of the taxon Elasmobranchii. The pectoral fins of a ray are excluded because they are a constituent part of raywings. Consistent with the approach in the Shark Finning Regulation 1185/2003, this also applies to the pectoral fins of a skate for the same reason.

## Amendment to retained EU law

### Clause 2: Removal of fins on board fishing vessels

- 22 Clause 2 provides for an amendment to the retained EU law version of Regulation 1185/2003. The amendment is to Article 1 of that Regulation, so that the prohibition of removal, retention on board, or transshipment and landing of shark fins applies to all UK fishing vessels wherever they fish and also to any fishing vessel in UK waters.

## General

### Clause 3: Extent

- 23 Subsection (1) of this clause sets out the territorial extent of the Bill (see also Annex A).

### Clause 3: Commencement

- 24 Subsections (2) to (4) of this clause set out when or how each provision in the Bill comes into force.
- 25 Subsection (2) provides powers for the Secretary of State to set the commencement dates for clause 1 and the Schedule in this Bill by statutory instrument.
- 26 Subsection (3) provides that clause 2 will come into force at the end of the period of two months beginning with the day on which this Act is passed.
- 27 Subsection (4) provides that clause 3 will come into force on the day on which this Act is passed.

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- 28 Subsection (5) provides the Secretary of State with powers to make regulations for transitional or savings provisions in connection with the coming into force of the Act.

### Clause 3(6): Short title

- 29 Subsection (6) provides that the short title of the Bill will be the Shark Fins Act 2022 once it becomes an Act.

## Schedule

### Schedule: Shark fins

#### Exemption certificates

- 30 Paragraph 1 confirms that the prohibition on the import or export of shark fins does not apply if the appropriate authority has issued an exemption certificate permitting such an import or export on a specified date or within a specific period set out in the exemption certificate (unless the exemption certificate has been revoked under paragraph 3). This paragraph also lists the information that must be included in an exemption certificate. The certificate will describe the shipment in as much detail as possible (i.e. weight/number of fins, whole/diced/powdered etc., species where possible).
- 31 Paragraph 9 defines the “appropriate authority” as: (i) the Secretary of State in relation to the entry into, or removal from, England of shark fins or things containing them, (ii) Scottish Ministers in relation to the entry into, or removal from, Scotland of shark fins or things containing them, and (iii) Welsh Ministers in relation to the entry into, or removal from, Wales of shark fins or things containing them. The appropriate authorities will not need to take action in relation to intra-Great Britain movements, as they are not caught by the prohibition in section 1.
- 32 Guidance on the exemption certificate process will be developed and agreed by the appropriate authorities.

#### Applications

- 33 Subparagraph (1) of paragraph 2 requires that a person applying for an exemption certificate (an “applicant”) must provide such information as the appropriate authority requests.
- 34 Subparagraph (2) requires the appropriate authority to grant the application where the applicant has provided all necessary information, paid any fee and where the appropriate authority is satisfied that the imported or exported shark fins are to be used for purposes connected with the conservation of sharks. The fee will be set at a level only to cover the administrative costs of processing the application.
- 35 Subparagraph (3) provides that where the appropriate authority refuses an application the applicant must be informed of why the application has been refused.

#### Revocation and revision

- 36 Paragraph 3 permits the appropriate authority to revoke or issue a revised exemption certificate if, before the import or export takes place, it appears to the appropriate authority that any information provided in connection with an application is or has become inaccurate or incomplete. However, the appropriate authority must revoke the exemption certificate if before the import or export takes place the appropriate authority ceases to be satisfied that the shark fins are to be used for purposes connected with the conservation of sharks. This



paragraph also requires the appropriate authority to inform the applicant of the reasons why an exemption certificate is revoked.

## Penalty for providing inaccurate, etc. information in connection with an application

- 37 Paragraph 4 provides for a civil liability, by way of a monetary penalty, where the applicant provides inaccurate or incomplete information or a document which contains an inaccuracy in relation to an application. This penalty would apply where inaccurate/incomplete information is provided deliberately or due to a failure to take reasonable care, or where the applicant knows the information is inaccurate/incomplete at the time it's provided or discovers it subsequently and fails to inform the appropriate authority. Subparagraph (3) also confirms the maximum penalty is £3,000. Subparagraph (4) allows the appropriate authority to amend this amount by regulations. Subparagraph (5), (6) and (7) provides that the regulations made respectively by the Secretary of State, the Welsh Ministers and the Scottish Ministers under subparagraph (4) must be made by the affirmative procedure.
- 38 Paragraph 5 outlines the process for monetary penalties. Subparagraph (1) sets out that the appropriate authority must give notice of the intent to impose a monetary penalty. This is done through an initial penalty notice.
- 39 Subparagraph (2) sets out that an initial penalty notice must offer the applicant the opportunity to avoid liability in relation to a monetary penalty by payment of a sum specified in the notice.
- 40 Subparagraphs (3) and (4) allows the applicant to object to the initial penalty notice within 28 days. After this period, a decision must be made by the appropriate authority as to whether to give the applicant a notice imposing the fine. This is the final penalty notice.
- 41 Subparagraph (5) states that a final penalty notice may not be given if the appropriate authority is no longer satisfied that the provision of inaccurate or incomplete information has occurred.
- 42 Subparagraph (6) states that the penalty in the final penalty notice may be of equal value to the amount proposed in the initial penalty notice or a penalty of a smaller amount.
- 43 Subparagraph (7) enables the appropriate authority to withdraw an initial or final penalty notice at any time.
- 44 Paragraph 6 defines what information must be included in an initial penalty notice and a final penalty notice. A final penalty notice may also provide for interest or other penalties to be payable in the event that payment is not made within the period specified by the notice.

## Appeals

- 45 Subparagraph (1) of paragraph 7 allows an applicant to appeal to the First-tier Tribunal against a decision either to refuse to issue or to revoke an exemption certificate or to give a final penalty notice.
- 46 Subparagraph (2) allows an appeal to be made on the grounds that the appropriate authority's decision to refuse an application, to revoke an exemption certificate or to give a final penalty notice was based on an error of fact, was wrong in law or was unreasonable. Subparagraph (3) provides that an appeal against a decision to give a final penalty notice may also be made on the ground that the amount of the penalty imposed by the notice is unreasonable.
- 47 Subparagraph (4) provides that on appeal against a decision to refuse to issue or to revoke an exemption certificate the First-tier Tribunal may confirm the original decision, require the

decision to be reversed or require the decision to be reconsidered by the appropriate authority.

- 48 Subparagraph (5) provides that on appeal against a decision to give a final penalty notice the First-tier Tribunal may confirm the final penalty notice, quash it or vary it by reducing the amount of the penalty.
- 49 Subparagraph (6) provides that on appeal against a decision to give a final penalty notice the requirement to pay the penalty is suspended until the appeal is finally determined or withdrawn and no interest or other penalty is payable during the suspension period.
- 50 Subparagraph (7) provides that references to the First-tier Tribunal, in relation to a decision of the Scottish Ministers, are to the First-tier Tribunal for Scotland.

## Enforcement

- 51 Paragraph 8 provides that if a person does not pay the whole or any part of a penalty then the outstanding sum is recoverable in England and Wales as if payable under an order of the county court, in Scotland in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court, and in Northern Ireland as if payable under an order of a county court in Northern Ireland.

## Financial implications of the Bill

- 52 The Regulatory Triage Assessment indicates that this policy has minimal costs to business and does not have associated enforcement costs, as the imports (and exports) and shark fin products will undergo existing enforcement and border checks.

## Parliamentary approval for financial costs or for charges imposed

- 53 No financial resolutions are required for the Bill as the Bill does not authorise significant new charges on public expenditure or impose new taxes or other charges on the public.

## Compatibility with the European Convention on Human Rights

- 54 The Government considers that the provisions of the Bill are compatible with the European Convention on Human Rights ('ECHR').

## Related documents

- 55 The following documents are relevant to the Bill and can be read at the stated locations:
- Shark fin trade: call for evidence, Department of Environment, Food and Rural Affairs, 10 December 2020: <https://www.gov.uk/government/consultations/shark-fin-trade-call-for-evidence>
  - Our Action Plan for Animal Welfare, Department of Environment, Food and Rural Affairs, 12 May 2021: <https://www.gov.uk/government/publications/action-plan-for-animal-welfare>

## Annex A – Territorial extent and application in the United Kingdom

- 56 The provision in the Bill extends to England and Wales and Scotland and Northern Ireland. However, the prohibition in clause 1 relating to the import and export of detached shark fins, applies in relation to Great Britain.
- 57 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.
- 58 To the extent that all of the provisions of the Bill fall within the legislative competence of one or more of the devolved legislatures, the legislative consent procedure would be appropriate.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1: Prohibition on import and export of shark fins	Yes	Yes	Yes	Yes	Yes	No	N/A
Clause 2: amendment to Regulation 1185/2003	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 3: Extent, commencement and short title	Yes	Yes	No	Yes	No	Yes	No
Schedule 1: Shark Fins	Yes	Yes	Yes	Yes	Yes	No	N/A

## Subject matter and legislative competence of devolved legislatures

- 59 In the opinion of His Majesty’s Government, the subject matter of clause 1 of the Bill relating to the import, export and trade of shark fins are within the devolved legislative competence of the Scottish Parliament because they do not relate to reserved matters under Schedule 5 of the Scotland Act 1998. Those provisions are also within the competence of Senedd Cymru because they do not relate to reserved matters under Schedule 7A of the Government of Wales Act 2006.
- 60 The Government consider that the subject matter deals with a reserved matter under paragraph 20 of Schedule 3 to the Northern Ireland Act 1998. The Government do not intend for clause 1 containing the prohibition on the import and export of detached shark fins or the Schedule to apply to Northern Ireland. In any event, the Government do not consider that it

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requires a legislative consent motion because it does not specifically deal with a transferred matter.

- 61 However, the amendments to the retained EU legislation, the Shark Finning Regulation 1185/2003, will apply to the whole of the UK. These provisions are devolved and would normally require all of the devolved administrations' consent. As a Legislative Consent Motion is engaged for the substantive provisions in the Bill, it is not needed in its own right for clause 3.
- 62 In the current absence of the NI Executive and a sitting Assembly, it may not be possible for the Assembly to provide a Legislative Consent Motion (with respect to clause 2).





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