



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

6th Report of Session 2019–21

Fisheries Bill [HL]

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and
- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chair)

[Baroness Browning](#)

[Lord Goddard of Stockport](#)

[Lord Haselhurst](#)

[Lord Haskel](#)

[Baroness Meacher](#)

[Lord Rowlands](#)

[Lord Thurlow](#)

[Lord Tope](#)

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hlddelegatedpowers@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Sixth Report

FISHERIES BILL [HL]

1. The Fisheries Bill had its second reading in the House of Lords on 11 February 2020. Like the predecessor Bill on which we reported in our 39th Report of Session 2017-19, the Bill provides a legal framework for the United Kingdom to operate as an independent coastal state when it leaves the common fisheries policy of the EU.
2. A Delegated Powers Memorandum has been provided by the Department for Environment, Food and Rural Affairs.¹ We commend its thoroughness.
3. **We commented positively on various aspects of the previous Bill, points which carry across to the new Bill:**
 - (a) The Bill represents a significant increase in the scrutiny that Parliament will have over fisheries policy compared to when the UK was a member of the EU.
 - (b) Clauses 2–10 require Ministers to act compatibly with national policies expressed in various published fisheries statements against which Ministerial action (including the making of statutory instruments) will be judged.
 - (c) Clause 14 (power of the Secretary of State to add, remove or vary exceptions to the prohibition on unlicensed fishing) is more transparent than, and offers fuller parliamentary scrutiny than, the present law.
 - (d) Clause 23 (determining the maximum quantity of sea fish that may be caught by British fishing boats and the maximum days they may spend at sea) constrains what is currently a prerogative power and makes the process of determining UK quota more transparent.
 - (e) The great majority of the delegated powers make provision for the affirmative procedure, and justifiably so.
4. **In our previous report, we drew attention to one power in the Bill.** What is now clause 27² allows the Secretary of State, by affirmative regulations, to sell rights to use English fishing opportunities for any calendar year. Currently, and throughout 2020, English fishing opportunities (total allowable catch, and maximum days spent by vessels at sea) are distributed according to an EU allocation. The power under clause 27 to distribute extra quota envisages increased fishing opportunities for British fishing boats once the UK takes back control of access to its fishing waters.
5. At paragraph 153 of the Explanatory Notes to the original Fisheries Bill introduced in 2018, the Government said that it is not intended that a scheme under (what is now) clause 27 would be used to sell fishing opportunities exclusively on the basis of price. The Bill as originally drafted would have

1 Department for Environment, Food and Rural Affairs Delegated Powers Memorandum: <https://publications.parliament.uk/pa/bills/lbill/58-01/071/5801071-DPM.pdf>

2 Previously clause 22.

allowed this. Accordingly, in our 39th Report of Session 2017-19, we recommended that:

- (a) the Bill should make clear that fishing opportunities will not be sold exclusively on the basis of price, and
 - (b) the exercise of the power in (what is now) clause 27 should be preceded by consultation.
6. **We welcome the fact that clause 27(5) accepts our recommendation about consultation.**
 7. We remain concerned however about the new provision in clause 27(3) (h). This stipulates that regulations may require or permit rights to fishing opportunities to be sold subject to conditions other than price and so does not—contrary to our original recommendation—explicitly prohibit sales exclusively on the basis of price. Paragraph 172 of the Explanatory Notes to the current Bill merely states: “The regulations could ... require fishing opportunities to be allocated on criteria other than price”. This contrasts with paragraph 153 of the Explanatory Notes to the original Bill which stated: “It is not intended that a scheme would be used to sell fishing opportunities exclusively on the basis of price”. Our original recommendation had been that this stated intention should be enshrined on the face of the Bill.
 8. **The House may wish to seek assurance from the Minister that, in accordance with paragraph 153 of the Explanatory Notes to the original Bill, it is not the Government’s intention that sales of fishing opportunities under clause 27 should be governed exclusively by price.**
 9. Paragraphs 36 and 37 of the Delegated Powers Memorandum set out examples of eligibility rules other than price: “eligibility rules could, for example, require those bidding for the quota to demonstrate they are engaged in sustainable fishing or are able to deliver wider social or environmental benefits should their bids be accepted”.
 10. **The House may wish to invite the Minister to offer a fuller explanation of the Government’s intentions with regard to the application of criteria other than price, including the interrelationship between these other criteria and price, and their relative weighting.**

APPENDIX 1: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 26 February 2020 Members declared no interests.

Attendance

The meeting was attended by Baroness Andrews, Lord Goddard of Stockport, Lord Haskel, Baroness Meacher, Lord Rowlands, Lord Thurlow and Lord Tope.