

THE FISHERIES (AMENDMENT) (EU EXIT) REGULATIONS 2019

Notification to the Scottish Parliament of Scottish Ministers' intention to consent to UK legislative proposals on areas of devolved competence.

Title of instrument:

The Fisheries (Amendment) (EU Exit) Regulations 2019.

Instrument and summary of proposal

The UK Government is making multiple sets of regulations relating to the management of sea fisheries to correct deficiencies which will arise as a result of the UK's exit from the EU. These deficiencies arise both in existing domestic legislation and in directly applicable EU legislation that will form part of domestic law after the UK's exit from the EU. These regulations are:

- The Fisheries (Amendment) (EU Exit) Regulations 2019 which amends existing domestic law, including both primary and secondary legislation.
- The Common Fisheries Policy (UK) (EU Exit) (Miscellaneous Amendment) Regulations 2019 which will make changes to correct deficiencies in directly applicable EU legislation, and which we expect Scottish Ministers to be consulted on shortly.
- There will also be further regulations brought forward to amend other directly applicable EU law that are not included in the regulations above, for instance because of the possibility of EU law in certain areas being changed in the next few months.

All these regulations, plus the SSIs which will be brought forward will be taken together to ensure that the UK Government and the devolved administrations are able to continue to manage sea fisheries in a coherent and sustainable way in the event that the UK leaves the EU without a withdrawal agreement or deal. The Fisheries (Amendment) and Common Fisheries Policy regulations are heavily interlinked with the latter being the most significant EU Exit SI in relation to the management of sea fisheries. The regulations are proceeding to different timetables and so will be subject to separate notifications.

The Fisheries (Amendment) (EU Exit) Regulations 2019 ("the Regulations") provides technical corrections to primary and secondary domestic legislation consisting of minor textual omissions or changes in order to ensure that the legislation will continue to be effective after the UK leaves the EU. There are no substantive policy changes, or changes in how the legislation operates. For example, references in UK legislation to "an enforceable EU obligation" are replaced by reference to "a retained EU obligation", a term which has been inserted into the Interpretation Act 1978 by the European Union (Withdrawal) Act 2018 ("EUWA"), and which ensures that the same obligations can be enforced.

The Regulations are made under the EUWA, are subject to the affirmative procedure in the UK Parliament and are expected to be laid in draft on 4 December 2018. ~~Under the terms of the EUWA~~ The regulations will not come into force until exit day, and these Regulations have been drafted in preparation for the UK leaving the EU without a withdrawal agreement or deal.

What is to be amended?

A list of the legislative instruments covered by the Regulations is provided in Annex A.

Summary of Proposals and how these correct deficiencies

The Regulations amend a range of primary legislation, and not all of these amendments require consent from Scottish Ministers as they relate to reserved matters or amend aspects of the legislation which extend only to England, Wales or Northern Ireland. The changes highlighted below are examples of the changes that are relevant to devolved matters or apply to Scotland and therefore require consent.

Primary Legislation

The Sea Fish (Conservation) Act 1967

This Act establishes a range of provisions and Ministerial powers required to establish and manage commercial sea fisheries. The Act predates the UKs joining the EU, but has subsequently been amended to be consistent with EU law. The relevant parts relate to proceedings in Scotland for offences under provisions covering licensing requirements for fishing boats. A single amendment is required to replace the phrase “enforceable EU obligation” with “retained EU obligation”.

The Fisheries Act 1981

This Act established the Sea Fishing Industry Authority, amended certain fishing provisions within the 1967 Act and other related instruments, and introduced provisions regarding fish farming. Amendments include the substitution of “enforceable” with “retained” as above, and replacement of the term “Community Rules” with “Rules relating to sea fishing”.

Section 31(3), which allows grants to be made where grants can be made by EU institutions, is being omitted because it is no longer relevant once funding from EU institutions is no longer available to the UK.

The Marine and Coastal Access Act 2009

This Act provides the legal mechanism to achieve UK Government objectives to help ensure clean, healthy, safe, productive and biologically diverse seas and establishes a marine planning system for England and Wales. Only those parts of the Act relevant to fisheries are amended by the Regulations, other parts are being amended through other thematic instruments, being notified separately.

Although most of the Marine and Coastal Access Act 2009 extends only to England and Wales, the provisions being amended extend to Scotland too.

Amendments include changing “enforceable EU restrictions and enforceable EU obligations” to “retained EU restriction or retained EU obligation”, with a definition being inserted for “retained EU restriction” (“retained EU obligation” is defined in the Interpretation Act 1978), to ensure that existing obligations and restrictions remain enforceable after exit day.

Subordinate legislation

The Regulations amend a range of subordinate legislation, not all of which require consent from Scottish Ministers as they relate to reserved matters or extend only to England, Wales or Northern Ireland. The full list of legislation being amended is listed in the annex. Amongst the amendments made to the following subordinate legislation not all will require consent, if again they relate to reserved matters or amend aspects of the subordinate legislation which extends only to England, Wales or Northern Ireland. The changes highlighted below are examples of the changes that are relevant to devolved matters or apply to Scotland and therefore require consent.

The Tote (Prohibition of Fishing) Order 2008

The Regulations amend a reference to “other member states”.

The Fish Labelling Regulations 2013

These regulations almost entirely apply to England alone and seek to correct references to “EU” obligations, cross references to EU instruments and to replace a sales threshold value from a €50 figure to that of £45. Regulation 3, which designates the Secretary of State as the competent authority in the UK for the purposes of drawing up a list of commercial designations, is omitted.

The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014

These regulations extends partially to Scotland in terms of notifications and sharing of information. The amendments are straightforward textual adjustments to remove or amend references to EU legislation and “other Member States”.

The Grants for Fishing and Aquaculture Industries Regulations 2015

The amendments correct for references to the European Maritime and Fisheries Fund and the associated Operational Programme, which will become redundant on exit from the EU. We continue to seek clear guarantees from the UK Government on the long term funding arrangements that will replace EMFF and other EU funding streams in the future. In doing so will robustly apply the “no detriment” principle to ensure that there is no impact on Scotland’s marine sectors and interests arising from EU Exit and the loss of access to relevant EU funding streams.

The Sea Fishing (Enforcement) Regulations 2018

These regulations extend to Scotland. Amendments remove or amend references to the EU and Member States. Redundant provisions relating to the transshipment of demersal species subject to a multi-annual plan are also deleted from the accompanying schedule as the relevant multi-annual plans are no longer in force around the UK.

Why are these amendments necessary?

The Regulations provide technical corrections to primary and secondary domestic legislation in order to ensure that the UK has an enforceable approach to maintaining the sustainability of fisheries management after Scotland as part of the UK leaves the EU.

A number of the amendments result from amendments that will be made to directly applicable EU legislation (the common fisheries policy and associated regulations), which will be notified at a later date), to ensure that the existing domestic law continues to function after EU exit.

Categories of Significance of Proposals

Category A. The amendments do not constitute a change of policy but are technical corrections ensuring operability, and which maintain the current devolution settlement.

Impact on environmental and animal welfare guiding principles

Addressing the deficiencies ensures continued adherence to the environmental principles established in EU and international law. In maintaining the current approach to sustainable sea fisheries management the Regulations maintain the existing level of environmental protection.

Impact on devolved areas

Our primary objective in analysis of the UK Government’s draft amendments has been to ensure that, in the event that the UK leaves the EU without a withdrawal agreement or deal, Scottish Ministers can continue to effectively manage sea fisheries activities in Scottish waters and that the devolution settlement is respected.

The legislation being amended by these Regulations have only limited impact or indirect impact on Scottish fisheries management, and maintain equivalent environmental protections. The

amendments are strictly technical amendments to ensure operability. We are satisfied that the devolution settlement is not affected or altered by the amendments being made by these Regulations.

Summary of stakeholder engagement

The Department for Environment, Food and Rural Affairs (DEFRA) has consulted with the devolved administrations of Scotland, Wales and Northern Ireland regarding this instrument. DEFRA has not carried out formal consultation external to government. The amendments do not amount to a change in policy. Defra have carried out a ten-week consultation in relation to their Fisheries Bill white paper.

The Regulations ensure that good management of sea fisheries as currently undertaken can continue uninterrupted in the event of EU Exit in March 2019 without a transitional period. As such Scottish Government has not undertaken any separate stakeholder engagement. Engagement with stakeholders over the long term future of fisheries management in Scotland is ongoing with a view to Scottish Ministers legislating in future.

Other impact assessments

We have discussed the need for an impact assessment with the UK Government and on the basis that these amendments do not infer any policy changes we have concluded that there is not a requirement to undertake an impact assessment.

Reason for Scottish Ministers' consent

Scottish Ministers recognise the requirement for amendments to correct deficiencies in UK domestic legislation which have arisen as a consequence of exit from the EU and will be bringing forward SSIs to ensure Scottish legislation continues to be operable after exit day.

Scottish Ministers are content that the current draft of these Regulations fully respects the current devolution settlement. However this situation is considered only a temporary fix necessary to allow sustainable management of commercial sea fishing to continue in the UK in the event that UK leaves the EU in March 2019. The Scottish Government is currently engaged in a dialogue with fisheries stakeholders on the longer term future of fisheries management in Scotland. It is the intention that Scottish Ministers will legislate and implement measures in the future to establish an optimum fisheries management system in Scottish waters.

Intended laying date

4 December 2018.

Does the Scottish Parliament have 28 days to scrutinise?

Yes.

Time dependencies

Having these deficiencies corrected by exit day is essential should the UK leave the EU at the end of March 2019 without a subsequent transitional period. Consequently the Regulations must be introduced to the UK Parliament in good time in order to ensure they pass through UK parliamentary procedure by this date.

Financial implications

The effect of these amendments is to maintain existing policy. No significant financial impacts on private or voluntary sectors is foreseen.

ANNEX A – LIST OF LEGISLATION AMENDED BY THE REGULATIONS

Primary Legislation

- The Sea Fisheries (Conservation) Act 1967
- The Fisheries Act 1981
- The Marine and Coastal Access Act 2009

Secondary Legislation

- The Merchant Shipping (Registration of Ships) Regulations 1993
- The Sea Fisheries (Northern Ireland) Order 2002
- The Tote (Prohibition of Fishing) Order 2008
- The Eels (England and Wales) Regulation 2009
- The Fish Labelling Regulations 2013
- The Sea Fishing (Points for Masters of Fishing Boats) Regulation 2014
- The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015
- The Grants for Fishing and Aquaculture Industries Regulation 2015
- The Sea Fishing (Enforcement) Regulations 2018