

POLICY NOTE

THE FISHERIES (EU EXIT) (SCOTLAND) (AMENDMENT) (No. 2) REGULATIONS 2019

SSI 2019/69

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the Regulations: The Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 (“the Regulations”) amend domestic legislation concerning technical conservation measures relating to sea fisheries.

Part 2 of the Regulations updates and replaces out of date references to EU instruments referred to in domestic legislation.

Part 3 amends deficiencies in domestic legislation arising from the withdrawal of the United Kingdom from the European Union. The amendments make the necessary technical corrections to ensure that the law continues to operate effectively when the UK leaves the EU.

Policy Objectives

The Regulations have two policy aims. Firstly, references to EU instruments which are no longer in force are removed and, where appropriate, references to repealed EU instruments are replaced with references to current EU equivalents. The purpose of these amendments in the instrument is to ensure a functioning statute book. Secondly, the Regulations amend deficiencies in legislation arising from the withdrawal of the United Kingdom from the European Union.

Where practical and appropriate, EU legislation is being retained in UK law on the UK’s exit from the EU. In the fields of sea fisheries and technical conservation measures, the Scottish Government and other devolved administrations plan to retain the current standards set out in EU legislation and EU-derived domestic legislation that protect these fields. The Regulations are necessary in order to correct deficiencies in retained EU law and thereby provide continuity in the monitoring and enforcement of technical conservation measures relating to sea fisheries following the UK’s withdrawal from the EU.

Upon exit day a number of technical corrections are required. The objective is to ensure the operability of Scotland’s sea fisheries and the continuation of conservation of certain species through technical measures. The amendments provide for necessary technical operability changes, for example replacing EU-specific terms such as “enforceable EU restriction” with equivalent terms that will ensure the continued effective operation of the law following EU-exit. Amendments also revoke elements that are no longer required or are not relevant after exit day, allowing continuity of business.

The domestic legislation amended by the Regulations makes numerous references to directly applicable EU law, which is being incorporated into UK law through the European Union

(Withdrawal) Act 2019, as amended by the ongoing programme of secondary legislation. As such, certain provisions of the Regulations are dependent on both the directly applicable EU law comprising the Common Fisheries Policy, and also the terms of the UK SIs which amend the EU regulations themselves, primarily the Common Fisheries Policy and Aquaculture (Amendment Etc.) (EU Exit) Regulations 2019.

This instrument does not introduce any policy changes.

Explanation of the law being amended by the Regulations

1. The Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Order 2000

The Order makes provision for the enforcement of Article 11 of Council Regulation (EC) No. 894/97 laying down certain technical measures for the conservation of fishery resources and makes provisions for the enforcement of certain enforceable restrictions and obligations concerning the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms which are contained in Council Regulation (EC) No. 850/98, as amended.

In Part 2 of the Regulations, references to EU Regulations are updated. Out of date references to provisions of Council Regulation (EC) No. 2847/93 are replaced with equivalent provisions of Council Regulation (EC) No. 1224/2009. The Regulations also remove references to out of date legislation to ensure a functioning statute book after the UK withdraws from the EU.

Part 3 of the Regulations omit certain offences in articles 3(1) and (2) of the Order. No new offence is created and the scope of the offences are not widened. Rather, certain Community conservation measures found in Council Regulation (EC) No. 850/98, and listed in the schedule, have been omitted. Similarly, the offence relating to Article 36 of Council Regulation (EC) No. 850/98 is removed. These amendments ensure continued operability of the Order as these provisions will not form part of retained EU law on the UK's exit from the EU as they are being removed from Council Regulation (EC) No. 850/98 by the Common Fisheries Policy and Aquaculture (Amendment Etc.) (EU Exit) Regulations 2019.

2. The Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Order 2000

This Order regulates the use of certain nets and other fishing gear in specific areas. The Order is made pursuant to Article 46 of Council Regulation (EC) No. 850/98 for the Conservation of Fishery resources through technical measures for the protection of juveniles of marine organisms. The Order applies to nets carried or used by Scottish fishing boats and relevant British fishing boats in certain specified areas.

Part 2 of the Regulations updates the reference to Council Regulation (EU) No. 850/98 to ensure a functioning statute book after the UK withdraws from the EU. Part 3 of the Regulations replaces the EU-specific term “enforceable EU restriction” with “retained EU restriction” and inserts a definition of “retained EU restriction” into the Order. This ensures continuity in the law following EU exit.

3. The Shrimp Fishing Nets (Scotland) Order 2004

This Order regulates the carriage and use of any fishing nets within mesh size between 16 and 31 millimetres, measured in accordance with Commission Regulation (EC) No. 129/2003 laying down detailed rules for determining the mesh size and thickness of twine of fishing nets. The Order also implements Article 25 (on the use of veil nets and sorting grids in shrimp fisheries) of Council Regulation (EC) No. 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms.

Commission Regulation (EC) No. 129/2003 is no longer in force. It was repealed by Commission Regulation (EC) No. 517/2008. In Part 2 of the Regulations, the out of date reference to Commission Regulation (EC) No. 129/2003 is substituted with a reference to the current EU law concerning the determination of the mesh size and assessing the thickness of twine of fishing nets. This technical amendment allows the continuing operability of the law.

4. The Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Order 2007

The objective of the Sea Fishing (Prohibition of the Removal of Shark Fins) (Scotland) Order 2007 was to implement Council Regulation (EC) No. 1185/2003 for Scotland, the Scottish zone, and Scottish vessels wherever they may be.

Council Regulation (EC) No. 1185/2003 prohibits the practice of ‘finning’, the removal of shark fins at sea, within all Union waters and for all Union vessels around the world. The Council Regulation prohibits the removal of fins on board a vessel and the keeping on board, trans-shipping or landing of shark fins which have been removed from the body.

The Regulations update the reference to Council Regulation (EC) No. 1185/2003 to ensure relevant amendments made to Council Regulation (EC) No. 1185/2003 are included for the purposes of the Order so that the continued prohibition of ‘finning’ is enforced on all Scottish vessels, wherever they may be in the world.

5. The Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010

This Order makes it an offence to contravene, or fail to comply with, measures for the protection of fish stocks and sets out the penalties for offences. In addition the order provides powers for the imposition of penalties and the recovery of fines in relation to offences mentioned above as well as to seize catches and fishing gear. Further, the order confers powers on British sea-fisheries Officers to board vessels, examine fishery products, fishing equipment and to examine related documents.

In Part 2 of the Regulations, references to EU Regulations are updated. Out of date references to provisions of Council Regulation (EC) No. 2847/93 are replaced with equivalent provisions of Council Regulation (EC) No. 1224/2009. The technical conservation measures contained in Annex III of Council Regulation (EC) No. 43/2009 were incorporated into Council Regulation (EC) No. 850/98 by Council Regulation (EU) No. 227/2013 in order to ensure proper conservation of marine biological resources. References in the Order to Annex III of Council Regulation (EC) No. 43/2009 are replaced with equivalent provisions contained in Council Regulation (EC) No. 850/98. The Regulations also remove references to

EU instruments which are no longer in force. These amendments are made to ensure a functioning statute book.

Reasons for and effect of the proposed change or changes on retained EU law

The amendments remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union by updating, replacing or removing EU references, including references to EU instruments, which will become redundant or will no longer be appropriate on or after exit day.

These minor technical changes to legislation concerning technical conservation measures for sea fisheries correct legislative deficiencies arising as a result of the UK leaving the EU. They have been made to ensure that the legislation continues to operate effectively following EU exit on 29 March 2019.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the Regulations do no more than is appropriate

The Cabinet Secretary for the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 do no more than is appropriate. This is the case because amendments are not being made to introduce policy change.”

Statement as to why the Scottish Ministers consider that there are good reasons for the Regulations and that this is a reasonable course of action

The Cabinet Secretary for the Rural Economy, Mr Ewing, has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. We must ensure that the relevant technical conservation measures relating to sea fisheries legislation continue to operate after the UK leaves the EU, in order to protect Scotland’s fisheries status which is vital to our economy. Amendments are technical in nature to ensure legislative operability only.”

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Cabinet Secretary for the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

Statement that Scottish Ministers have, in preparing the Regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Cabinet Secretary for the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations

2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the Regulations, had due regard to the guidance principles on the environment and animal welfare

The Cabinet Secretary for the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 have had due regard to the need to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”

Statement explaining the effect (if any) of the Regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

This heading is not applicable.

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Low - The amendments made by this instrument do not amount to a change in policy. Amendments are technical in nature to allow continuity of law.

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

Negative procedure is considered appropriate as these minor and technical amendments to relevant technical conservation measures in sea fisheries legislation do no more than is necessary to ensure that the legislation continues to operate effectively following the UK’s exit from the EU and they do not impose any additional financial burdens on local authorities or businesses. The Regulations do not include provision which falls within paragraph 1(2) of schedule 7 to the European Union (Withdrawal) Act 2018.

Further information

Consultation

This instrument does not amount to change in policy. There has been no formal public consultation regarding this instrument.

Impact Assessments

An Impact Assessment has not been prepared for this instrument because it relates to maintenance of existing regulatory standards and will not introduce any new policy. The amendments do not alter Scottish Government’s current environmental policies and priorities

and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

Financial Effects

The Cabinet Secretary for Rural Economy, Mr Fergus Ewing, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business

Scottish Government
Marine Scotland Directorate

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