

POLICY NOTE

THE SEA FISH LICENSING (FOREIGN VESSELS) (EU EXIT) (SCOTLAND) ORDER 2019

SSI 2019/87

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 4(1) of the Sea Fish (Conservation) Act 1967. The instrument is subject to the negative procedure.

Purpose of the Regulations: This Order prohibits foreign fishing vessels from fishing within the Scottish zone without first obtaining a licence from the Scottish Ministers. Such a licence will control fishing activity within the Scottish zone and is not in itself an authorisation to enter Scottish waters.

This Order is made in consequence of the withdrawal of the United Kingdom from the European Union to ensure that fisheries within the Scottish zone can be managed and controlled appropriately.

Policy Objectives

This Order is made on a contingency basis in the event of the UK leaving the EU with no deal or withdrawal agreement in place. In this event a regime will be required to manage any fishing activity being undertaken by foreign vessels in UK waters, including the Scottish zone. The policy intent is to use vessel licensing as the means of imposing and enforcing conditions on any foreign vessels through domestic law, and create a level playing field for the foreign and domestic fleets fishing in the Scottish zone.

Although this Order is being made to prepare for EU Exit it is not being made under the European Union (Withdrawal) Act 2018. Therefore, the SSI protocol between the Scottish Ministers and the Scottish Parliament does not apply so the SSI is not subject to the requirement for sifting by committee to determine the appropriate procedure (the procedure applying to the Order is set out in the Sea Fish (Conservation) Act 1967), nor are the written statements made under the terms of EUWA or the SSI protocol considered appropriate.

Provision to this effect is made within the Fisheries Bill, however this Order is required as we do not consider that the UK Fisheries Bill will be in force by 29th March 2019. The Secretary of State for Defra and the other devolved administrations are making equivalent provisions so all foreign fishing boats in the UK EEZ will need to be licenced by the Secretary of State and each of the Devolved Ministers in order to fish in their respective parts of UK waters. The coordination of this approach does not prevent divergence in licensing conditions in different territories as it will be for the Scottish Ministers to determine the licence conditions in the Scottish zone so Scottish Ministers will still be able to use licensing conditions on foreign vessels' activity in Scottish waters to deliver devolved domestic policy.

This Order prohibits foreign fishing vessels from fishing within the Scottish zone without first obtaining a licence from the Scottish Ministers. The Sea Fishing (Licensing and Notices) (EU Exit) (Scotland) (Amendment) Regulations 2019 make consequential amendments to the

legislation relating to domestic licences and notices to vessels so that these take account of foreign vessel licensing.

The Scottish Ministers intend to make arrangements for foreign vessel licences to be administered by the MMO (section 4(11A)(b) of the Sea Fish (Conservation) Act 1967 expressly provides for this). This approach is consistent with a UK wide approach in licensing all foreign vessels, providing for a single point of contact within the UK for Coastal States seeking authorisation allowing controlled access by their respective vessels.

The creation of a licensing regime for foreign vessels is separate from any decision made on access. This instrument does not give rights of access but reflects the UK wide approach of providing control of licenced commercial marine fishing operations for foreign vessels only where rights of access are agreed between the UK and other countries. The annual coastal state negotiations and agreement will deal with access arrangements including consideration of historic track record, as such the numbers of foreign vessels allowed in the UK EEZ at any time will be strictly controlled.

Foreign vessel licences will have no monetary value and will not be tradable or transferrable.

Further information

Consultation

This instrument is a contingency required in the event that the UK Fisheries Bill is not in place if the UK leaves the EU without a deal or withdrawal agreement in place. There has been no formal public consultation regarding this instrument.

Impact Assessments

This instrument is a contingency required in the event that the UK Fisheries Bill is not in place if the UK leaves the EU without a deal or withdrawal agreement in place, as such no impact assessment has been prepared for this instrument. The instrument does 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

March 2019