

POLICY NOTE

THE FISHERIES (TECHNICAL CONSERVATION MEASURES) (EU EXIT) (SCOTLAND) (AMENDMENT ETC.) REGULATIONS 2020

SSI 2020/367

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 to the European Union (Withdrawal) Act 2018. The instrument is subject to the negative procedure.

Purpose of the Regulations: The Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (“the Regulations”) amend domestic legislation concerning technical conservation measures relating to sea fisheries.

These Regulations make miscellaneous amendments to subordinate legislation to reflect the coming into force of Regulation (EU) 2019/1241 of the European Parliament and of the Council (“the Technical Conservation Regulation”).

Regulations 2 to 6 make minor amendments to subordinate legislation to replace, amend or remove out of date references to, and in respect of, Council Regulation (EC) No. 850/98 which was repealed and replaced by the Technical Conservation Regulation.

Regulation 7 revokes certain provisions in the Fisheries (EU Exit) (Scotland) (Amendment) (No.2) Regulations 2019 which are redundant as a result of these Regulations, and Regulation 8 revokes subordinate legislation which is redundant and makes saving provision.

Policy Objectives

The principal purpose of the miscellaneous amendments made by these Regulations is to ensure the operability of Scotland’s sea fisheries and the continuing conservation of certain species through technical measures. These Regulations amend subordinate legislation concerning technical conservation measures for sea fisheries to reflect the coming into force of the Technical Conservation Regulation as well as the consequential repeal and amendment of other EU instruments. The Aquaculture and Fisheries (Scotland) Act 2013 (“2013 Act”) introduced new general enforcement powers for British sea-fisheries officers to enforce sea fisheries legislation and made changes to the enforcement regime for directly applicable EU restrictions and obligations. These Regulations revoke provision in subordinate legislation which are redundant as a result of the repeal of certain EU instruments by the Technical Conservation Regulation or the changes introduced by the 2013 Act.

Deficiency fixes previously made to subordinate legislation, which are no longer required as a result of these Regulations, are omitted.

This instrument does not introduce any policy changes.

Explanation of the law being amended by the Regulations

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

The Order regulates the use of certain nets and other fishing gear in specific areas. The Order is amended to replace an out of date reference to the repealed Council Regulation (EC) No. 850/98.

In addition, these Regulations amend the definition of “codend” to have the same meaning as in the Technical Conservation Regulation and revoke redundant powers of British sea-fishery officers, which are covered by the common enforcement powers provided for by section 35(1) of the 2013 Act.

2. The Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Amendment Order 2001

The Order is amended to remove an out of date reference to the repealed Council Regulation (EC) No. 850/98 which is no longer required as a result of amendments made by these Regulations to the Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear (Scotland) Order 2000 (see above).

3. The Shrimp Fishing Nets (Scotland) Order 2004

The Order regulates the use of fishing nets within mesh size between 16 and 31 millimetres. The Order is amended to remove the out of date reference to the repealed Council Regulation (EC) No. 850/98.

In addition, these Regulations amend the definition of “codend” to have the same meaning as in the Technical Conservation Regulation and revoke redundant powers of British sea-fishery officers, which are covered by the common enforcement powers provided for by section 35(1) of the 2013 Act.

4. The Regulation of Scallop Fishing (Scotland) Order 2017

The Order contains measures for the conservation of king scallops, including minimum size requirements for landing king scallops. These Regulations replace an out of date reference to repealed Council Regulation (EC) No. 850/98 with a reference to how scallops are measurable under the Technical Conservation Regulation.

5. The Prohibition of Fishing with Multiple Trawls (Scotland) Order 2017

The Order prohibits fishing for sea fish with more than one trawl, except in two specified situations. These Regulations amend the Order to replace out of date references to the repealed Council Regulation (EC) No. 850/98 with references to the Technical Conservation Regulation.

In accordance with the Technical Conservation Regulation, these Regulations also make provision for the minimum mesh size requirement for fishing for redfish with trawls in the area described in the first sub-paragraph of paragraph 1(1) of Part C of Annex 12 of the Technical Conservation Regulation.

6. The Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019

In Part 3 of the 2019 Regulations provision is made to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union by updating, replacing or removing references to EU legislation in domestic legislation, which will become redundant or will no longer be appropriate after IP completion day. Certain of that provision is redundant given the Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Order 2000 and certain provision in the Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Order 2000 are revoked. These Regulations revoke the redundant provisions.

7. Revocation and savings

These Regulations revoke Orders which contain provision in respect of the enforcement of the repealed Council Regulation (EC) No. 850/98 and other EU instruments which are redundant because they pre-date changes made to the enforcement powers of British sea-fishery officers and section 30(1) of the Fisheries Act 1981 (the enforcement of directly applicable EU restrictions and obligations) by the 2013 Act. The revoked Orders are:

- The Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Order 2000;
- The Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Amendment Order 2002;
- The Prevention and Monitoring of Cetacean Bycatch (Scotland) Order 2005; and
- The Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010.

Savings provision is made in order that the revoked Orders will continue to have effect for the purposes of any investigation or legal proceedings relating to any acts or omissions which occurred before 21 December 2020 and which constitute an offence under those Orders.

Reasons for and effect of the proposed change

The amendments to subordinate legislation are made to reflect the coming into force of the Technical Conservation Regulation and the consequential repeal and amendment of other EU instruments. Out of date references in subordinate legislation to the repealed Council Regulation (EC) No 850/98 are removed or updated and provision inconsistent with the Technical Conservation Regulation is amended. The amendments also revoke legislation which is no longer required due to the coming into force of the Technical Conservation Regulation or the changes made to the enforcement of directly applicable EU restrictions and obligations by the 2013 Act.

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 Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 do no more than is appropriate. This is the case because the amendments are not being made to introduce policy change. Powers under the European Union (Withdrawal) Act 2018 are only used to make Regulation 7(3) of this instrument. Regulation 7(3) revokes amendments made by the Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union.”

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 Rural Economy and Tourism, Mr Fergus 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 be effective and continue to operate after the UK leaves the EU, in order to protect Scotland’s fisheries status which is vital to our economy. The 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 Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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 Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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 Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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 these Regulations 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 are minor and technical amendments to sea fisheries legislation and do no more than is necessary to ensure that the legislation continues to operate effectively following the UK’s withdrawal from 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 of the European Union (Withdrawal) Act 2018.

Further information

Consultation

There is a requirement to consult the UK Secretary of State under paragraph 4 of schedule 2 of the European Union (Withdrawal) Act 2018 as these Regulations contain provisions to remove redundant deficiency fixes to subordinate legislation which are due to come into force before IP completion day. The relevant UK Secretary of State was consulted before the Regulations were made.

No other consultation was considered necessary as the instrument does not amount to a change in policy.

Impact Assessments

Full impact assessments have 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 the 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 and Tourism, 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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