

EXPLANATORY MEMORANDUM TO
THE FISHERIES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2009
2009 No. 1309

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“the Department”) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments (“the Joint Committee”).

2. **Purpose of the instrument**

- 2.1 These Regulations amend:

- the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005 (SI 2005 No 1605) (“the RBS Regulations”) to clarify their application and extent and the powers of British sea-fishery officers; and
- the Grants for Fishing and Aquaculture Industries Regulations 2007 (SI 2007 No 3284) (“the Grants Regulations”) to address the unexpected use of the enabling power.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 These Regulations have been made in response to issues raised by the Joint Committee in its Sixth Report of Session 2005-06 (in relation to the RBS Regulations) and in its Eighth Report of Session 2007-08 (in relation to the Grants Regulations).

- 3.2 Further information on these issues, and how they have been addressed in the Fisheries (Miscellaneous Amendments) Regulations 2009, is contained in the following paragraphs.

4. **Legislative Context**

- 4.1 The RBS Regulations implement Article 9 of the EU Control Regulation (Council Regulation (EEC) No 2847/93) and Article 22 of the Common Fisheries Policy framework regulation (Council Regulation (EC) No 2371/2002). They require fish auction sites to be designated for the purposes of Articles 9 and 22, the seller (auction trader) and buyer of first sale fish to be registered with the competent authorities in the Member State concerned and for fish sellers and buyers to maintain records of each sale and purchase of first sale fish. They also specify the powers of British sea-fishery officers, create offences and specify the penalties for those offences.

4.2 When the RBS Regulations were made, the Joint Committee requested that the Department submit a memorandum dealing with issues relating to regulations 1(3) and (4), 13 and 15. Subsequently, the Joint Committee reported regulation 1(3) and (4) on the ground that it was defectively drafted. Regulation 1(3) and (4) dealt with the application and extent of the RBS Regulations: regulations 13 and 15 relate to the powers of British sea-fishery officers under those Regulations.

4.3 The Grants Regulations provide powers for the Secretary of State to pay grants to applicants from the fishing and aquaculture industries under the European Fisheries Fund (“the EFF”) (Council Regulation (EC) 1198/2006), covering the period from 2007 to 2013. The payments come from national money, and are in addition to EU funds provided by the EFF. The Grants Regulations include provisions specifying what is required in the application process, powers to inspect projects given grant aid and offences for obstructing, or failing to give assistance to, an authorised person, making a false or misleading statement or failing to produce a record.

4.4 When the Grants Regulations were made, the Joint Committee requested that the Department submit a memorandum dealing with the words, in regulation 3, “out of moneys provided by Parliament”. Regulation 3 provided that the Secretary of State may pay grants out of monies provided by Parliament for any of the purposes specified in Title IV of Council Regulation (EC) 1198/2006. Subsequently, the Joint Committee reported regulation 3 on the ground that it made an unexpected use of the enabling power.

4.5 The Fisheries (Miscellaneous Amendments) Regulations 2009 make the amendments necessary to address the above issues. The Department has delayed making changes to the RBS Regulations any earlier to await the result of a review of the operation of the Regulations, which may have resulted in further changes to them being considered. However, no further changes were required following the review.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required

7. Policy background

7.1 These amending regulations introduce technical changes to the original regulations and do not amount to any change in policy in relation to either the registration of buyers and sellers or payment of grants under the European Fisheries Fund.

8. Consultation outcome

8.1 Two rounds of consultation with relevant stakeholders were carried out on the RBS Regulations in 2002 and 2004 respectively. A review of the registration process was also undertaken by Defra and the Scottish Government in 2006 which showed general satisfaction with the levels of effort required to complete applications and with the guidance provided by Fisheries Administrations. In November 2008, a fuller review was carried out by Fisheries Administration to examine the scheme to see how well it is working. Feedback received from the review showed general satisfaction levels with the level of effort required to complete the application forms and the guidance provided by Fisheries Departments. It also showed that the scheme was meeting the requirements of the relevant EU Regulations in full.

Consolidation

8.2 This is the first amendment to each of the regulations being amended and the Department does not intend to consolidate the amending Regulations with the implementing Regulations.

9. Guidance

9.1 There are existing guidelines in place for enforcement officers and the industry on the application of each of the implementing Regulations. However, since there is no change to policy, guidance notes are not deemed necessary for the amending Regulations

10. Impact

10.1 An impact assessment has not been prepared for these Regulations as no impact on the private, public or voluntary sector is foreseen.

11. Regulating small businesses

11.1 The Regulations applies to all relevant small businesses but as stated in paragraph 10 above has no impact upon them.

12. Monitoring and review

12.1 The Regulations will be continuously monitored and reviewed by the Department

13. Contact

Eileen Ashamu at the Department for Environment, Food and Rural Affairs Tel: 0207 238 4437 or email: Eileen.ashamu@defra.gsi.gov.uk