

EXPLANATORY MEMORANDUM TO
THE FISHERIES (AMENDMENT) (NORTHERN IRELAND) (EU EXIT)
REGULATIONS 2019

2019 No. 209

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument provides technical corrections to Northern Ireland secondary domestic legislation in order to ensure an enforceable approach to maintaining the sustainability of fisheries management after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 This instrument does not amend EU law itself, but amends Northern Ireland secondary legislation which has transposed EU regulations into domestic legislation to give effect to and enable enforcement of certain fisheries measures.
- 2.3 The domestic laws in Northern Ireland being amended are as follows:
 - The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations (Northern Ireland) 2005 make provision for the administration and enforcement of Article 22 of Council Regulation (EC) No. 2371/2002, and Article 9 of Council Regulation (EEC) No. 2847/93 which impose requirements relating to the first marketing and purchasing of fish (first sale fish).
 - The Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order (Northern Ireland) 2008 creates a scheme of penalty notices for certain fisheries offences.
 - The Salmon Netting Regulations (Northern Ireland) 2014 prohibit the use of bag nets, draft nets and tidal draft nets to catch and kill salmon in tidal waters and Lough Neagh.
 - The Salmon Drift Net Regulations (Northern Ireland) 2014 prohibit the use of drift nets to catch and kill salmon in tidal waters.
 - The European Maritime and Fisheries Fund (Financial Assistance) Regulations (Northern Ireland) 2015 provide for the payment of financial assistance from the European Maritime and Fisheries Fund in respect of certain categories of investments, projects or actions in the fisheries and aquaculture sectors.

- The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order (Northern Ireland) 2018 makes provision for enforcement of Council Regulation (EC) No 1005/2008 and Commission Regulation (EC) 1010/2009 establishing restrictions and obligations relating to illegal, unreported and unregulated fishing.

Why is it being changed?

- 2.4 This instrument makes minor and technical changes which are necessary to ensure that the domestic laws in Northern Ireland which give effect to and provide for the enforcement of sea fisheries measures in Northern Ireland will continue to operate effectively after the UK leaves the EU.

What will it now do?

- 2.5 This instrument will address deficiencies in domestic legislation arising from withdrawal of the United Kingdom from the European Union. This will ensure that controls over fishing activities remain in place, and that other aspects of fisheries management, such as grant aid for fishing activities, continue to operate on EU exit. There are no changes to policy, all amendments are strictly technical fixes for operability.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 7 December 2018. On 8 January 2019 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in Parliament. The instrument will therefore remain subject to the negative resolution procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Northern Ireland.
4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The key legislative context is set out at paragraphs 2.2 and 2.3 above.
6.2 This instrument is linked to and should be read in conjunction with The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2018 (the CFP Regulations) which amend CFP measures to ensure that they operate effectively on EU exit. Some of the amendments in the CFP Regulations affect implementing and enforcement

provisions or other cross-references to CFP measures in domestic law and have been amended by this instrument to ensure operability and consistency with the CFP Regulations.

- 6.3 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. The instrument is made in exercise of these powers.

7. Policy background

What is being done and why?

- 7.1 This instrument applies to sea fisheries which is a transferred matter for Northern Ireland under Section 4 of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day in the absence of a Northern Ireland Executive. In the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.
- 7.2 This instrument is essential for Northern Ireland to have an operable legislative framework for the sustainable management of fisheries post EU exit. The instrument amends regulations related to fisheries measures and funding, ensuring that Northern Ireland can continue to effectively enforce regulations, enabling the maintenance of sustainable fisheries management.
- 7.3 Regulations 2, 3, 6 and 7 correct 4 Northern Ireland Statutory Rules to remove references to Member States, Community, European Commissioners etc.
- 7.4 Regulations 4 and 5 replace references to the Habitats Directive with relevant Northern Ireland domestic legislation.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this explanatory memorandum.

9. Consolidation

- 9.1 It is not intended to consolidate the relevant legislation. Informal consolidation of new instruments is available to the public free of charge via the National Archives website <http://www.legislation.gov.uk>.

10. Consultation outcome

- 10.1 The Department for Environment, Food and Rural Affairs has consulted with officials in the Department of Agriculture, Environment and Rural Affairs in Northern Ireland regarding this instrument.
- 10.2 The amendments in this instrument do not give effect to any policy change. There has been no formal consultation on the contents of this instrument given the minor, technical nature of the amendments.
- 10.3 In Northern Ireland, the Department of Agriculture, Environment and Rural Affairs established a Fisheries Stakeholder Brexit Group and during its meetings stakeholders were advised of DAERA's programme to amend Northern Ireland domestic fisheries legislation to make it operable on exit day. In addition these meetings have facilitated engagement on the Fisheries Bill White Paper.

11. Guidance

- 11.1 There is no associated guidance.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument as it does not introduce any new policy.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 There is no additional impact on small businesses (employing up to 50 people), because this instrument maintains the *status quo* and does not introduce any policy change. Therefore, no specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Patrick Smith at the Department of Agriculture, Environment and Rural Affairs Telephone: 028 4461 8111 or email: Patrick.Smith@daera-ni.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Small, Head of Environment, Marine and Fisheries Group at the Department of Agriculture, Environment and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

15.3 George Eustice MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

The Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the Statutory Instrument makes minor and technical changes as set out in Section 2 of the explanatory memorandum to ensure that Northern Ireland domestic fisheries legislation continues to operate after the exit from the EU. It does not confer powers on individuals or bodies to make subordinate legislation, nor does it amend primary legislation.

2. Appropriateness statement

- 2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because the changes made in this instrument are very minor and do no more than is strictly necessary by correcting deficiencies in Northern Ireland domestic legislation to ensure that the Regulations function correctly once the UK has left EU, as further described in paragraphs 2.2, 2.3 and 2.4 of the main part of this explanatory memorandum.”

3. Good reasons

- 3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are ensuring Northern Ireland secondary fisheries legislation is operable after EU exit and retaining provisions for the enforcement of regulations detailed in paragraphs 2.3, 2.3 and 2.4 of the main part

of this explanatory memorandum, so as to maintain a suitable approach to fisheries management.”

- 3.2 These are ensuring Northern Ireland secondary fisheries legislation is operable after EU exit and retaining provisions for the enforcement of regulations detailed in Section 2 of the explanatory memorandum so as to maintain a suitable approach to fisheries management.

4. Equalities

- 4.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP has made the following statement:

“The instrument 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.”

- 4.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, George Eustice 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. This Act does not extend to Northern Ireland, and as The Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland.”

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.