

EXPLANATORY MEMORANDUM TO
THE SEA FISHERIES (AMENDMENT) (ENGLAND) REGULATIONS 2023
2023 No. 1054

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by The Department for the Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument removes provisions in Regulation (EU) 2019/1241 of the European Parliament and of the Council on the conservation of fisheries resources and the protection of marine ecosystems through technical measures (EUR 2019/1241) which allow a 40mm mesh size to be used for directed fishing for squid (*Lolignidae*, *Ommastrephidae*) by towed gear in North Western Waters and, the North Sea, Skagerrak, and Kattegat. These provisions will be removed for English waters only. This will provide some immediate protection for squid stocks and help to reduce catches of other data poor and potentially vulnerable demersal Non-Quota Species (NQS) and juvenile fish. This forms part of a wider policy approach to manage flyseine vessel pressure on demersal NQS in English waters, following a Defra consultation on this issue in 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England only.

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 provisions to remove the squid mesh size derogation amend the following legislation:
- 6.2 Article 6, Annex V and Annex VI in Regulation (EU) 2019/1241 of the European Parliament and of the Council on the conservation of fisheries resources and the protection of marine ecosystems through technical measures (EUR 2019/1241) (“Regulation (EU) 2019/1241”).

7. Policy background

What is being done and why?

- 7.1 This instrument will remove provisions in Regulation (EU) 2019/1241 that allow a derogation of a 40mm mesh size to be used for a directed squid fishery for towed gear, in English waters only. The minimum mesh size will therefore increase to 80mm for directed fishing for squid using towed gear in the English zone.
- 7.2 The aim of this policy is to provide some immediate protection for squid stocks and wider demersal NQS from flyseine pressure, while we develop the Channel Demersal NQS Fisheries Management Plan (FMP). This FMP, led by the Marine Management Organisation (MMO) and due to be published by the end of 2023, will consider longer term demersal NQS management in the Channel.
- 7.3 Defra have concerns about the state of demersal NQS and specifically the current impact of more numerous, newer, larger flyseining vessels (compared with more traditional flyseiners) operating in English waters. Flyseine vessels tow gear which touches the seabed; demersal fish inhabit the bottom of the sea. These concerns have been echoed by the inshore catching sector and Non-Governmental Organisations over the past two years, who have been calling for urgent action to resolve this issue.
- 7.4 MMO data confirms that these new larger flyseiners are targeting NQS such as red mullet, gurnards, and squid, and that since 2019 UK flyseine landings have doubled while UK flyseine vessel numbers have nearly doubled to 11 vessels. We estimate there are currently 24 EU flyseine vessels in operation.
- 7.5 Defra ran a public consultation from 25 August to 16 November 2022 to gather further evidence on the impact of flyseining in English waters, and ask for views on some possible technical measures, to help support sustainable fishing and reduce pressure on demersal stocks. The proposal to remove the derogation allowing for a 40mm mesh size for a directed squid fishery received the most and clearest support in the consultation responses.
- 7.6 Squid is caught as part of a mixed fishery. Given the nature of mixed fisheries, the current derogation to be able to use a smaller mesh size than permitted elsewhere results in other demersal NQS being caught at the same time. Removing the derogation will help to reduce catches of other data poor and potentially vulnerable demersal NQS and juvenile fish.
- 7.7 There is little evidence on the state of the squid stock, with no International Council for the Exploration of the Sea (ICES) assessment or time series of abundance indices available, so this step would be in line with our obligation to consider the fisheries objectives such as the precautionary approach under the Fisheries Act 2020, to safeguard future stock sustainability.
- 7.8 Maturity evidence collected as part of the Channel Demersal NQS FMP shows some species of squid, e.g., Common squid (or European squid) (*Loligo vulgaris*), mature at 120-179mm and 140-181mm for males and females, respectively. Removing the derogation will help stocks to reach maturity.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.9 Regulation (EU) 2019/1241 allowed a derogation to be able to use a 40mm mesh size for directed fishing for squid (*Lolignidae, Ommastrephidae*) for towed gear in North Western Waters and, the North Sea, Skagerrak, and Kattegat.

Why is it being changed?

- 7.10 The changes being implemented through this instrument seek to remove in English waters the derogation which allows for a smaller mesh size to be used, to provide protection for squid stocks and other demersal NQS caught as part of a mixed fishery. This follows a public consultation in 2022 looking at technical measures to manage flyseiners and help reduce pressure on demersal NQS.

What will it now do?

- 7.11 Removing the provisions that allow a 40mm mesh size to be used for directed fishing for squid, will mean the minimum mesh size will increase to 80mm, as per baseline mesh sizes for towed gear.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.
- 8.2 This instrument does however relate to the implementation of the Trade and Cooperation Agreement 2020, whereby either party making changes to legislation which will have an effect on vessels of the other party should notify ahead of the legislative changes coming into force. Considering this, the UK will notify the EU of the measures in this instrument which will affect EU vessels fishing in English waters and allow time for comment before this instrument is laid. This measure will apply equally to UK and EU vessels. It is the responsibility of the UK and EU fisheries administrations to ensure compliance of their fleets.

9. Consolidation

- 9.1 There are no plans to consolidate legislation amended by this instrument.

10. Consultation outcome

- 10.1 Defra ran a public consultation from 25 August to 16 November 2022 to ask for views on some possible technical measures, including removal of the squid derogation, to help support sustainable fishing and reduce pressure on demersal stocks from flyseine vessels.
- 10.2 This instrument relates to English waters only; however Devolved Administrations are aware of the consultation, and of Defra's plans to remove this derogation.

11. Guidance

- 11.1 As these are technical changes to amend existing legislation there is no associated guidance. The MMO will however issue relevant guidance, detailing the relevant changes to the legislation.

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 A full Impact Assessment has not been prepared for this instrument because of the predicted low-level impact on business and the low economic effects of the changes being applied.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that updated guidance from the Marine Management Organisation, detailing the relevant changes and timelines, will be released in sufficient time to allow industry to take any practical steps required to meet the new standards.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that by updated guidance from the Marine Management Organisation the information would reach the relevant businesses in good time.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that Defra will monitor and review the impact of the instrument as part of their standard policy-making procedures.
- 14.2 The instrument does not include a statutory review clause, as a requirement for a review would be disproportionate when considering the economic impact of the regulatory provision on the qualifying activity.

15. Contact

- 15.1 Phil McBryde at the Department for Environment, Food and Rural Affairs (telephone: 020 8026 5426 or email: Phil.Mcbryde@defra.gov.uk) can be contacted with any queries regarding this instrument.
- 15.2 Anne Freeman, Deputy Director for Domestic Fisheries and Reform, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mark Spencer MP, Parliamentary Minister of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.