

2019 No. 24

EXITING THE EUROPEAN UNION

FISHERIES

**The Fisheries (EU Exit) (Scotland) (Amendment) Regulations
2019**

Made - - - - - *31st January 2019*

Laid before the Scottish Parliament *4th February 2019*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a) and paragraphs 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018^(b) and all other powers enabling them to do so.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019.

(2) These Regulations come into force as follows—

- (a) Parts 1 and 2 come into force on 28 March 2019,
- (b) Parts 3 and 4 come into force on exit day.

^(a) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of schedule 8 of the Scotland Act 1998 (c.46) (“the 1998 Act”) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by section 3(3) and Part 1 of schedule 1 of the European Union (Amendment) Act 2008 (c.7). The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

^(b) 2018 c.16.

PART 2

Amendments to Out of Date References in Subordinate Legislation

The Salmon (Definition of Methods of Net Fishing and Construction of Nets) (Scotland) Regulations 1992

2.—(1) The Salmon (Definition of Methods of Net Fishing and Construction of Nets) (Scotland) Regulations 1992(a) are amended as follows.

(2) In regulation 4, for the definition of “the Commission Regulation” substitute—

““the Commission Regulation” means Commission Regulation (EC) No 517/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets(b);”.

(3) In regulation 7, omit paragraph (2).

The Tweed Regulation Order 2007

3.—(1) The Tweed Regulation Order 2007(c) is amended as follows.

(2) In article 9(3), for “articles 3 and 4 of Commission Regulation (EC) No. 129/2003 laying down detailed rules for determining the mesh size and thickness of twine of fishing nets” substitute “Commission Regulation (EC) No 517/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets(d)”.

The Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010

4.—(1) The Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010(e) is amended as follows.

(2) In article 2—

(a) in paragraph (1)—

(i) in the definition of “EU (third country) recording and reporting requirement” for “Regulation 1006/2008 or Regulation 201/2010” substitute “Regulation 2017/2403 or the Control Regulation”,

(ii) omit the definition of “Regulation 1006/2008”,

(iii) omit the definition of “Regulation 201/2010”,

(iv) in the definition of “Regulation 404/2011” at the end, insert “, as last amended by Commission Implementing Regulation (EU) 2015/1962(f),”,

(v) after the definition of “Regulation 404/2011” insert—

““Regulation 2017/2403” means Council Regulation (EU) 2017/2403 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008(g),”,

(vi) after the definition of “Scottish fishing boat” insert—

““third country” means any country other than a Member State,”,

(a) S.S.I. 1992/1974.

(b) OJ L 151, 11.6.2008, p.5.

(c) S.S.I. 2007/19.

(d) OJ L 151, 11.6.2008, p.5.

(e) S.S.I. 2010/334, as amended by S.S.I. 2011/59 and S.S.I. 2015/320.

(f) OJ L 287, 31.10.2015, p.6.

(g) OJ L 347, 28.12.2017, p.81.

- (vii) for the definition of “third country fishing boat” substitute—
 - ““third country fishing boat” means a fishing vessel as defined in Article 4 of the Control Regulation, which flies the flag of, or is registered in, a third country”,
- (b) in paragraph (5), for “Regulations 1006/2008, 201/2010 and 404/2011,” substitute “Regulations 2017/2403 and 404/2011.”.
- (3) In article 6(2), for ““control measures” in Article 22 of Regulation 1006/2008” substitute ““the rules governing the fishing operations of Union vessels” in Article 32(2) of Regulation 2017/2403”.
- (4) In the table in schedule 1—
 - (a) in column 1—
 - (i) in entry 1(a), omit “and Article 13(1) of Regulation 1006/2008”,
 - (ii) in entry 2, for “Regulation 1077/2008” substitute “Regulation 404/2011”.
- (5) In the table in schedule 2—
 - (a) in entry 1, in column 1, for “Regulation 1006/2008” substitute “Regulation 2017/2403”,
 - (b) in entry 1(a), in column 1, for “Article 22” substitute “Article 32(2)”,
 - (c) in entry 1(b), in column 1, for “Article 23(1)” substitute “Article 38(1) and (2)”,
 - (d) in entry 2—
 - (i) for “Regulation 201/2010” substitute “Regulation 1224/2009”,
 - (ii) in paragraph (a), for “Article 8 and Annex II” substitute “Article 14(8)”,
 - (e) omit column 2,
 - (f) in column 3, for the subject matter for entry 1(a), substitute—
 - “In relation to third country fishing boats authorised to engage in fishing activities in EU waters—
 - Requirement to comply with the rules governing the fishing operations of Union vessels in the fishing area in which the third country fishing boat operates.”,
 - (g) in column 3, for the subject matter for entry 1(b), substitute—
 - “In relation to third country fishing boats undertaking fishing activities in EU waters—
 - Requirement to comply with the control rules governing the fishing operations of Union vessels in the fishing area in which the third country fishing boat operates.
 - Requirement to provide to the European Commission and, where relevant, to the coastal Member State, the data which Union vessels are required to send to the flag Member State under the Control Regulation.”.

The Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing) (Scotland) Order 2012

5.—(1) The Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing) (Scotland) Order 2012(a) is amended as follows.

- (2) In article 2—
 - (a) in the definition of “Common Fisheries Policy Regulation” at the end insert “, as last amended by Council Regulation (EU) 2017/2092”,
 - (b) after the definition of “Scottish fishing boat” insert—
 - ““third country” means any country other than a Member State.”,
 - (c) for the definition of “third country fishing boat” substitute—

(a) S.S.I. 2012/63, as amended by S.S.I. 2015/320.

““third country fishing boat” means a fishing vessel, as defined by Article 4 of Regulation (EU) No 1224/2009 of the European Parliament and of the Council, which flies the flag of, or is registered in, a third country,”.

The Sea Fishing (EU Control Measures) (Scotland) Order 2015

6.—(1) The Sea Fishing (EU Control Measures) (Scotland) Order 2015(a) is amended as follows.

(2) In article 2(1)—

(a) for the definition of “EU (third country) control measure” substitute—

““EU (third country) control measure” means a provision of Regulation 2017/2403 or the Control Regulation, relating to third country fishing boats, as read with any qualifying or supplementary provision in an EU instrument, and in particular—

(a) Articles 32 to 34 of Regulation 2017/2043, as read with Article 38 of that Regulation,

(b) Article 9(6) of the Control Regulation,

(c) Article 14(8) of the Control Regulation,

(d) Article 50(4) and (5) of the Control Regulation,”

(b) for the definition of “Regulation 1006/2008”, substitute—

““Regulation 2017/2403” means Council Regulation (EU) No 2017/2403 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008,”

(c) omit the definition of “Regulation 201/2010”,

(d) after the definition of “Scottish fishing boat” insert—

““third country” means any country other than a Member State,”

(e) for the definition of “third country fishing boat” substitute—

““third country fishing boat” means a fishing vessel as defined in Article 4 of the Control Regulation, which flies the flag of, or is registered in, a third country.”.

PART 3

Amendments to primary legislation

The Aquaculture and Fisheries (Scotland) Act 2013

7.—(1) The Aquaculture and Fisheries (Scotland) Act 2013(b) is amended as follows.

(2) In section 53(1), in the definition of “sea fisheries legislation”, for paragraph (b) substitute—

“(b) any retained EU restrictions and retained EU obligations (within the meaning of schedule 1 of the Interpretation Act 1978(c)) relating to sea fishing.”.

(3) In section 59(8), for paragraph (b) substitute—

“(b) retained direct EU legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) falling within section 3(2)(a) of that Act containing a retained EU obligation (within the meaning of schedule 1 of the Interpretation Act 1978) or a retained EU restriction”.

(a) S.S.I. 2015/320.

(b) 2013 asp 7.

(c) 1978 c.30. Schedule 1 was relevantly amended by paragraph 22 of the European Union (Withdrawal) Act 2018 (c.16).

- (4) In section 63—
- (a) omit the definitions of “enforceable EU obligation” and “enforceable EU restriction”,
 - (b) after the definition of “pathogen” insert—
 - ““retained EU restriction” means a restriction that—
 - (a) was created or arose by or under the EU Treaties (within the meaning of schedule 1 of the Interpretation Act 1978) before exit day (within the meaning of section 20 of the European Union (Withdrawal) Act 2018), and
 - (b) forms part of retained EU law (within the meaning of section 6(7) of the European Union (Withdrawal) Act 2018),
 as modified from time to time.”.

PART 4

Other amendments to subordinate legislation

The Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010

8.—(1) The Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010(a) is amended as follows.

- (2) In article 2—
- (a) in paragraph (1)—
 - (i) omit the definition of “Common Fisheries Policy Regulation”,
 - (ii) in the definition of “equivalent provision”—
 - (aa) for “EU recording” substitute “recording”,
 - (bb) for “EU (third country)” substitute “third country”,
 - (iii) omit the definition of “EU fishing boat”,
 - (iv) omit the definition of “EU recording and reporting requirement”,
 - (v) omit the definition of “EU (third country) recording and reporting requirement”,
 - (vi) in the definition of “logbook”, for “Articles 14, 15 and 16” substitute “Articles 14 and 15”,
 - (vii) after the definition of “logbook” insert—
 - ““recording and reporting requirement” means a provision of the Control Regulation or Regulation 404/2011 specified in column 1 of schedule 1, as read with any qualifying words relating to the provision in that column and any detailed rules specified in the corresponding entry in column 2 of schedule 1,”,
 - (viii) in the definition of “third country”(b) for “a Member State” substitute “the United Kingdom”,
 - (ix) after the definition of “third country fishing boat” insert—
 - ““third country recording and reporting requirement” means—
 - (i) a provision of the Control Regulation or Regulation 404/2011 specified in entries 1(aa) to (e) or 2(a) to (e) of column 1 of schedule 1, as read with any qualifying words relating to the provisions in that column and any detailed rules specified in the corresponding entry in column 2 of schedule 1, or
 - (ii) a provision of Regulation 2017/2403 specified in entries 1(a) or (b) or 2(a) of column 1 of schedule 2,”

(a) S.S.I. 2010/334, as amended by S.S.I. 2011/59 and S.S.I. 2015/320.

(b) That definition will be inserted by regulation 4(2)(a)(vi) of S.S.I. 2019/24.

- (b) omit paragraph (3).
- (3) In article 3—
 - (a) in paragraph (1)—
 - (i) for “EU recording” substitute “recording”,
 - (ii) for “EU (third country)” substitute “third country”,
 - (b) in paragraph (2)—
 - (i) for “EU recording” substitute “recording”,
 - (ii) for “EU (third country)” substitute “third country”.
- (4) In article 5—
 - (a) In the heading, for “EU recording” substitute “Recording”,
 - (b) for paragraph (1) substitute—
 - “(1) Where there is, in respect of—
 - (a) any Scottish fishing boat wherever it may be; or
 - (b) any fishery product, premises or vehicle in Scotland,
 a contravention of any recording and reporting requirement, the persons specified in the corresponding entry in column 4 of schedule 1 are each guilty of an offence.”,
 - (c) in paragraph (2), for “EU recording” substitute “recording”,
 - (d) in paragraph (3)—
 - (i) for “€200,000” substitute “£175,000”,
 - (ii) omit “and based on the European Central Bank’s official average euro foreign exchange rate applicable for that calendar year”.
- (5) For article 6 substitute—

“6. Third country recording and reporting requirements

- (1) Where there is, in respect of—
 - (a) any third country fishing boat within the Scottish zone; or
 - (b) the entry into the Scottish zone by any third country fishing boat,
 a contravention of any third country recording and reporting requirement, the persons specified in the corresponding entry in column 4 of schedule 2 are each guilty of an offence.
- (2) For the purposes of this article, the reference to “the rules governing the fishing operations of Union vessels” in Article 32(2) of Regulation 2017/2403 is to be construed as a reference to the recording and reporting requirements specified in entries 1(aa) to (e) and 2(a) to (e) in schedule 1 of this Order.
- (3) A person is guilty of an offence if that person, in purported compliance with a third country recording and reporting requirement, knowingly or recklessly records or reports information which is false in a material particular where that information is recorded or reported in Scotland or in the Scottish zone.”.
- (6) In schedule 1—
 - (a) in the heading for “**EU RECORDING**” substitute “**RECORDING**”,
 - (b) in the table in schedule 1—
 - (i) omit column 3,
 - (ii) omit entry 1(c),
 - (iii) in column 1, in entry 1(d), omit “subject to Article 22(2)”,
 - (iv) in column 1, in entry 1(e), omit “subject to Article 24(2)”,
 - (v) omit entries 2(d) and (e).

- (7) In schedule 2—
 - (a) in the heading—
 - (i) for “EU (THIRD COUNTRY)” substitute “THIRD COUNTRY”,
 - (b) in the table in schedule 2—
 - (i) omit column 3.

The Sea Fishing (Licences and Notices) (Scotland) Regulations 2011

9.—(1) The Sea Fishing (Licences and Notices) (Scotland) Regulations 2011(a) are amended as follows.

(2) In regulation 2, in the definition of “nominee”, for “a member State” substitute “the United Kingdom”.

The Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing) (Scotland) Order 2012

10.—(1) The Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing) (Scotland) Order 2012(b) is amended as follows.

- (2) In article 2—
 - (a) omit the definition of “Common Fisheries Policy Regulation”,
 - (b) omit the definition of “EU fishing boat”,
 - (c) in the definition of “third country”(c) for “a Member State” substitute “the United Kingdom”,
- (3) In article 3—
 - (a) in paragraph (2)(c)—
 - (i) for “an EU fishing boat or” substitute “a”,
 - (ii) omit “within the meaning of Article 19(1)(a) of the Common Fisheries Policy Regulation”.

The Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013

11.—(1) The Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013(d) is amended as follows.

- (2) In article 2—
 - (a) omit the definition of “EU fishing boat”,
 - (b) in the definition of “third country fishing boat”, for “an EU” substitute “a United Kingdom”,
 - (c) after the definition of “third country fishing boat” insert—
 - ““United Kingdom fishing boat” means a fishing vessel which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995(e);”.
- (3) In article 9—
 - (a) in paragraph (4A), for “Council” substitute “Secretary of State”,
 - (b) in paragraph (5), for “Articles 42(1) and 44(1)” substitute “Article 42(1)”,

(a) S.S.I. 2011/70.
 (b) S.S.I. 2012/63, as amended by S.S.I. 2015/320.
 (c) That definition will be inserted by regulation 5(2)(b) of S.S.I. 2019/24.
 (d) S.S.I. 2013/189, as amended by S.S.I. 2015/320.
 (e) 1995 c.21.

- (c) in paragraph (6)—
 - (i) in sub-paragraph (b), for “Community” substitute “United Kingdom”,
 - (ii) in sub-paragraph (c), omit “referred to in Article 30 of the Council Regulation”,
- (d) in paragraph (7)—
 - (i) for “an EU” substitute “a United Kingdom”,
 - (ii) for “Community” substitute “United Kingdom”,
- (e) in paragraph (8), for “Community” substitute “United Kingdom”,
- (f) in paragraph (10A), for “fishing boat flying the flag of a member State” substitute “United Kingdom fishing boat”,
- (g) in paragraph (11), for “an EU” substitute “a United Kingdom”.

The Sea Fishing (Points for Masters of Fishing Boats) (Scotland) Regulations 2014

12.—(1) The Sea Fishing (Points for Masters of Fishing Boats) (Scotland) Regulations 2014(a) are amended as follows.

- (2) In regulation 2—
 - (a) in the definition of “administrative sanction”, for “another member State or” substitute “a”,
 - (b) in the definition of “third country”, for “which is not a member State” substitute “other than the United Kingdom”.
- (3) In regulation 3—
 - (a) in paragraph (b), omit “another member State or in”,
 - (b) in paragraph (c), omit “another member State or”.
- (4) In regulation 8—
 - (a) in the heading, omit “other member States and in”,
 - (b) in paragraph (1), omit “another member State or in”,
 - (c) in paragraph (3), omit “another member State or”.
- (5) In regulation 9(2)(a)—
 - (a) for “Article 74 of the Control Regulation” substitute “carrying out inspections”,
 - (b) omit sub-paragraph (ii).

The Sea Fishing (EU Control Measures) (Scotland) Order 2015

13.—(1) The Sea Fishing (EU Control Measures) (Scotland) Order 2015(b) is amended as follows.

- (2) In article 2(1)—
 - (a) after the definition of “British sea-fishery officer”, insert—
 - ““control measure” means a requirement contained in a provision of the Control Regulation or Implementing Regulation, as read with any qualifying or supplementary provision in retained EU law (within the meaning of section 6(7) of the European Union (Withdrawal) Act 2018);”,
 - (b) in the definition of “equivalent provision”—
 - (i) for “EU control” substitute “control”,
 - (ii) for “EU (third country)” substitute “third country”,

(a) S.S.I. 2014/379.

(b) S.S.I. 2015/320.

- (c) omit the definition of “EU control measure”,
 - (d) omit the definition of “EU instrument”,
 - (e) omit the definition of “EU recording and reporting requirement”,
 - (f) omit the definition of “EU (third country) control measure”,
 - (g) after the definition of “PLN number” insert—
 - ““recording and reporting requirement” means any requirement under the Control Regulation or the Implementing Regulation to record, keep, notify, submit, transmit or communicate any information or document;”,
 - (h) in the definition of “third country”(a) for “a Member State” substitute “the United Kingdom”,
 - (i) after the definition of “third country”, insert—
 - ““third country control measure” means a provision of Regulation 2017/2403 or the Control Regulation, relating to third country fishing boats, as read with any qualifying or supplementary provision in retained EU law (within the meaning of section 6(7) of the European Union (Withdrawal) Act 2018), and in particular—
 - (a) Articles 32 to 34 of Regulation 2017/2043, as read with Article 38 of that Regulation,
 - (b) Article 9(6) of the Control Regulation,
 - (c) Article 14(8) of the Control Regulation,
 - (d) Article 50(4) and (5) of the Control Regulation;”,
- (3) In article 3(a), omit “for Union and”.

The European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015

14.—(1) The European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015(b) are amended as follows.

- (2) In regulation 2(1)—
 - (a) before the definition of “application” insert—
 - ““aid” means aid towards eligible expenditure under the EMFF Regulation and payable in accordance with the EU Regulations;”,
 - (b) omit the definition of “EMFF Implementing Regulation”,
 - (c) omit the definition of “EU aid”,
 - (d) in the definition of “EU Regulations”, omit sub-paragraph (d),
 - (e) in the definition of “relevant operation”, for “EU aid” substitute “aid”.
- (3) In regulation 12—
 - (a) in paragraph (1)(f), for “, pursuant to Article 72 of the Common Provisions Regulation, whether EU aid” substitute “whether aid”,
 - (b) in paragraph (6)(d), omit “or which the Scottish Ministers may require to make available to the Commission, pursuant to Article 122 of the EMFF Regulation”.

(a) That definition will be inserted by regulation 6(2)(d) of S.S.I. 2019/24.
 (b) S.S.I. 2015/359.

(4) In regulation 14(1), omit sub-paragraph (h).

St Andrew's House,
Edinburgh
31st January 2019

FERGUS EWING
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (c.68) and paragraphs 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018 (c.16). These Regulations make amendments to legislation relating to salmon fishing, salmon conservation, sea fisheries and marine and fisheries funding legislation. The amendments update references to a number of EU instruments referred to in that legislation. The amendments also address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Part 2 amends subordinate legislation concerning salmon fishing, salmon conservation and sea fisheries. Regulations 2 to 6 update and replace out of date references to EU instruments in the following subordinate legislation: the Salmon (Definition of Methods of Net Fishing and Construction of Nets) (Scotland) Regulations 1992; the Tweed Regulation Order 2007; the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010; the Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing) (Scotland) Order 2012; and the Sea Fishing (EU Control Measures) (Scotland) Order 2015. Regulations 2 to 6 update or replace out of date references to EU law with either equivalent text or references to current EU instruments. References to EU instruments which are no longer in force are removed and, where appropriate, references to repealed EU instruments are replaced with references to current EU equivalents.

Part 3 makes amendments to primary legislation. Regulation 7 amends deficiencies arising from the withdrawal of the United Kingdom from the European Union which are contained within the Aquaculture and Fisheries (Scotland) Act 2013.

Part 4 makes amendments to various subordinate legislation concerning sea fisheries and marine and fisheries funding. Regulations 8 to 14 make amendments to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union by updating, replacing or removing EU references including references to EU instruments which will become redundant or will no longer be appropriate on or after exit day.

A Business and Regulatory Impact Assessment has not been produced for this instrument as no significant impact on the private or voluntary sectors is foreseen.

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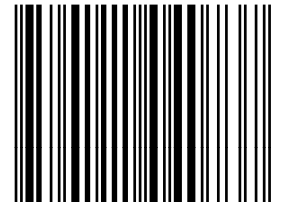
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