

## POLICY NOTE

### THE FISHERIES (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

#### SSI 2019/24

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

**Purpose of the Regulations:** The Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 (“the Regulations”) amend domestic legislation concerning salmon fishing, salmon conservation, sea fisheries, aquaculture and marine and fisheries funding.

Part 2 of the Regulations updates and replaces out of date references to EU instruments referred to in domestic legislation.

Parts 3 and 4 amend deficiencies in legislation arising from the withdrawal of the United Kingdom from the European Union. The amendments make the necessary technical corrections to ensure that the law continues to operate effectively when the UK leaves the EU.

#### Policy Objectives

The Regulations have two policy aims. Firstly, to amend out of date references in domestic legislation to EU instruments referred to in the domestic legislation relating to salmon fishing, salmon conservation and sea fisheries. These corrections update and replace out of date references to EU instruments with either equivalent text or references to current EU instruments. References to EU instruments which are no longer in force are removed and, where appropriate, references to repealed EU instruments are replaced with references to EU equivalents. The purpose of these amendments in the instrument is to ensure a functioning statute book. Secondly, the Regulations amend deficiencies in legislation arising from the withdrawal of the United Kingdom from the European Union.

Where practical and appropriate, European legislation is being retained in UK law on the UK’s exit from the EU. In the fields of sea fisheries and aquaculture, marine and fisheries funding, the Scottish Government and other devolved administrations plan to retain the current standards set out in EU legislation and EU-derived domestic legislation that protect these different fields. The Regulations will ensure that appropriate monitoring and enforcement measures relating to sea fishing remain in place and will ensure the continued operation of financial assistance to the fishing and aquaculture sector in Scotland, after the UK’s exit from the EU.

Upon exit day a number of technical corrections are required to domestic legislation relating to sea fisheries and aquaculture and marine and fisheries funding. These technical corrections include removing any reference to EU entities and replacing them with the appropriate UK equivalent, such as “European Union” changed to “United Kingdom”. The objective is to ensure the operability of legislation relating to Scotland’s sea fisheries and to the aquaculture, marine and fisheries funding framework. In addition to amendments making legislation operable, the amendments also revoke elements that are no longer required or are not relevant after exit day.

This instrument does not introduce any policy changes.

## **Explanation of the law being amended by the Regulations**

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

The definition of “Commission Regulation” in the Salmon (Definition of Methods of Net Fishing and Construction of Nets) (Scotland) Regulations 1992 (“the 1992 Regulations”) currently refers to Commission Regulation (EEC) No. 2108/84. However, the 1984 EU Regulation was expanded and replaced in 2003 and again in 2008. The definition is therefore amended to refer to the extant EU Regulation – Commission Regulation (EC) No. 517/2008. The instrument also removes Regulation 7(2) of the 1992 Regulations as this made provision for the measurement of mesh sizes in square mesh netting. However, Commission Regulation (EC) No. 517/2008 makes specific provision for measuring such netting and superseded the 1992 Regulations. Commission Regulation (EC) No. 517/2008 lays down detailed rules with regard to the determination of mesh size and the thickness of twine of fishing nets. In practice, these rules are well established and by updating out of date references to EU instruments, these Regulations ensure a functioning state book by bringing domestic legislation into line with existing equivalent EU law.

### 2. The Tweed Regulation Order 2007

The reference to Commission Regulation (EC) No. 129/2003 in the Tweed Regulation Order 2007 is also amended to refer to Commission Regulation (EC) No. 517/2008.

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

This Order consolidates all EU obligations relating to the keeping and submission of paper logbooks, declarations and documents and to the transmission of electronic logbooks, declarations and sales notes. The primary objective is to enforce Council Regulation (EC) 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (“the Control Regulation”) so far as it requires the recording and reporting of information relating to fishing activity undertaken by EU fishing boats and to the landing and first sale of fishery products in the EU. The Control Regulation will become retained EU law on the UK’s exit from the EU.

This Order contains out of date references to EU obligations relating to recording and reporting requirements contained in Council Regulations 2847/93 and 1006/2008 and Commission Regulation 1077/2008. Part 2 of the Regulations updates or replaces 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 EU equivalents.

In Part 4 of the Regulations EU-specific terms are amended, the distinction between EU fishing boats and third country fishing boats is removed, references to euros are substituted to references to pound sterling and references that are no longer required or are not relevant after exit day are removed. These amendments are minor technical corrections, enabling

primary policy provisions on the enforcement of recording and reporting of information relating to fishing activity to continue to operate effectively after exit day.

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

The purpose of this Order was to conserve vulnerable species of shark, skate and ray that are found in Scottish waters. This Order has two main aims. Firstly, to protect tope (*Galeorhinus galeus*) stocks in Scottish waters. EU legislation requires tope caught as a by-catch by longline in certain waters (including parts of the Scottish zone) to be promptly released unharmed. However, EU legislation does not prohibit or restrict fishing for tope by any other method. Secondly, to ensure equality between the recreational sea angling sector and the commercial sector in relation to other species of shark, skate and ray. Due to its authority referring to EU legislation, deficiencies had to be corrected in order to continue the effective protection and conservation of vulnerable species of sharks, skates and rays.

Part 2 of the Regulations update out of date references to EU law. The definition of “third country fishing boat” in the Order cross-referred to Council Regulation (EC) 1006/2008 which is no longer in force. A new definition of “third country fishing boat” is inserted which makes reference to Council Regulation (EC) 1224/2009. By inserting this new definition domestic law is brought into line with existing equivalent EU law.

The continued protection of these vulnerable species is secured through the provisions in Part 4 of the Regulations which make technical operability changes by removing or amending references to EU fishing boats and by omitting elements that are no longer required or will not be relevant after exit day.

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

The purpose of the Order is to update provisions relating to the implementation and enforcement in Scotland of obligations under the Control Regulation and Commission Implementing Regulation (EU) No 404/2011 (“the Implementing Regulation”) and to ensure consistency with the rest of the UK. The Order included a number of provisions which brought Scottish technical control measures into line with the terminology used in the Control Regulation and the Implementing Regulation. Both the Control Regulation and the Implementing Regulation will become retained EU law on the UK’s exit from the EU.

The amendments made to the Order in Part 2 of the Regulations update and replace out of date references to EU law in order to ensure a functioning statute book. The provisions in Part 4 of the Regulations amend elements that are no longer appropriate, required or are not relevant after exit day. These amendments are technical operability changes, for example replacing EU-specific terms and removing reference to “EU fishing boat” and “the Union”, as we will no longer be a part of the EU after exit day. The amendments made by the Regulations enable primary policy provisions around the management of non-UK fishing vessels to continue to operate effectively.

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

The Sea Fishing (Points for Masters of Fishing Boats) (Scotland) Regulations 2014 implements the obligation under the Control Regulation for Member States to establish two points systems under which persons are assigned an appropriate number of points as a result

of them having committed a serious infringement of the rules of the common fisheries policy. One points system requires to apply to the holders of fishing boat licences who have committed a serious infringement and the other system requires to apply to masters of fishing boats who have committed a serious infringement.

The amendments proposed by the Regulations are minor technical corrections. As the UK will no longer be a Member State of the EU following EU Exit the words “another Member State” and references to EU legislation which are no longer necessary have been removed in order to allow the legislation to work effectively. These technical corrections allow for the continued operation of an equivalent penalty point system in Scotland following EU exit.

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

The purpose of the Order is to meet Scotland’s obligations under EU law in relation to Council Regulation (EC) 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing and Commission Regulation (EC) 1010/2009 laying down detailed rules for the implementation of the Council Regulation (EC) 1005/2008. The policy objectives in implementing the Order was the reduction of illegal fishing activity which would help to improve the sustainability of fishing stocks and ensure a level playing field for fisheries operators that are compliant and responsible. Both of these EU Regulations will become retained EU law after the UK’s exit from the EU.

The amendments ensure that subordinate regulatory provisions aimed at preventing the trade in IUU fishing continue to operate effectively in domestic law following EU exit day. References to “EU fishing boats” are removed, references to “the Council” are substituted for “the Secretary of State” and references to the “EU” are substituted for the “United Kingdom”. Technical corrections made by the Regulations will ensure all necessary enforcement powers continue to operate effectively after the UK exits the EU.

#### 8. The Sea Fishing (Licences and Notices) (Scotland) Regulations 2011

The purpose of the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011 was to make provision to enable the Scottish Ministers to publish notices of variation, suspension or revocation of a sea fishing licence on the Marine Scotland website. Introducing changes to the notices publication process ensures more effective procedures. The 2011 Regulations are underpinned by a licence condition which will require licence holders to check the Marine Scotland website regularly and on a specified day/s each week for the publication of notices relating to their licences.

The amendments contained within these Regulations will ensure that the administrative functions around domestic fishing vessel licencing, including the publication of variation notices continues through established protocols following EU Exit. As the UK will no longer be a Member State of the EU following EU Exit the words “a member State” have been removed and replaced with “the United Kingdom”.

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

The amendments to the European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015 (“the EMFF Regulations”) concern deficiencies in cross-references to Regulation (EU) 508/2014 and Regulation 1303/2013 and references to EU specific terms

which need to be corrected so that the EMFF Regulations continue to be operable after the UK leaves the EU. The EMFF underpins the economic, environmental and social objectives of the new Common Fisheries Policy: for the sector, it eases the transition towards sustainable fishing and improves marketing and processing for both fishery and aquaculture products; supports data collection and management; delivers new means to control and enforcement; and finances wider Maritime Policy.

The Regulations revoke elements that are no longer required or are not relevant after exit day. These amendments are technical operability changes, for example replacing EU-specific terms.

What these Regulation also do in practice is provide Scottish Ministers with the ability, once outside the EU, to continue to draw down funding under the Treasury Guarantee and consider applications for funding in the applicable areas. Further, Scottish Ministers will continue to have the power to award funding, deal with claims for that funding, monitor outcomes and recover funding where required. The policy intention is that these Regulations will cover the current funding period set out in the Treasury Guarantee and that a successors Scottish programme will be developed over that period.

#### *Amendments to Primary Legislation*

##### 1. The Aquaculture and Fisheries (Scotland) Act 2013

The primary purpose of this Act is to ensure that farmed and wild fisheries – and their interactions with each other – continue to be managed effectively, maximising their combined contribution to supporting sustainable economic growth with due regard to the wider marine environment. The Act makes provisions about fish farming and shellfish farming; about salmon fisheries and freshwater fisheries; about sea fisheries; about shellfish waters and fisheries for shellfish; about charging in connection with functions relating to fish farming, shellfish farming, salmon fisheries, freshwater fisheries and sea fisheries; and about fixed penalty notices for offences under certain aquaculture, fisheries and other marine legislation.

The Regulations revoke definitions that are no longer required or are not relevant after exit day and replace with equivalent definitions that will work in the post-EU context. The Regulations also make technical corrections to ensure that the law continues to operate effectively when the UK leaves the EU.

#### **Reasons for and effect of the proposed change or changes on retained EU law**

The amendments remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union by updating, replacing or removing any EU references, including references to EU instruments, which will become redundant or will no longer be appropriate on or after exit day.

These minor technical changes to sea fisheries and aquaculture, marine and fisheries funding legislation correct legislative deficiencies arising as a result of the UK leaving the EU. They have been made to ensure that the legislation continues to operate effectively following EU Exit on 29 March 2019.

## **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 the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate. This is the case because the amendments are being made only to ensure, following a ‘no deal’ United Kingdom exit from the European Union, continued and effective functioning of the legislation being amended. The amendments do not introduce policy change.”

### **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 the Rural Economy, Mr 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 sea fisheries legislation and aquaculture and marine and fisheries funding legislation continue to operate after the UK leaves the EU, in order to protect Scotland’s fisheries status which is vital to our economy. 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 the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 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 the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (EU Exit) (Scotland) (Amendments) Regulations 2019 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 the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (EU Exit) (Scotland) (Amendments) Regulations 2019 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.**

Category A (low) - The amendments made by this instrument 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 minor and technical amendments to relevant sea fisheries legislation and aquaculture and marine and fisheries funding legislation do no more than is necessary to ensure that the legislation continues to operate effectively following the UK's exit from the 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 to the European Union (Withdrawal) Act 2018.

**Further information**

**Consultation**

This instrument does not amount to change in policy. There has been no formal public consultation regarding this instrument. The SSI is linked to the Fisheries (Amendment) (EU Exit) Regulations 2019, a separate statutory instrument made under section 8(1) the Withdrawal Act by the UK Government with permission from Scottish Ministers and the Scottish Parliament. Changes are essential to ensure legislative operability on day one of the UKs exit from the EU.

**Impact Assessments**

An Impact Assessment has 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 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, 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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