

EXPLANATORY MEMORANDUM TO

THE SEA FISHING (MISCELLANEOUS AMENDMENTS) REGULATIONS 2018

2018 No. 643

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The principal purpose of this instrument is to amend the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 (S.I.2009/3391) (“the 2009 IUU Order”) to extend offence provisions to third countries identified by the European Union as non-cooperating under EU regulations concerning Illegal, Unreported and Unregulated (IUU) fishing.
- 2.2 Its secondary purpose is to amend the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 (S.I. 2014/3345) (“the 2014 Points for Masters Regulations”) to clarify provisions relating to the start date of a suspension period or disqualification of a master under those Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Council Regulation (EC) No. 1005/2008 (“the IUU Regulation”) establishes a Community system to prevent, deter and eliminate IUU fishing. Provisions in the IUU Regulation allow the European Council to list (1) fishing vessels engaged in IUU fishing (“listed IUU vessels”); and (2) countries which it considers are not cooperating in the fight against IUU fishing (“non-cooperating third countries”). Article 37 of the IUU Regulation sets out measures that apply in relation to listed IUU vessels. Article 38 sets out measures that apply in relation to non-cooperating third countries.
- 4.2 The 2009 IUU Order made provision for the enforcement of the IUU Regulation and Article 9 created offence provisions in respect of listed IUU vessels, implementing provisions of Article 37 of the IUU Regulation.
- 4.3 In 2014 Council Implementing Decision 2014/170/EU established the first list of non-cooperating third countries pursuant to the IUU Regulation.

- 4.4 This instrument implements provisions of Article 38 of the IUU Regulation by extending the offence provisions in Article 9 of the 2009 IUU Order so that they relate to non-cooperating third countries.
- 4.5 This instrument also amends the Points for Masters Regulations 2014. In accordance with Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, the 2014 Regulations set up a system for the allocation of points to masters of England, Wales and Northern Ireland fishing boats who have committed serious infringements of EU fisheries law. The 2014 Regulations provide for the setting up and maintenance of a register that details the points allocated to convicted masters.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales and in part to Scotland and Northern Ireland.
- 5.2 The territorial application of this instrument is England, Wales, and in part to Scotland and Northern Ireland.

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

What is being done and why

- 7.1 The IUU Regulation sets out a range of measures that can be taken against listed IUU vessels and non-cooperating third countries. In 2014, the European Commission published, for the first time, a list of non-cooperating third countries and the 2009 IUU Order needs to be amended to take account of this list to ensure that we can fully implement and enforce these measures and meet our obligations under the IUU Regulation. Failure to do so could leave the United Kingdom open to infraction proceedings as well as reputational damage arising from criticism from other member states and the wider NGO community.
- 7.2 This instrument therefore makes the necessary amendments to the 2009 IUU Order. This will include amendments which extend the offence provisions in the 2009 IUU Order relating to non-cooperating third countries to implement the measures set out in Article 38 of the IUU Regulation. The extended offences are as follows:
1. importing fishery products caught by a fishing vessel flying the flag of a listed non-cooperating third country unless the products are from stock or species to which the listing does not apply;
 2. purchasing a fishing vessel flying the flag of a listed non-cooperating country;
 3. reflagging a fishing vessel flying the flag of a member state so that it flies the flag of a listed non-cooperating third country;
 4. entering into a charter agreement in relation to a fishing vessel flying the flag of a listed non-cooperating third country;
 5. exporting a community fishing vessel to a listed non-cooperating third country. Export is a reserved matter under the devolution settlements, the SI

extends this offence provision to Scotland and Northern Ireland and provides that the offence is an “equivalent provision” for the purposes of Scotland’s and Northern Ireland’s own IUU legislation;

6. entering into an agreement for a fishing vessel flying the flag of a member state to use the fishing possibilities of the listed non-cooperating third country;
 7. participating in joint fishing operations with a fishing vessel flying the flag of the listed non-cooperating third country.
- 7.3 The offences will be incorporated into those offences already listed in article 9 of the 2009 IUU Order.
- 7.4 This instrument makes additional minor and consequential amendments to the 2009 IUU Order. In particular it revokes Article 11 of the 2009 IUU Order regarding recovery of fines because there are enforcement powers, including provisions for forfeiture, set out in Part 8 of the Marine and Coastal Access Act 2009. It also updates Article 21 of the 2009 IUU Order regarding admissibility of documents in evidence by replacing references to Council Regulation (EEC) No. 2847/93 with references to Council Regulation (EC) No. 1224/2009.
- 7.5 This instrument also amends the 2014 Points for Masters of Fishing Boats Regulations in order to clarify provisions in the Regulations relating to the start date of a suspension period or the disqualification of a master. In view of these amendments, the Department has considered whether it is appropriate to provide free copies of this instrument. The Department has decided that it would be disproportionate to apply the procedure for free issue, given that these amendments are minor clarifications and do not constitute the primary purpose of this instrument, which is to amend the 2009 IUU Order. The group of persons likely to be affected by these minor amendments will be comprised within the target audience for the amendments to the 2009 IUU Order contained in this instrument and will therefore be made aware of these amendments. The Department has consulted the SI Registrar on this matter in accordance with paragraph 4.7.6 of Statutory Instrument Practice.

Consolidation

- 7.6 The new offence provisions being added to the 2009 IUU Order are in addition to and do not substantively amend the existing offence provisions in the 2009 IUU Order in relation to listed IUU vessels. The amendments to the 2014 Points for Masters of Fishing Boats Regulations 2014 are limited in scope. As such the Department does not intend to consolidate the relevant legislation.

8. Consultation outcome

- 8.1 This instrument does not require consultation as Defra is merely seeking to amend regulations to complete the implementation of the relevant provisions of the IUU Regulation. However, as advised by the Cabinet Office, we have consulted with the Foreign and Commonwealth Office, as the one government department which has an interest, which supports the proposals. The provisions of the IUU Regulation relating to non-cooperating countries were not implemented in 2009 because the list of non-cooperating countries had yet to be established. This instrument implements the outstanding measures relating to non-cooperating third countries following the publication by the EU of a list of such countries.

9. Guidance

- 9.1 We do not plan to issue guidance. This is a simple measure the principal purpose of which is to extend offences to third countries identified as being non-cooperating under the IUU legislation and to make certain other minor and consequential amendments. In addition it provides for a minor clarification of certain provisions of the Points for Masters of Fishing Boats Regulations 2014.

10. Impact

- 10.1 There is no impact on those businesses complying with applicable IUU legislation, charities or voluntary bodies.
- 10.2 The impact on the public sector is likely to be limited to legal aid. However, although Criminal legal aid is in principle available for the offences, it is extremely unlikely that defendants would pass the interests of justice and means tests. Most if not all defendants will be international fishing companies or importers of fisheries products with significant means.
- 10.3 An Impact Assessment or Regulatory Triage Assessment has not been prepared for this instrument as the amendments are considered minor. Impacts on businesses are expected to be less than £5 million.

11. Regulating small business

- 11.1 The legislation in part applies to activities undertaken by small businesses. The proposal is not anticipated to affect small or micro businesses negatively, their customers or competitors. Small business cannot be excluded from this instrument and from a financial perspective it would be cheaper for businesses to comply with this legislation than to be prosecuted.

12. Monitoring & review

Member States are required to submit a report to the Commission on the application of the regulation every two years. On the basis of these reports and its own observations, the Commission will submit a consolidated report to the European parliament and the Council every three years.

13. Contact

- 13.1 Graham Lott at the Department for the Environment, Food and Rural Affairs Telephone: 020 8026 4399 or email: graham.lott@defra.gsi.gov.uk can answer any queries regarding the instrument.