

EXPLANATORY MEMORANDUM TO

THE SEA FISHING (MISCELLANEOUS AMENDMENTS) REGULATIONS 2019

2019 No. 1284

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument amends two pieces of secondary legislation in the field of sea fisheries and sea fish conservation:
- The Scallop Fishing (England) Order 2012
 - The Sea Fishing (Enforcement) Regulations 2018 (“the 2018 Regulations”)
- 2.2 This instrument is being made to reflect the introduction of a new EU law on fisheries conservation and the protection of marine ecosystems through technical measures (Regulation (EU) 2019/1241) and the amendment and revocation of other EU fisheries conservation measures.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 each regulation in this instrument is the same as the instrument, or regulation or provision in the instrument that it amends. In particular:
- (a) regulation 2 extends to England and Wales;
 - (b) regulation 3 extends to England, Wales and Scotland.
- 4.2 The territorial application of each regulation in this instrument is the same as the instrument, or regulation or provision in the instrument that it amends. In particular:
- (a) regulation 2 applies to England and within British fishery limits but not the Northern Ireland, Scottish or Welsh zones or the territorial seas adjacent to Guernsey, the Isle of Man or Jersey.
 - (b) regulation 3 applies in relation to the enforcement powers of Inshore Fisheries Conservation Officers (IFCOs) who are appointed for inshore fisheries conservation districts in England.

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 This instrument makes various amendments to domestic secondary legislation to update out of date references to EU law and to reflect changes to EU law in the field of sea fisheries conservation under the Common Fisheries Policy.
- 6.2 Regulation (EU) 2019/1241 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, which came into force on 14 August 2019:
- amended a number of EU regulations in the field of fisheries conservation, including Council Regulation (EC) No 1224/2009;
 - repealed a number of fisheries conservation regulations including Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, and (EC) No 812/2004; and
 - introduced replacement technical fisheries conservation measures.
- 6.3 Regulation 2 of this instrument updates an out of date reference to Council Regulation (EC) No 850/98 in the Scallop Fishing (England) Order 2012 (S.I. 2012/2283) and replaces it with a corresponding reference to Regulation (EU) 2019/1241.
- 6.4 Regulation 3 of this instrument amends the 2018 Regulations (S.I. 2018/849) which grant IFCOs the enforcement powers in section 166(3) of the Marine and Coastal Access Act 2009 (“the 2009 Act”) in respect of the EU fisheries conservation measures listed in the Schedule to those Regulations. Regulation 3 of this instrument replaces the Schedule with an updated Schedule to reflect the relevant changes to EU fisheries conservation legislation referred to in section 6.2 above.

7. Policy background

What is being done and why?

- 7.1 This instrument amends two domestic fisheries instruments, to reflect the EU’s recent overhaul of its technical conservation legislation. The new EU measures concern the taking and landing of marine biological resources, the operation and types of fishing gear and the interaction of fishing activities with marine ecosystems.
- 7.2 Regulation 2 updates an out of date reference to EU technical fisheries conservation measures in Council Regulation (EU) No 850/98, which was repealed by new Regulation (EU) 2019/1241, so that it refers to the equivalent measure in the new Regulation.
- 7.3 When new Regulation (EU) 2019/1241 came into force in August, IFCOs lost powers to enforce a number of EU technical fisheries measures listed in the Schedule to the 2018 Regulations, due to Regulation (EU) 2019/1241 having revoked or amended those measures.
- 7.4 This has resulted in an enforcement gap for IFCOs in relation to their ability to enforce relevant new conservation measures in Regulation (EU) 2019/1241. However the powers of the Marine Management Organisation (“MMO”) to enforce the new EU Regulation under the 2009 Act are unaffected. The enforcement gap for IFCOs began

on 14 August, when the new EU Regulation came into force. It will be closed by this instrument when it comes into force on 21 October – 21 days after the 30 September laying date. During this period, the issue has been addressed by the MMO “cross warranting” IFCOs as Marine Enforcement Officers so that they can enforce relevant new EU measures.

- 7.5 The new EU Regulation was anticipated, and Defra worked with the MMO and IFCAs to put in place the interim cross warranting arrangement, giving IFCOs powers to enforce those new EU conservation measures which are being inserted into the list of enforceable measures in the 2018 Regulations by this instrument. Consequently there have been no adverse impacts on enforcement in inshore fisheries and conservation districts. It should be noted that whilst a workable interim solution, due to practical and operational issues cross warranting is not seen by the MMO or IFCAs as a viable permanent one.
- 7.6 Regulation 3 of this instrument replaces the table of EU measures set out in the Schedule to the 2018 Regulations with an updated table incorporating relevant measures set out in new Regulation (EU) 2019/1241, thus reinstating IFCOs enforcement powers in relation to the measures listed.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the EU.

9. Consolidation

- 9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

- 10.1 The amendments within this instrument consist of updates to out of date and amended references to EU law and consultation was not considered necessary.
- 10.2 In relation to the amendments to the 2018 Regulations in regulation 3 of this instrument: the original consultation for the 2018 Regulations noted that “where a substantive change to an EU technical fisheries measure or where a new EU technical measure is introduced, we will amend the 2018 Regulations following public notification of the proposal to all our stakeholders”. We have engaged substantially on the amendments to the 2018 Regulations with the stakeholders affected – the Inshore Fisheries and Conservation Authorities and the Marine Management Organisation – and notified them by letter of the policy intention of the amendments and the decision not to run a public consultation.

11. Guidance

- 11.1 None.

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 because the amendments made by this instrument seek to maintain the status quo as far as

possible, and no significant impact on business is foreseen as a result (less than +/- £5 million net annualised).

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the impact on small businesses as there is expected to be no significant impact on business as a direct result of this instrument as it relates to the maintenance of existing regulation.

14. Monitoring & review

- 14.1 Defra and its agencies will monitor and review the impact of the instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to and implemented.
- 14.2 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, George Eustice MP has made the following statement. “Neither of the two statutory instruments being amended by this instrument contain a review clause and the Minister considers that inserting review provisions in those statutory instruments is not appropriate, because there is not expected to be a significant annualised net impact on business (greater than +/- £5 million net annualised). It would not be proportionate to undertake a review in each case, given the costs of doing so and the limited scope for change, particularly in relation to out of date references.”

15. Contact

- 15.1 Ross Robertson at the Department for Environment, Food and Rural Affairs, Telephone: 02087201493 or email: Ross.Robertson@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Colin Faulkner, Deputy Director for Control and Enforcement, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Eustice MP, Minister of State for Agriculture, Fisheries and Food at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.