

EXPLANATORY MEMORANDUM TO
THE COMMON FISHERIES POLICY (AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2019

2019 No. [XXXX]

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 EU's Common Fisheries Policy ("CFP") regulates fishing activities and the enforcement of those activities in UK waters. The CFP comprises numerous EU Regulations which will automatically be transferred into UK law on exit day, by virtue of the European Union (Withdrawal) Act 2018, and will have the status of 'retained direct EU legislation'. These EU Regulations require amendment in order to operate effectively in UK law after the UK has exited from the European Union, and therefore the CFP. This instrument uses the powers in section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 to make the necessary amendments.

Explanations

What did any relevant EU law do before exit day?

2.2 The CFP comprises approximately 100 EU Regulations which impose a common approach to the sustainable management of fisheries across the European Union and its waters (currently UK waters are part of EU waters). The CFP governs fishing effort (the days fishermen can spend at sea fishing for certain stocks), the amount of fish caught for certain species (quotas), and sets technical rules that control, for example, the types of fishing equipment that can be used. Member States are responsible for the implementation of CFP management measures. In the UK, this responsibility is devolved and undertaken by the four fisheries administrations. This includes licensing vessels, managing quota and ensuring compliance with CFP and UK rules. The EU Regulations have direct effect in UK law. The CFP "Basic Regulation" (Regulation (EU) No 1380/2013) contains the overarching aims and objectives of the CFP, but the rest of the CFP regulates the detail of many aspects of fisheries management, in particular:

- (i) The Control Regulations: these contain the rules for compliance with the CFP legislation, including requirements to produce catch certificates and sales notes, the vessel monitoring and inspection provisions and the enforcement of the CFP generally. There are specific Regulations which impose rules for particular species only, such as for highly migratory fish. This Part also covers the Sustainable Management of External Fishing Fleets, a framework for authorising EU vessels to operate outside EU waters, and non-EU vessels to operate in EU waters.
- (ii) The Regulations on Illegal, Unregulated and Unreported fishing: these aim to prevent, deter and eliminate illegal fishing activities. They establish the

requirement to produce catch certificates and lists of vessels which are in breach of existing rules and prohibit the import of fish from vessels or countries which fish illegally.

- (iii) The multiannual plans and effort regimes: these Regulations establish long-term plans for the recovery, preservation or management of fish stocks, including managing how much time fleets can spend at sea.
- (iv) The data collection frameworks: these Regulations set out rules for the collection, management and use of data, in particular scientific data relating to fish stocks.
- (v) The Regulations on the Common Organisation of the Markets (CMO): these Regulations provide for the collective management of producer organisations, common marketing standards, rules on consumer information, competition rules and the transparency and efficiency of the market as a whole.
- (vi) Regulations relating to the protection of vulnerable marine ecosystems and fish stocks in the deep seas and high seas: these impose technical and control measures to ensure that vulnerable stocks are protected.
- (vii) The regulations of the European Maritime and Fisheries Fund: these establish an EU funding scheme to support the implementation of the CFP and CMO.
- (viii) Other provisions: setting defining characteristics for fishing vessels, establishing an EU vessel fleet list and technical conservation measures governing gear size and design, minimum mesh sizes, by catch limits and other measures for the conservation of resources and ecosystems.

2.3 Annex B to this explanatory memorandum describes the amendments to the above CFP regulations made by this SI. There are additional regulations that form part of the CFP, these will be amended in the same way in separate instruments. CFP Regulations which are not amended in this instrument will be amended at a later date because either they were not in force when this instrument was drafted, they were listed for revocation by the EU, or they were less critical to the effective management of our waters than the Regulations amended by this instrument.

2.4 Provisions in the EU Regulations which contain powers of the EU to make legislation have been left unamended by this instrument, except that a small number of powers which are not required by the UK have been omitted. That is because all provisions which contain powers that are to be transferred to UK authorities will be addressed in a later instrument, which will be subject to the 'affirmative' Parliamentary procedure.

2.5 The CFP is implemented throughout the EU through directly applicable EU Regulations.

Why is it being changed?

2.6 The technical changes made by this instrument are necessary to ensure that the rules contained in the CFP continue to operate effectively, so that fishing within UK waters continues to be regulated in a sustainable manner. This instrument imposes the rules of the CFP on UK vessels wherever they are, subject to different rules stemming from international agreements, and on all vessels within UK waters.

What will it now do?

2.7 This instrument makes the minimum necessary technical fixes to address deficiencies within CFP legislation and enable the same sustainable fisheries management in UK

waters after exit as is currently provided for by the CFP. This instrument has the effect of preserving the status quo, so that there is immediate continuity in the regulation of UK waters when the UK exits the EU.

- 2.8 No substantive changes are made to the effect of the CFP and no change to the way in which fisheries conduct their activities is expected. Some functions which are currently carried out by the EU will be carried out by fisheries administrations. A broad description of the amendments being made is given at section 7, and a detailed, regulation-by-regulation explanation given in Annex B.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments or the Select 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 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent is the United Kingdom.
4.2 The territorial application is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding Human Rights:

“In my view, the provisions of the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. This instrument is made in exercise of these powers.
- 6.2 Paragraph 21 of Schedule 7 to the Act specifies that the power to modify retained EU law includes a power to make supplementary, incidental and consequential provision and the power to restate retained EU law in a clearer or more accessible way.
- 6.3 This SI operates together with the Fisheries (Amendment) (EU Exit) Regulations 2019, which provide technical corrections to correct deficiencies within *domestic* legislation. The two SIs work together to amend the suite of fisheries management legislation that applies to the UK.

7. Policy background

What is being done and why?

- 7.1 The Government remains committed to retaining existing standards of effective fisheries management. This instrument is required to ensure that after the UK leaves the EU there is immediate continuity in regulation, and the same environmental standards are met. In accordance with the provisions of section 8 of the European Union (Withdrawal) Act 2018, all amendments to the CFP have arisen as a result of the UK's departure from the EU and therefore the amendments do not represent any changes in policy regarding fisheries management. Over time, the fisheries administrations will amend retained EU law in order to implement their own policies.
- 7.2 We do not consider any other policy options in this explanatory memorandum, because the deadline of the UK's departure from the EU means that the priority is to ensure essential legislation operates in UK law in time for EU exit, so that the UK is not left with a legislative deficit upon exit. The CFP is the main body of law which regulates fishing activities and enforcement in UK waters.
- 7.3 The intention of this SI is to make simple technical operability changes. Where provisions place obligations on EU Member States to do something, these references to Member States are mostly changed to "a fisheries administration", which is a new defined term that applies to all of the CFP Regulations being retained in domestic law.
- 7.4 The definition ensures that "a fisheries administration" means the Secretary of State, a devolved fisheries administration or the Marine Management Organisation, and 'a devolved fisheries administration' means the Scottish Ministers, the Welsh Ministers or, in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs. This definition has the effect of preserving the status quo, so that the administration which currently carries out the function in question, or which exercises the power in question, continues to do so. This instrument does not alter the devolution settlements in any way.
- 7.5 For example, Article 90 of the Control Regulation (Council Regulation (EC) No 1224/2009) provides a list of activities which can be considered as serious infringements, to be determined by the competent authority of the relevant Member State. Fisheries management is devolved, therefore the devolved administrations are the competent authorities in each of their territories. Regulation 4(82) of this instrument amends Article 90 so that all references to "Member State(s)" are changed to "a fisheries administration". The definition of a fisheries administration interprets these references so as to provide for the devolved fisheries authorities to carry out these functions, as they do now.
- 7.6 This instrument makes a number of amendments that are common to many of the Regulations. Below is an explanation of these repeated amendments, but for a detailed explanation of specific amendments to Regulations, please see Annex B to this explanatory memorandum.
- 7.7 Duplication of domestic law:
Provisions in EU Regulations which duplicate existing UK legislation are removed as are provisions that are not capable of operating within the UK, or which have no relevance to the UK outside of the EU. A number of provisions already exist as a matter of UK domestic law. For example, Articles 6, 7 and 8 of the CFP Basic Regulation (Regulation (EU) No 1380/2013), which relate to conservation measures, are omitted by this instrument because UK legislation already provides UK fisheries

administrations with powers relating to conservation (for example, powers in the Sea Fish (Conservation) Act 1967). Other provisions that merely duplicate what is already in domestic law are omitted accordingly.

7.8 Areas where the UK has no fishing interest:

A number of provisions in the CFP relate to specific regions in which UK vessels do not fish. One such example is Regulation (EU) 1343/2011, regarding fishing in the General Fisheries Commission for the Mediterranean Agreement area. As described in Annex B, the UK does not have fishing interests in the Mediterranean and this Regulation is therefore revoked by this instrument.

7.9 Data:

This instrument amends existing EU rules on fisheries data collection. There is a comprehensive system of data collection; right from the point of catching and where those fish were caught, through to sales, and this system is amended to make it operable in retained EU law on our domestic statute book. However, outside of the EU, it will no longer be appropriate for the UK to report its data to the European Commission.

Flexible, efficient and effective fisheries management needs the best possible scientific data on fish stocks and impacts on the wider environment. Data for scientific purposes will continue to be collected and shared with international organisations, such as the International Council for the Exploration of the Sea (ICES) and relevant Regional Fisheries Management Organisations (RFMOs), under the retained Data Collection Framework Measures. This will ensure continuation of the current UK data programme, enabling UK scientists to continue making a strong contribution to international co-operation on stock assessments and related fisheries science.

7.10 Oversight:

When the UK leaves the European Union, it will no longer be a Member State. Therefore, the Commission will not be able to oversee the application of the CFP within the UK. The implementation and oversight of fisheries management in the UK will be the subject of new arrangements, as proposed in the draft Environment Bill and draft Fisheries Bill, as well as the 2018 Fisheries White Paper, consistent with the devolution settlements.

7.11 Funding:

Funding in the fishing and aquaculture industries is currently available through the European Maritime and Fisheries Fund (EMFF). When the UK leaves the EU, we will no longer be part of the EMFF.

However, the Government has confirmed that all EMFF projects approved before the closure date of the current programme (December 2020) will be fully funded under a Treasury guarantee; this applies across the UK. As such, this instrument amends the EMFF Regulation (Regulation (EU) No 508/2014) to ensure that the principles and conditions for funding continue in UK law whilst removing references to the involvement of the European Commission.

7.12 Advisory Councils:

Advisory Councils advise the EU on fisheries matters and will, therefore, have no involvement with the UK after exit. Advisory Councils play an important role for the EU, but we already have extensive involvement with stakeholders, including environmental NGOs and the fishing industry. We have a number of other models,

such as the scallop industry consultation group; work closely with other fisheries science partnerships around the country; and have a multi-stakeholder expert advisory group to consider EU exit issues. We are working with the industry to establish a replacement fisheries advisory infrastructure for the UK that can be put in place after we leave the EU.

7.13 Cooperation with Member States:

There are a number of provisions throughout the CFP that oblige Member States to coordinate with or assist other Member States, often in close cooperation with the European Commission. One such example is Article 18 of the Basic Regulation (Regulation (EU) No 1380/2013), providing for regional cooperation on conservation measures. As the CFP is a single regulatory system where all EU Member States are subject to the same law and obligations, these provisions make sense as part of EU law. The UK is unable to legislate for cooperation with Member States in the absence of international agreements and any future cooperation with the European Union or other countries will form the basis of those future agreements and be the subject of negotiations. References to regional cooperation or coordination have therefore been omitted from retained EU law.

7.14 Expired provisions:

Certain provisions throughout the CFP impose a deadline; for example, Article 4 of the 'Eels Regulation' (Council Regulation (EC) No 1100/2007) required Member States to produce Eel Management Plans and send them to the European Commission by 31 December 2008 for approval. The UK produced the necessary Eel Management Plans and these have already been approved by the Commission and implemented in the UK. This, and other references to expired deadlines, has been omitted from retained EU law. In the context of the example in the Eels Regulation, the provisions were amended to make reference to the specific Eel Management Plans that have been approved by the Commission. As such, the provisions will no longer require the UK to produce Eel Management Plans for approval by the Commission, instead they require the UK to continue to implement the plans that have already been approved prior to exit.

7.15 Currency:

The retained EU law amended by this instrument contains references to values and thresholds that are set in euros. Defra has followed the Government's default position of changing references from euros to pounds sterling in this instrument using a consistent conversion factor.

7.16 This instrument does not amend all of the Regulations within the CFP, it amends 31 Regulations. Regulations concerning specific Member States, regions and operations which are not relevant to the UK once it is no longer part of the EU are being revoked. A full schedule of legislation which is being revoked is contained in the instrument, with an explanation for each regulation contained in Annex B to this explanatory memorandum.

7.17 Some Regulations, particularly those concerned with technical conservation measures, multi-annual plans, discard plans and Regional Fisheries Management Organisations have not yet been introduced by the EU, or are currently being amended, therefore these regulations will be included in a future instrument as appropriate.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of Annex A to this explanatory memorandum.

9. Consolidation

9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

10.1 The Devolved Administrations (Scottish Government, Department of Agriculture, Environment and Rural Affairs, and Welsh Government) were involved in the drafting of the proposed amendments.

10.2 A targeted engagement was carried out on the approach to the amendments, involving key stakeholders from the fisheries sector, food industry and environmental non-governmental bodies. In addition, a ten-week consultation was conducted through the Fisheries White Paper. Stakeholders were broadly supportive of the approach being taken.

11. Guidance

11.1 As these are technical changes to existing legislation there is no associated guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or the voluntary sector.

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 there are no changes to what the public sector, or business, will have to do under the regulations.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 As the legislation will continue to operate as it did before exit it will not disproportionately affect small business.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of this instrument as part of its standard policy-making procedures.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Tim Godson at the Department for Environment, Food and Rural Affairs, Telephone: 0208 225 8532 or email: Tim.Godson@defra.gov.uk can be contacted with any queries regarding the 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 George Eustice MP at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

Annex A

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is the case because: this instrument corrects deficiencies in retained EU legislation which have arisen out of the UK’s exit from the EU. It does no more than ensure the UK has functional and operable fisheries legislation in place immediately after EU exit.

2. Good reasons

- 2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are: without the amendments contained in this instrument the retained EU legislation in question would not operate in the context of the UK as an independent coastal state, rather than as part of the EU’s common fisheries policy. The amendments ensure that the UK has an operable legal framework for the maintenance of existing standards of sustainable fisheries management after EU exit. This is essential in the absence of other legislation.

3. Equalities

- 3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement:

“The instrument 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”.

- 3.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, George Eustice MP, 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”.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.