

EXPLANATORY MEMORANDUM TO
THE LYME BAY DESIGNATED AREA (FISHING RESTRICTIONS)
(AMENDMENT) ORDER 2009

2009 No. 1675

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“the Department”) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This Order amends the Lyme Bay Designated Area (Fishing Restrictions) Order 2008 (S.I 2008/1584) (“the 2008 Order”).

- 2.2 This Order is necessary to correct an error in the drafting of the 2008 Order, which included a power for British sea-fishery officers to do anything to facilitate disembarkation of a vessel (article 3(2)). No such power is conferred on British sea-fishery officers by the Sea Fisheries Act 1968 (1968 c. 77) (“the 1968 Act”), from which the powers cited in article 3(2) of the 2008 Order derive.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This Order has been made in response to issues raised by the Joint Committee in its Twenty Seventh Report of Session 2007-08.

- 3.2 The Joint Committee’s report contained discussion regarding the inclusion, in article 3(2) of the 2008 Order, of a power for British sea-fishery officers to require a vessel to do anything to facilitate the disembarkation of that vessel.

- 3.3 The Joint Committee was concerned that this power appeared to be *ultra vires*: the power to make the Order (section 15(3) of the Sea Fish (Conservation) Act 1967 (“the 1967 Act”) (as read with section 8(2) of the Fisheries Act 1968)) does not specifically provide for a power to direct vessels to facilitate disembarkation.

- 3.4 Having considered the Department’s submission on this issue, the Joint Committee reported article 3(2) of the 2008 Order: first on the ground that there appeared to be a doubt as to whether it was *intra vires* and secondly on the ground that, to the extent of that doubt, its deviation from the wording of the enabling power did not accord with proper legislative practice.

- 3.3 This Order addresses those issues by removing the words “or disembarkation” from article 3(2) of the 2008 Order.

4. **Legislative Context**

- 4.1 Following advice from Natural England that voluntary measures to protect the biodiversity in Lyme Bay were failing to deliver protection from damaging fishing practices for the majority of the high value biodiversity in the bay, a decision was made to prohibit dredging for shellfish and demersal trawls in an area of Lyme Bay.

That decision was implemented by the 2008 Order, which came in to force on 11 July 2008.

4.2 Article 2 of the 2008 Order specified a “designated area” in which the prohibition applied, and article 3 specified the powers of British sea-fishery officers in relation to the enforcement of the 2008 Order.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom (in relation to the powers specified in article 3 of the 2008 Order) but, in relation to article 2, applies only to a specific area of the United Kingdom (Lyme Bay).

6. European Convention on Human Rights

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 See paragraph 3, above.

- *Consolidation*

7.3 The Department does not intend to consolidate the legislation.

8. Consultation outcome

8.1 For the reason stated in paragraph 10, below, no consultation has been undertaken in relation to this Order.

9. Guidance

9.1 There are no guidelines in place in relation to the 2008 Order, beyond general enforcement guidance used by British Sea Fishery Officers.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument, as no impact on the private, public or voluntary sector is foreseen.

10.2 This amendment is not expected to impact on the ability of British Sea Fishery Officers to enforce the closed area.

11. Regulating small business

11.1 This legislation applies to small business but, as stated in paragraph 10, above, has no impact upon them.

12. Monitoring & review

12.1 The Department will monitor and review both the 2008 Order and this Order.

13. Contact

Tim Andrews at the Department for Environment, Food and Rural Affairs Tel: 0117 372 8320 or email: tim.andrews@defra.gsi.gov.uk can answer any queries regarding this instrument.