

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Common Fisheries Policy (Amendment etc) (EU Exit) (No. 2) Regulations 2019

1. Name of the instrument and summary of proposal

The Common Fisheries Policy (Amendment etc) (EU Exit) (No. 2) Regulations 2019 (“the Regulations”) amend directly applicable EU legislation that will form part of domestic law after exit day. The amendments correct deficiencies in the legislation resulting from the withdrawal of the United Kingdom from the European Union and will ensure that the directly applicable EU legislation being amended by these Regulations is operable in the event that the UK leaves the EU without a withdrawal agreement or deal.

The majority of amendments to EU fisheries legislation being rolled over into domestic law have already been notified to the Scottish Parliament. These Regulations amend EU fisheries legislation that was either published in late 2018 or agreed at December Council 2018 and therefore published in the last few weeks. Specifically, the legislation being amended by these Regulations concerns discard plans and the establishment of fishing opportunities (quota). It should be noted that Scottish Parliament consent has not been requested in regards to the provisions concerning quota, so those provisions are not covered by this notification.

Explanation of law that the proposals amend and summary of proposals

The Legislation Being Amended

These Regulations amend five EU regulations that were recently adopted or amended by the EU. These EU regulations concern fishing opportunities and discard plans in relation to certain areas of sea:

- Commission Delegated Regulation (EU) 2018/2034 of 18 October 2018 establishing a discard plan for certain demersal fisheries in North-Western waters for the period 2019-2021
- Commission Delegated Regulation (EU) 2018/2035 of 18 October 2018 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021
- Commission Delegated Regulation (EU) No 1395/2014 of 20 October 2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea
- Council Regulation (EU) 2018/2025 of 17 December 2018 fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks
- Council Regulation (EU) 2019/124 of 30 January 2019 fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters

The amendments

Many of the amendments are technical operability changes, for example replacing EU-specific terms, such as “Union fishing vessels” or “Union waters”, with an equivalent term (e.g. “United Kingdom fishing vessels” and “United Kingdom waters”). References to Member States (in the context that obligations are put on Member States to do something) are, generally speaking, changed to “a fisheries administration”, which is a new defined term that applies to all the directly applicable EU fisheries legislation being retained in domestic law. (The definition is being added to the “basic” CFP Regulation, by an amendment contained in the an exit SI that was notified to you in November 2018).

The definition ensures that “fisheries administration” means the Scottish Ministers in relation to any powers or obligations that it would be within the legislative competence of the Scottish Parliament to include in Act of the Scottish Parliament. “Fisheries administration” means the Secretary of State or the Marine Maritime Organisation in relation to reserved matters.

The definition of fisheries administration provides that in applying the legislative competence test there is provision equivalent to article 5 of the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (SI 1999/1748). This means that when determining the meaning of “fisheries administration” the element of the legislative competence test which considers whether a function is exercisable “in or as regards Scotland” extends to the Scottish zone in relation to fishing and aquaculture in the Scottish zone and to Scottish fishing boats where there are any.

In relation to fishing there are a number of functions which both the Scottish Ministers and the SoS can exercise concurrently (set out in the Scotland Act 1998 (Concurrent Functions) Order 1999 (SI 1999/1592)). The definition of “fisheries administration” takes account of this and provides that the Secretary of State as well as the Scottish Ministers may be the “fisheries administration” in relation to concurrent functions. Where the definition of “fisheries administration” in relation to an obligation means both the Scottish Ministers and the Secretary of State then if the Scottish Ministers meet that the obligation then the Secretary of State does not need to and vice versa.

The North Sea Discard Plan

Regulation 2018/2035 provides exemptions from the landing obligation for certain fisheries in the North Sea for the period 2019 to 2021. The provisions include a high survival exemption for nephrops caught in trawl fisheries and a high survival exemption for fish caught in pots, traps and creels.

These Regulations make minor technical amendments to the North Sea Discard Plan ensure that the landing obligation and exemptions would continue to apply, so that the UK can continue to be able to work towards eliminating discards in this area. Where a fisheries administration has a direct management interest in any of the exempted species, the Regulations amend the Discard Plan to provide that the fisheries administration must, as soon as possible after exit day, assess the appropriateness of the exemption on the basis of scientific information. Other amendments are straightforward substitutions, for example “Union” is replaced with “United Kingdom”.

Discard Plan for the North-Western waters

Regulation 2018/2034 provides exemptions from the landing obligation for certain fisheries in the North-Western Waters. The provisions include a high survival exemption for nephrops caught in trawl fisheries and a high survival exemption for fish caught in pots, traps and creels.

As is the case with the North Sea Discard Plan, the Regulations make minor technical amendments to ensure that the landing obligation and exemptions would continue to apply, so that the UK can continue to be able to work towards eliminating discards in North-Western waters. For example a reference to “the STECF” (the Scientific, Technical and Economic Committee for Fisheries), which is part of the European Commission, is replaced with “a fisheries administration” and “Union” is replaced by “United Kingdom”. Where a fisheries administration has a direct management interest in any of the exempted species, the Discard Plan is being amended to require that the fisheries administration, as soon as possible after exit day, assess the appropriateness of the exemption on the basis of scientific information.

Discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea

Commission Delegated Regulation (EU) No 1395/2014 provides exemptions from the landing obligation for certain fisheries (such as mackerel, herring and whiting) in the North-Sea. It was recently amended by an EU Regulation to extend its period of application to 31 December 2020.

The amendments to this Discard Plan are straightforward. They amend it so that it applies until 31 December 2020 (in accordance with the recent EU amendment), and ensures that the Annex applies only to UK waters, rather than Union waters.

Deep Sea Fishing Opportunities Regulation

Council Regulation (EU) 2018/2025 includes the prohibition of fishing for deep sea sharks and orange roughy, the requirement to collect and transmit data, and the outline of conditions for landing catches and bycatches.

The Regulations amend provisions containing the conditions for landing catches and bycatches, and those containing prohibitions on fishing for certain species, so that both continue to operate effectively after EU Exit. The amendments are technical in nature, for example “Union” is replaced by “United Kingdom” and “vessels flying the flag of a Member State” is changed to “United Kingdom fishing vessels”. In addition, provisions concerning the submission of data to the Commission are being omitted because it will no longer be appropriate for the UK to do so after exit day.

In addition, this Council Regulation fixes quota available to Union fishing vessels (the amendments to which are not in the scope of this notification).

The TAC and Quota Regulation

Council Regulation 2019/124 contains prohibitions on fishing for certain stocks at certain times and in certain areas, as well as fishing opportunities in waters of regional fisheries management organisations (RFMOs).

The Regulations make minor technical amendments to inoperable references in relation to the prohibitions, to ensure that the provisions remain operable after exit day. For example, Article 10 provides for specific measures for European seabass fisheries in certain areas. This is amended by the Regulations so that the prohibition continues to apply to UK fishing vessels in certain areas, but during certain times, these UK vessels can fish for European seabass with certain conditions. Similarly, Article 11, which sets measures for European eel fisheries is being amended so that it prohibits fishing for European eel in UK waters of the ICES area, for a consecutive three-month period to be determined by a fisheries administration. Requirements to report to the Commission are being deleted by the Regulations.

The Regulations also omit several articles which cover waters in which the UK has no fishing interests, or organisations of which we will no longer be members immediately on EU Exit.

Certain provisions concerning RFMOs, specifically ICCAT (an Atlantic Tuna RFMO) and CCAMLR (The Convention on the Conservation of Antarctic Marine Living Resources) are being left un-amended for the time being, because UK vessels do not currently fish in these fisheries, and these provisions are therefore not essential for immediately after EU Exit.

In addition, the TAC and Quota Regulation fixes the quota available to Union vessels (the amendments to which are not in the scope of this notification).

2. Why are these changes necessary?

These changes are required to ensure the continuity of the existing fisheries management regime on withdrawal from the EU. Failure to address these deficiencies would render the EU legislation that is being retained inoperable or ineffective on exit day. Inoperable or ineffective legislation would make implementation of the discard ban more challenging for fishers and would exacerbate risks around an increase in dead fish being discarded at sea. It may leave the fishing industry open to criticism from retailers and environmental groups that the UK is failing to encourage sustainable and responsible fishing practices through its policies and regulations.

3. Scottish Government categorisation of significance of proposals

The proposed amendments covered by this notification fall within categories A. The amendments are technical in nature and do not represent a change in policy.

4. Impact on devolved areas

Our primary objective in analysis of the UK Government's draft amendments has been to ensure that we can effectively manage fisheries in Scottish waters and manage Scottish fishing boats wherever they are, which requires the devolution settlement to be respected across all amendments.

The Scottish Government has worked closely and constructively with DEFRA, who have recognised the expertise in fisheries management and legislation within the Scottish Government. Other devolved administrations, with a similar interest in protecting devolved interests, have also engaged in this dialogue.

5. Stakeholder engagement/consultation

The Department for Environment, Food and Rural Affairs (DEFRA) has consulted with the devolved administrations of Scotland, Wales and Northern Ireland regarding this instrument. Defra has also conducted some targeted engagement involving key stakeholders from the fisheries sector, food industry and environment non-governmental bodies. In addition, a ten-week consultation was conducted through the Fisheries White Paper which described future fisheries policy. Stakeholders were broadly supportive of the approach being taken in the White Paper.

The Regulations ensure that good management and adequate transfer of functions of those aspects of sea fisheries covered by these Regulations can continue uninterrupted in the event of EU Exit in March 2019 without a transitional period. As such Scottish Government has not undertaken any separate stakeholder engagement. Engagement with stakeholders over the long term future of fisheries management in Scotland is ongoing.

6. Any other impact assessments?

On the basis that these amendments do not result in any policy changes, no impact assessment has been prepared.

7. Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The provisions are being made at the UK level to reflect the mix of reserved and devolved responsibilities and the UK wide approach taken in the subject matter dealt with in the Regulations. Scottish Ministers consider that consenting to the Regulations is the most effective and transparent way to make changes to address deficiencies at the same level. Officials have worked with UKG to ensure the provisions covered by this notification deliver for our interests and respects devolved competence in Scotland.

8. Do the proposed changes adhere to the environment and animal welfare principles?

Yes. The guiding principles on the environment as set out in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union are relevant to these proposals. The legislation modified by the Regulations is already in line with these principles, and as no policy changes are being introduced, it is considered that these amendments are in adherence with these principles.

9. Intended UK laying date

Our current understanding is that the SI will be laid in draft under the affirmative procedure on 27 February but this may be subject to change by a matter of days.

10. Does the Scottish Parliament have 28 days to scrutinise Scottish Ministers' proposal to consent?

Defra have confirmed that they will not put affirmative instruments forward for debate that have not been consented by Scottish Ministers and agreed by the Scottish Parliament under the protocol, however in order to ensure these regulations are debated and in place before exit day they have asked Scottish Ministers to provide consent in advance of the week commencing 18 March, allowing the SI to complete its process and be made in the last two weeks preceding the UKs anticipated exit from the EU. Therefore, it would be very helpful if the Committee could consider this notification in early course and respond to the Scottish Government by 15 March 2019.

11. Information about any time dependency associated with the proposal

It is essential that the legislation being amended is operable in the event that the UK leaves the EU with no deal or no transition period in March 2019. Consequently, the Regulations must be introduced to the UK Parliament in good time in order to ensure they pass through UK parliamentary procedure by this date.

12. Any significant financial implications

The effect of these amendments is to maintain existing policy. No significant financial impacts on private or voluntary sectors is foreseen.