

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Common Fisheries Policy (Transfer of Functions) (EU Exit) Regulations 2019

1. Name of the instrument and summary of proposal

The Common Fisheries Policy (Transfer of Functions) (EU Exit) Regulations 2019 (“the Regulations”) transfer a series of legislative functions that are currently conferred by EU legislation upon the European Commission to the devolved administrations and/or the Secretary of State. This will ensure those functions, which ensure the operability of the legislation, can be exercised after the UK leaves the EU.

The EU legislation being amended by these Regulations forms part of the body of legislation known as the Common Fisheries Policy (the “CFP legislation”). The Common Fisheries Policy (Amendment) (EU Exit) Regulations 2018 (the “2018 Regulations”), which were notified to the Scottish Parliament on 21 November 2018 contained the vast majority of amendments to the CFP legislation, but did not contain certain provisions that were being amended in the UK Fisheries Bill or transfers of legislative functions. These Regulations contain those transfer of legislative function provisions that were absent from the 2018 Regulations.

The CFP legislation being amended by these Regulations (and the 2018 Regulations / the UK Fisheries Bill) is not the entirety of the legislation forming the Common Fisheries Policy. The rest of the EU legislation forming the Common Fisheries Policy will be amended in other Exit SIs to be notified at a later date. Domestic fisheries legislation is being amended in the Fisheries (Amendment) (EU Exit) Regulations 2019, which was notified to the Scottish Parliament on 2 November 2018.

2. Explanation of law that the proposals amend and summary of proposals

The Legislation Being Amended

Of the 31 pieces of legislation that were amended by the 2018 Regulations, only 13 of those contained legislative function provisions that required to be transferred to a domestic authority/body. A list of those 13 pieces of legislation is contained in Annex A and are summarised below:

- The Basic Regulation, which contains the basic provisions for the Common Fisheries Policy, including objectives and definitions.
- The Control Regulation, which set out the rules for compliance with the Common Fisheries Policy legislation, including those around control, inspection and enforcement.
- The Regulations on Illegal, Unregulated and Unreported fishing (“IUU fishing”), which aims to deter and combat illegal fishing activities.
- The multi-annual plans and effort regimes, which set out long-term plans for the recovery, preservation or management of fish stocks, including managing how much time fleets can spend at sea so as to achieve these goals.

- The data collection framework regulation, which set out rules for the collection, management and use of data.
- The regulations around the Common Organisation of the Markets (“CMO”), which legislate 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.
- Measures relating to the protection of vulnerable marine ecosystems and fish stocks in the deep seas and high seas.
- The regulations of the European Maritime and Fisheries Fund (“EMFF”), a funding scheme to support the implementation of the Common Fisheries Policy and CMO.
- A regulation regarding the defining characteristics of fishing vessels (Regulation (EU) 2017/1130 of the European Parliament and of the Council). The powers being transferred are not devolved and are therefore not notifiable to the Scottish Parliament under the protocol notification procedure.

These Regulations transfer a series of legislative functions that are currently conferred by European Union legislation upon the European Commission. The functions are transferred so that they will be exercisable instead by “fisheries administrations” or the Secretary of State. A “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 in relation to reserved matters.

Three approaches are taken to this transfer:

- Approach 1) Regulation-making powers will be exercisable only by a fisheries administration. This means that for devolved matters in or as regards Scotland, it is only the Scottish Ministers who can carry out the function. This approach is taken in the majority of cases.
- Approach 2) Regulation-making powers will be exercisable by the devolved administrations but, if administrations agree that a UK-wide approach is preferable, the Secretary of State can make regulations on behalf of all four administrations. In order for the Secretary of State to do so, consent from the Scottish Ministers (and the other devolved administrations) will be required.
- Approach 3) Regulation-making powers can only be exercised by the Secretary of State, with the consent of the Scottish Ministers (and the other devolved administrations). This approach is taken in a small number of cases for functions which, if transferred to devolved administrations, would cause practical difficulties or additional costs.

Examples of all these approaches are given below, and a table containing the full list of functions and the approach taken in each case is provided at Annex B.

Example of Approach 1

The European Commission has the power to adopt detailed rules or make exemptions in relation to a number of technical control and enforcement measures (under the Control Regulation), including in relation to satellite-based VMS, conversion of fish weight into live weight, completion and transmission of logbook data, transshipment declarations, sales notes, surveillance reports, officer safety during inspections, and electronic databases. These functions will be transferred to “fisheries administrations” as a power to make regulations. This means that to the extent that these functions are devolved, the Scottish Ministers will have the power to make regulations in these areas. In the case that a function is reserved, then the power lies with the Secretary of State.

Example of Approach 2

Under Article 4 of the Data Collection Framework Regulation, the Commission has the power to establish a multiannual [Union] programme for the collection and management of biological, environmental, technical and socioeconomic data. These Regulations amend Article 4, to provide that a fisheries administration may, by regulations, establish that multiannual data collection programme. In relation to Scotland and Scottish vessels, this power can be carried out by the Scottish Ministers. However, there is already a UK-wide framework for data collection, so it has been agreed that it is desirable for the Secretary of State to be given the same power to make regulations but on a UK-wide basis. In order for the Secretary of State to exercise this power, the consent of the devolved administrations is required. This ensures that the devolution settlement is respected but allows for the continued cooperation of the four administrations in relation to data collection.

Example of Approach 3

At present the European Commission maintains a list of vessels that are known to carry out IUU fishing and therefore not permitted in Union waters. Administratively and practically would be very difficult to maintain and enforce four separate lists of IUU vessels, i.e. a list for each of the four UK fisheries administrations in relation to their part of UK waters, and it is advantageous for the administrations to cooperate in preventing IUU fishing. Additional costs would also be incurred through the four fisheries administrations maintaining separate IUU vessel lists. It has been agreed that there will only be one IUU vessel list for the UK, which will be amended by the Secretary of State with consent from the devolved administrations. The requirement that devolved administrations (including the Scottish Ministers) must consent before the Secretary of State can act on their behalf ensures that the devolution settlement is protected.

3. Why are these changes necessary?

These changes are necessary to allow the continuation of the effective functioning of this legislation. These legislative functions ensure the continued operability of the legislation, on and after exit day. Without regulation-making powers, the legislation risks becoming ineffective or not being operable, for example due to the inability to keep pace with changing circumstances, or due to a lack of detail in the existing legislation.

4. Scottish Government categorisation of significance of proposals

Category B. These Regulations are wholly concerned with the transfer of legislative functions which previously rested with EU entities to the relevant authority within the UK. This instrument does not make substantive policy changes.

5. Impact on devolved areas

The approaches taken to legislative functions transferred by the Regulations respect the devolved settlement. In the first instance transferring powers to “fisheries administrations”, ensures that functions are transferred in line with devolved areas of responsibility. This is consistent to the approach taken by the Common Fisheries Policy (Amendment) (EU Exit) Regulations 2018. It has been agreed in some areas a UK wide approach will or might be required, and in these cases whilst the Secretary of State may act in devolved areas consent will be required from all devolved administrations. This respects the devolution settlement while allowing a consistent pan-UK approach to these powers where it is sensible to do so.

6. 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 a targeted engagement was also carried out on the approach, 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 with a view to Scottish Ministers legislating in future

7. Any other impact assessments?

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

8. Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation

The provisions were 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 drafting delivers for our interests and respects devolved competence in Scotland.

9. 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.

10. Intended UK laying date

7 February 2019

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

Yes

12. 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.

13. Any significant financial implications

We have discussed the need for an impact assessment with the UK Government and on the basis that these amendments do not infer any policy changes we have concluded that there is not a requirement to undertake an impact assessment. It is the intention that Scottish Ministers will legislate and implement measures in the future to establish a world class fisheries management system in Scottish waters.

ANNEX A: Legislation amended by these Regulations

- The Basic Regulation, which contains the basic provisions for the Common Fisheries Policy, including objectives and definitions.
 - **Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy**
- The Control Regulation, which set out the rules for compliance with the Common Fisheries Policy legislation, including those around control, inspection and enforcement.
 - **Council Regulation (EC) No 1224/2009 on establishing a Union control system for ensuring compliance with the rules of the common fisheries policy**
- The Regulations on Illegal, Unregulated and Unreported fishing (“IUU fishing”), which aims to prevent, deter and eliminate illegal fishing activities.
 - **Regulation (EU) No 1026/2012 of the European Parliament and of the Council on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing**
 - **Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing**
- The multi-annual plans and effort regimes, which set out long-term plans for the recovery, preservation or management of fish stocks, including managing how much time fleets can spend at sea so as to achieve these goals.
 - **Council Regulation (EC) No 1100/2007 establishing measures for the recovery of the stock of European Eel**
 - **Council Regulation (EC) No 1954/2003 on the management of the fishing effort relating to certain Community fishing areas and resources**
- The data collection framework regulation, which set out rules for the collection, management and use of data.
 - **Regulation (EU) 2017/1004 of the European Parliament and of the Council of 17 May 2017 on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy and repealing Council Regulation (EC) No 199/2008**
 - **Council Regulation (EC) No 1954/2003 on the management of the fishing effort relating to certain Community fishing areas and resources**

- The regulations around the Common Organisation of the Markets (“CMO”), which legislate 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.
 - **Regulation (EU) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products**
 - **Council Regulation (EC) No 2406/96 laying down common marketing standards for certain fishery products**
 - **Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito**
 - **Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products**
- Measures relating to the protection of vulnerable marine ecosystems and fish stocks in the deep seas and high seas.
 - **Regulation (EU) 2016/2336 of the European Parliament and of the Council of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing Council Regulation (EC) No 2347/2002**
- The regulations of the European Maritime and Fisheries Fund (“EMFF”), a funding scheme to support the implementation of the Common Fisheries Policy and CMO
 - **Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund**
- The Regulation defining characteristics for fishing vessels
 - **Regulation (EU) 2017/1130 of the European Parliament and of the Council defining characteristics for fishing vessels**

ANNEX B: Approaches to transfer of functions.

Approach	Explanation
1	Regulation-making powers will be exercisable only by a fisheries administration. This means that for devolved functions, in or as regards Scotland, it is only the Scottish Ministers who can carry out the function. This approach is taken in the majority of cases.
2	Regulation-making powers will be exercisable by the devolved administrations but, if administrations agree that a UK-wide approach is preferable, the Secretary of State can make regulations on behalf of all four administrations. In order for the Secretary of State to do so, consent from the Scottish Ministers (and the other devolved administrations) will be required.
3	Regulation-making powers can only be exercised by the Secretary of State, with the consent of the Scottish Ministers (and the other devolved administrations). This approach is taken in a small number of cases for functions which, if transferred to devolved administrations, would cause practical difficulties or additional costs.

Section	Regulation	Article		
Basic Regulation	Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy	15(6)	Power to make regulations laying down a specific discard plan for a particular fishery	1
		24(4)	Power to make regulations establishing technical operational requirements for the recording, format and transmission of the information to go in the UK fishing fleet register	3
Control Regulation	Council Regulation (EC) No 1224/2009 on establishing a Union control system for	7(5)	Power to make regulations in relation to authorisations for specific fishing activities in UK waters	1

	ensuring compliance with the rules of the common fisheries policy	8(2)	Power to make regulations specifying detailed rules for the marking and identification of fishing vessels and their gear
		9(10)	Power to make regulations specifying detailed rules in relation to satellite-based vessel monitoring systems
		14(10)	Power to make regulations specifying detailed rules in relation to the completion and submission of fishing logbooks
		15(9)	Power to make regulations specifying detailed rules in relation to the electronic completion and transmission of fishing logbook data
		17(6)	Power to make regulations exempting certain categories of fishing vessel from the prior notification requirements before arriving in port.
		21(6)	Power to make regulations exempting certain categories of fishing vessels from the obligation to complete a transshipment declaration.
		21(7)	Power to make regulations determining the transshipment declaration procedures and forms.

	22(7)	Power to make regulations specifying detailed rules in relation to electronic completion and transmission of transshipment declaration data
	23(5)	Power to make regulations specifying detailed rules in relation to the completion and submission of landing declarations
	24(8)	Power to make regulations specifying landing declaration procedures and forms.
	32	Power to make regulations specifying detailed rules in relation to the control of fishing effort.
	40(6)	Power to make regulations specifying detailed rules in relation to monitoring, certification and verification of engine power
	51(3)	Power to make regulations specifying detailed rules in relation to real time closures.
	52(2)	Power to make regulations modifying the prescribed distances between the fishing areas of two consecutive hauls.
	58(8)	Power to make regulations amending the threshold value of products sold directly from fishing vessels to consumers that are exempted from traceability requirements (currently set at £44).

	58(9)	Power to make regulations in relation to the traceability at all stages of production, processing and distribution, catching or harvesting to retail of lots of fisheries and aquaculture products.
	59(3)	Power to make regulations in relation to the threshold weight of products whose first sale is for private consumption and consequently exempt from 'first sale' requirements (currently 30kg).
	60(7)	Power to make regulations in relation to risk based methodology and procedure of weighing of fishery products.
	64(2)	Power to make regulations in relation to the content of sales notes.
	65(2)	Power to make regulations to amend the threshold weight up to which products bought for private consumption are exempt from sales not requirements (currently 30kg).
	71(5)	Power to make regulation specifying the content of the surveillance report.
	73(9)	Power to make regulations specifying detailed rules in relation to the control observer scheme.
	75(2)	Power to make regulations specifying detailed rules in relation to duties of operators.

		76(4)	Power to make regulations specifying detailed rules in relation to inspection reports.	
		78(2)	Power to make regulations specifying detailed rules in relation to the electronic database where they upload all inspection and surveillance reports.	
		92(5)	Power to make regulations specifying detailed rules in relation to a licence points system for serious infringements of fisheries rules.	
		95(1)	Power to make regulations determining which fisheries should be subject to specific control and inspection programmes.	
IUU	Regulation (EU) No 1026/2012 of the European Parliament and of the Council on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing	4	Power to make regulations adopting specified measures in respect of a country allowing non-sustainable fishing	2
		7(2)	Power to make regulations determining whether conditions imposed on non-cooperating countries have been complied with and providing that measures adopted cease to apply.	2

Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing	6(3)	Power to make regulations to exempt, for a limited period or make provisions for another notification period to be taken into account, certain categories of third country fishing vessels, from the obligation to notify the competent authorities of a fisheries administration whose designated port/landing facilities they wish to use of certain information, at least three working days before the estimated time of arrival.	1
	8(3)	Power to make regulations to specify landing and transshipment declaration procedures and forms	2
	9(1)	Power to make regulations to determine benchmarks for inspections carried out in UK ports.	1
	12(5)	Power to make regulations to amend the list of products excluded from the scope of implementation of catch certificates.	2
	16A	Power to make regulations specifying rules relating to the status of approved economic operators.	2
	27(1)	Power to make regulations providing for a United Kingdom IUU vessel list	3
	28(1)	Power to make regulations to remove a fishing vessel from the United Kingdom IUU vessel list	3

		33	Power to make regulations to provide for a list of non-cooperating third countries	3
		34	Power to make regulations removing a country from the list of non-cooperating third countries	3
Multiannual Plans and Effort Regimes	Council Regulation (EC) No 1100/2007 establishing measures for the recovery of the stock of European Eel	5	Power to amend Eel Management Plans	1
		7(6)	Power to take measures in relation to the restocking of eels to address a significant decline in market prices for eels	
	Council Regulation (EC) No 1954/2003 on the management of the fishing effort relating to certain Community fishing areas and resources	12	Power to make regulations amending the maximum annual fishing effort in "western waters" (specific areas of waters concerned by this Regulation)	3
DCF	Regulation (EU) 2017/1004 of the European Parliament and of the Council of 17 May 2017 on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy	4	Power to make regulations in relation to the multiannual programme for the collection, management and use of biological, environmental, technical and socioeconomic data in the fisheries sector	2

CMO	Council Regulation (EC) No 2406/96 laying down common marketing standards for certain fishery products	2(3)	Power to make regulations in relation to the detailed aspects of the rule that fishery products of UK or third countries may be marketed only if they meet specific requirements (set out in this Regulation).	2
		8(4)	Power to make regulations specifying detailed rules in relation to size categories of fisheries products, in particular as regards the method of weighing and the determination of a variation in the net weight, above or below that marked or presumed, permitted for each lot	2
		9(2)	Power to make regulations specifying detailed rules in relation to the grading of pelagic species based on sampling, in particular for determining the number of samples to be taken, the weight or volume of fish in each sample, and the methods for assessing the grading and verifying the weight of lots offered for sale.	2
		10	Power to make regulations determining the coastal zones which are exempted from rules on minimum marketing sizes of crabs and shrimps and determining the corresponding marketing sizes.	1

	Regulation (EU) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products	21	Power to make regulations in relation to procedures for recognition of producer organisation and inter-branch organisations and withdrawal of recognition	1
		29	Power format and structure of production and marketing plans	
	Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products	8	Power to make regulations regarding the application of rules on marketing standards and trade descriptions of preserved sardines, in particular the sampling plan for assessing conformity of manufacturing batches with the rules.	1
Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito	8	Power to make regulations regarding the application of rules on marketing standards for tuna and bonito, in particular the sampling plan for assessing conformity of manufacturing batches with the rules.		
Vulnerable marine ecosystems	Regulation (EU) 2016/2336 of the European Parliament and of the Council of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and	7	Power to make regulations determining the "existing deep-sea fishing areas".	1
		8	Power to make regulations authorising exploratory fisheries in locations outside the existing deep-sea fishing areas.	
		9(6)	Power to make regulations establishing a list of areas where vulnerable marine ecosystems are known to or likely to occur.	

	repealing Council Regulation (EC) No 2347/2002	9(6A)	Power to make regulations removing an area from the list of areas where vulnerable marine ecosystems are known to or likely to occur.	
		9(7)	Power to make regulations amending the list of indicators for vulnerable marine ecosystems, based on the best available scientific information.	
EMFF	Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund	20	Power to amend the operational programme which provides the framework for UK expenditure under EMFF.	3
		21(2)	Power to amend the UK work plan	3