

THE COMMON FISHERIES POLICY (AMENDMENT ETC.) (EU EXIT) (NO.3) REGULATIONS 2019

Notification to Scottish Parliament of Scottish Ministers' intention to consent to UK legislative proposals on areas within devolved competence

Instrument and Summary of Proposal

The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 3) Regulations 2019 (the "Regulations") amend directly applicable EU legislation that will form part of domestic law after exit day as well as previous EU Exit statutory instruments. The amendments correct deficiencies in the legislation resulting from the withdrawal of the United Kingdom from the European Union and will ensure that it is operable in the event that the UK leaves the EU without a withdrawal agreement or deal.

The EU legislation being amended by these Regulations forms part of the body of legislation known as the Common Fisheries Policy ("CFP"). The CFP comprises around 100 EU Regulations and other instruments and ensures a common approach to the sustainable management of fisheries across the European Union and its waters. The majority of the legislation forming the CFP has already been amended in EU Exit SIs prepared in advance of the original "exit day", 29 March 2019, and notifications about those amendments were considered by the Scottish Parliament. Since then, the EU has adopted legislation which amends certain aspects of the CFP. These Regulations correct deficiencies in the new and amended EU Regulations. They also amend earlier Exit SIs to reflect the recent amendments to the underlying EU Regulations, and take the opportunity to make minor corrections for earlier errors or inconsistencies in drafting.

The legislation being amended

These Regulations amend the following EU legislation, that will form a part of domestic law after exit:

- Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks ("**the Western Waters MAP**");
- Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea ("**the North Sea MAP**"); and
- Proposed Regulation of the European Parliament and of the Council on the conservation of fishery resources and the protection of marine ecosystems through technical measures ("**the Technical Conservation Regulation**").

The Regulations revoke some EU Regulations that will have no application in the UK after exit day.

The Regulations also amend the following EU Exit SIs, which have already been made but will not come into force until exit day:

- The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019;
- The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019; and

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

The text of the Technical Conservation Regulation has been agreed by the European Parliament and the Regulation is available in draft. The European Council has not yet approved the Regulation but is expected to do so in coming days or weeks. The Technical Conservation Regulation is a key piece of fisheries management legislation so it is essential that it is operable come exit day. Amendments have therefore been prepared on the basis of the draft text (we do not anticipate that the text will change). These Regulations will not be laid in the UK Parliament until the Technical Conservation Regulation has been formally adopted and published in the Official Journal of the EU. It was necessary to provide this notification to the Scottish Parliament ahead of the Technical Conservation Regulation being published in order to ensure that the notification process could run its course, and the SI be laid by UK Government in time to allow the relevant deficiencies to be corrected by exit day. We will of course provide confirmation, under Annex H of the protocol between the Scottish Parliament and Scottish Ministers, that these Regulations when made are consistent with this notification, or if not, what implications changes have on any consent Scottish Ministers have given.

More detail on the amendments being made by these Regulations are set out below.

The amendments

Many of the amendments are technical operability changes, for example replacing EU-specific terms, such as “Union vessels” or “Union waters”, with an equivalent term (e.g. “United Kingdom 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 CFP regulations being retained in domestic law. “Fisheries administration” is an overarching term that is being used in the amendments to all EU Regulations that formed part of the CFP. It is defined as meaning 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 an Act of the Scottish Parliament, and the Secretary of State or the Marine Management Organisation in relation to reserved matters. This definition ensures that the amendments made by this Exit SI respect the devolution settlement. The amendments contain provisions transferring legislative functions from the European Commission to the Scottish Ministers (detailed below).

The amendments to earlier exit SIs are technical in nature. They make amendments that are necessary as a result of changes at EU level to the EU Regulations that are being amended in the SIs or to correct minor errors (such as typos) in the SIs.

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.

- 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. This approach is taken in the majority of cases.
- 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.

The Regulations are made under the European Union (Withdrawal) Act 2018, are subject to the affirmative procedure in the UK Parliament and are expected to be laid before the sifting committee in July 2019 (subject to the publication of EU Regulations on technical conservation measures as noted above). Under the terms of the Withdrawal Act the Regulations will not come into force until exit day.

What is to be amended?

Multi Annual Plans (Regulation (EU) 2019/472 and (EU) 2018/973)

The amendments to the Western Waters MAP ensure that the multiannual plan for stocks fished in these and adjacent waters continues to operate effectively for UK fisheries. Amendments ensure that the plan operates effectively for United Kingdom waters, as opposed to Union waters. The amendments are technical in nature, amending the terminology of the Regulations so that they continue to work after the UK leaves the EU. Provisions that will no longer be relevant after exit day are being omitted. For example, references to Advisory Councils are omitted because they advise the EU on fisheries policy and will no longer be relevant after exit day, and references to EU evaluation processes are also omitted. In addition the Regulations contain the transfer of legislative functions correcting deficiencies in provision where the European Commission has legislative functions by transferring those functions to the relevant UK fisheries administrations. For instance powers to limit or prohibit the use of certain fishing gears and the power to specify landing obligations (functions previously carried out by the Commission) are being transferred to the relevant UK authority (the Secretary of state, the Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers and the Welsh Ministers to exercise in their respective areas of competence).

The majority of deficiencies in the North Sea MAP were amended in an earlier EU Exit SI (The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019). These Regulations contain the transfer of legislative functions correcting deficiencies in provision where the European Commission has legislative functions by transferring those functions to the relevant UK fisheries administrations. For instance, powers to make regulations for the conservation of the relevant stocks, the ability to adjust the geographical areas or amend the list of stocks listed in the Regulation as well as the power to supplement the North Sea multiannual plan with regards to technical measures are transferred from the Commission to the relevant UK authority (the Secretary of state, the Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers and the Welsh Ministers, to exercise in their respective areas of competence).

Full lists of the Transfer of Legislative functions for these two regulations are contained in Annex 1.

Regulations made by the Scottish Ministers will be subject to the negative procedure.

The Technical Conservation Regulation

The Technical Conservation Regulation repeals the principal EU Regulation (Council Regulation (EC) 850/98) concerning technical conservation measures and establishes an updated regime for technical conservation measures. In an earlier EU exit SI (the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019), amendments were made to the Regulation that is now being repealed. The same general approach is being taken to the amendments contained within these Regulations as was taken in that earlier EU exit SI. The amendments contained within that earlier EU exit SI are being revoked by these Regulations.

This new Technical Conservation Regulation lays down technical conservation measures concerning the taking and landing of marine biological resources, the operation of fishing gear and the interaction of fishing activities with marine ecosystems. The technical measures include mesh sizes and combinations thereof appropriate for the capture of certain species and other characteristics of fishing gear, and the minimum sizes of marine organisms, as well as limitations of fishing within certain areas and time-periods and with certain gears and equipment.

These Regulations make technical amendments so that the Regulation remains operable after exit day, ensuring that conservation practices continue to apply.

The Regulations amend the application of the Regulation so that it primarily applies within United Kingdom waters. The exceptions to this limit of application include international waters where the UK fleet has a direct fishing interest as well as areas which relate to the North-East Atlantic Fisheries Commission (NEAFC) Convention. In line with the approach taken to EU Regulations implementing RFMO provisions, this instrument retains the provisions of the Regulation that apply to the NEAFC Convention as the UK intends to apply to NEAFC as a contracting party outside of the EU after exit day.

Examples of amendments include changing references to a “coastal Member State” or a “flag Member State” to a “fisheries administration”; changing references to “Union acts” to “retained direct EU legislation”; and changing references to EU Directives to the legislation in the UK that implemented those Directives. References to EU entities, such as Advisory Councils, and reporting processes have been omitted.

These Regulations also contain provisions that transfer legislative functions that are currently to be carried out by the Commission to the relevant UK fisheries administrations. The provisions that will be transferred to the appropriate UK authority are: the power to adopt implementing acts to establish detailed rules for the specification of codends and certain devices, the power to amend the prohibited fish and shellfish species listed in Annex 1 and the list of areas set out in Annex 2, the power to adopt delegated acts to make changes to the technical measures to take into account regional specificities, the power to supplement this Regulation by defining pilot projects that involve a system of full documentation of catches and discards, and the power to make implementing regulations for establishing specifications for certain devices and fishing gear. Full lists and details of the Transfer of Legislative functions are contained in Annex 1.

Regulations made under the Technical Conservation Regulation are subject to the negative procedure.

Revocations

The following EU Regulations are being revoked, for the reasons that follow the title of the Regulation.

- Regulation (EU) 2016/1139 of the European Parliament and of the Council establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks: this Regulation does not apply to UK fishers as they do not fish in the Baltic Sea.
- Regulation (EU) 2019/473 of the European Parliament and of the Council on the European Fisheries Control Agency: this Regulation concerns the European Fisheries Control Agency (EFCA). EFCA is a European Union body and, since we will no longer be a member of the EU, we will no longer have membership to that organisation.
- Regulation (EU) 2019/1022 of the European Parliament and of the Council of 20 June 2019 establishing a multiannual plan for the fisheries exploiting demersal stocks in the western Mediterranean Sea: this Regulation does not apply to UK fishers as it concerns the Mediterranean Sea.

Amendments to earlier EU Exit SIs

These Regulations make changes to three Exit SIs that have already been made but are not yet in force.

- The Regulations make a minor change to the amendments within the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019. Specifically, the revocation of Council Regulation (EC) 768/2005 is removed as this Regulation has now been revoked at EU level.
- A minor change is made to the amendments within the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019. Specifically, amendments to the Regional Fisheries Management Organisations Regulations are updated to reflect the revocation at EU level of Council Regulations (EC) No 1386/2007 and 2115/2005.
- The Regulations also make a minor change to the amendments within the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019. Specifically, amendments to the North Sea Discard Plan are updated to correct a new deficiency in that EU Regulation created by an amendment to it at EU level.
- A number of minor changes are made to all three of the above SIs to correct typographical and other minor errors. Examples of such errors include where the amendments made in previous EU Exit SIs led to duplication of words (“report to to”) or inclusion of two articles “the a fisheries administration”.

Why are the amendments necessary?

These changes are required to ensure the continuity of fisheries management legislation in the UK. Failure to address deficiencies would render retained EU law pertaining to fisheries inoperable or ineffective on exit day. Inoperable or ineffective legislation would risk severe environmental damage and overfishing as there would be less effective means to control activities of fishers. The UK would risk finding itself in contravention of international obligations and risk its global reputation as sound

managers of marine resources. Negative market impacts would also result as many export destinations for seafood would not accept produce from unsustainably managed fisheries.

The functions transferred by this instrument will ensure that fisheries management in the UK can continue to operate efficiently, and that measures for the sustainable management of fish stocks continue.

Categorisation of Significance of Proposals

The proposed amendments within the Regulations fall within categories A and B. The majority of the amendments are technical in nature, and none represent a significant change in policy, however the regulations do include the transfer of legislative functions which previously rested with EU entities to the relevant authority within the UK.

Impact on environmental and animal welfare guiding principles

Addressing the deficiencies ensures continued adherence to the environmental principles established in EU and international law. In maintaining the current approach to sustainable sea fisheries management the Regulations maintain the existing level of environmental protection.

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 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.

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.

Where functions are transferred to the Secretary of State to act on behalf of devolved administrations, or where this is an option we are satisfied that this is necessary, and the requirement for consent ensures the devolved settlement is respected.

Summary of Stakeholder Engagement

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 not carried out formal consultation external to government. The amendments do not amount to a substantive change in policy. Defra have carried out a ten-week consultation in relation to their Fisheries Bill white paper.

The Regulations ensure that good management of those aspects of sea fisheries covered by these Regulations can continue uninterrupted in the event of EU Exit in October 2019 (or any other point) 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.

Other Impact Assessments

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 Minister's will legislate and implement measures in the future to establish a world class fisheries management system in Scottish waters.

Any significant financial implications

No significant financial impacts on private or voluntary sectors is foreseen.

Reasons for Scottish Ministers' Consent

The Regulations cover numerous amendments to ensure the operability of sea fisheries management in a no deal scenario. The Scottish Government has successfully ensured that the devolution settlement has been respected throughout the proposed regulation. These regulations will:

- Ensure that a framework fisheries management system is in place at the point that the UK leaves the EU.
- Ensure continued sustainable management of fish stocks in Scottish waters.

Allowing the Secretary of State to make these Regulations including provisions which could be made by the Scottish Ministers in an SSI is appropriate to avoid considerable duplication of work by the Scottish Ministers and Parliament in replicating these changes through a SSI.

Consequently Scottish Ministers are content for the Regulations to fix the relevant deficiencies with regard to devolved matters.

Intended laying Date

It is expected that the final Regulations will be laid before the UK Parliament in draft under the affirmative procedure at the beginning of September 2019. 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, Defra currently expect that the Regulations will be debated in October.

Time Dependencies

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 on 31 October 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.

ANNEX I: TRANSFER OF LEGISLATIVE 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.

Article	Power being Transferred	Approach Taken
Western Waters MAP (Regulation (EU) 2019/472)		
Article 9	Currently the European Commission has the power to supplement the Western Waters multiannual plan with regards to technical measures, for example limiting or prohibiting the use of certain fishing gears in so far as they are not covered by the Technical Conservation Regulation.	2
Article 13	The Commission also has the power to adopt delegated acts to supplement this Regulation by specifying details concerned with the landing obligation.	1
North Sea MAP (Regulation (EU) 2018/973)		
Article 1	The European Commission has the legislative power, where scientific advice indicates a change is required to adjust the geographical areas or amend the list of stocks listed in the Regulation, to adopt delegated acts in order to reflect that change.	3

Article 8	The European Commission also has legislative powers to make regulations for the conservation of the relevant stocks, where scientific advice indicates remedial action is required.	2
Article 9	The European Commission has power to supplement the North Sea multiannual plan with regards to technical measures, for example limiting or prohibiting the use of certain fishing gears, in so far as they are not covered by the Technical Conservation Regulation.	2
Technical Conservation Measures (Regulation (EC) 850/98)		
Article 8	Commission the power to adopt implementing acts to establish detailed rules for the specification of codends and certain devices. There is a requirement to consult such bodies or persons as appear to be representative of the interests likely to be substantially affected by the regulations and any other bodies or persons as the fisheries administration considers appropriate, prior to making the regulations.	2
Article 10 & 12	The Commission has the power to amend Annexes 1 and 2. More specifically, the Commission is able to amend the prohibited fish and shellfish species listed in Annex 1 and the list of areas set out in Annex 2, on the basis of the best scientific advice. Consent is not required where the Secretary of State has a concurrent or joint power to act (for example in relation to an English fishing boat in the Scottish zone) because to require consent would fetter the discretion of the Secretary of State. We are content that this still respects the devolution settlement.	3
Article 15	the Commission has the power to adopt delegated acts to make changes to the technical measures to take into account regional specificities, with the aim of achieving the objectives and targets set out in this Regulation and other EU law. There is a requirement to obtain scientific evidence to support the technical measures adopted.	2
Article 23	the Commission has the power to supplement this Regulation by defining pilot projects that involve a system of full documentation of catches and discards. Such projects may derogate from the measures set out in the Regulation if, for example, they aim to improve the selectivity of fishing gear. There is again a requirement to consult prior to making regulations.	2
Article 24	The article transfers power to make implementing regulations for establishing specifications for certain devices and fishing gear.	2