

EXPLANATORY MEMORANDUM TO
THE COMMON FISHERIES POLICY (AMENDMENT ETC.) (EU EXIT) (NO. 2)
REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

- 2.1 The Common Fisheries Policy (“CFP”) imposes a common approach to the sustainable management of fisheries across the European Union and its waters. Several provisions of the CFP are included in Annex 2 to the Protocol on Ireland / Northern Ireland in the EU Withdrawal Agreement (“the Protocol”) and will therefore be directly applicable in the UK in respect of Northern Ireland from the end of the transition period. This instrument makes amendments to domestic law, retained EU law and previous amendments to retained EU law, all in the field of the CFP, ensuring the legislation operates effectively for the UK outside of the European Union to account for the inclusion of that legislation in Annex 2 to the Protocol.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The CFP regulates fishing activities and the enforcement of those activities in EU waters, and in respect of EU fishing vessels outside of those waters, as well as implementing the EU’s obligations under international agreements. This instrument deals with the following provisions:
- a) the Fisheries (Amendment) (EU Exit) Regulations 2019¹ (“the 2019 Regulations”); specifically regulation 3 which amends section 30 of the Fisheries Act 1981 (“the 1981 Act”). Section 30 of the 1981 Act provides for the enforcement of breaches of EU law relating to sea fishing. Regulation 3 of the 2019 Regulations currently amends section 30 to provide for the enforcement of breaches of retained EU law instead;
 - b) the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019² and specifically the amendments made by those Regulations to Regulation (EU) No 640/2010 establishing a catch documentation programme for bluefin tuna *Thunnus thynnus* (“Regulation 640/2010”) in retained EU law. Regulation 640/2010 currently implements Recommendation 18-13 on the ‘Recommendation by ICCAT replacing recommendation 11-20 on an ICCAT Bluefin tuna catch documentation program’ adopted by the International Commission for the Conservation of Atlantic Tunas (“ICCAT”). The catch documentation scheme adopted by ICCAT, as implemented by the EU, imposes

¹ 2019/746

² 2019/753

various controls on imports and exports of bluefin tuna from and on movements of tuna within the EU;

- c) Council Regulation (EC) No 1035/2001 establishing a catch documentation scheme for *Dissostichus* spp (“Regulation 1035/2001”). This Regulation currently implements measure 170/XVIII which establishes a catch documentation scheme for *Dissostichus* spp. adopted by the Convention on the Conservation of Antarctic Marine Living Resources (“CCAMLR”). The catch documentation scheme adopted by CCAMLR, as implemented by the EU, imposes various controls on imports and exports of *Dissostichus* spp. (toothfish) from, and on movements of tuna within, the EU.
- d) Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (“the retained IUU regulation”). This Regulation currently legislates for the EU’s regime to tackle IUU fishing and ensure the conservation and sustainable exploitation of fisheries resources under the CFP;
- e) Commission Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing; and
- f) Commission Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing.

2.3 Full explanations of how the above legislation is amended or applied can be found in the table at Annex B.

Why is it being changed?

2.4 The EU is a contracting party to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (known as the Port State Measures Agreement or “the PSMA”). The PSMA is a multilateral fisheries agreement designed to combat illegal, unreported and unregulated fishing by regulating access to the ports of contracting parties by foreign fishing vessels. The UK intends to accede to the PSMA as an independent party at the end of the transition period, as part of our commitment to sustainable fishing and to tackling illegal, unreported and unregulated (“IUU”) fishing practices. The EU implements its obligations under the PSMA through Council Regulation (EC) No 1005/2008 (“the IUU Regulation”), which will continue to apply to and in the United Kingdom in respect of Northern Ireland by virtue of the Protocol.

2.5 The IUU Regulation does not regulate access by EU vessels to EU ports (such vessels are not foreign fishing vessels for the purposes of the EU’s obligations under the PSMA). However, once the UK accedes to the PSMA as an independent contracting party it will be required to impose controls on all non-UK vessels, including those flying the flag of EU Member States. To ensure full compliance with the UK’s obligations vis-à-vis the control of foreign fishing vessels under the PSMA once it accedes to the agreement after the end of the transition period, it is necessary to apply the retained IUU regulation and related provisions of retained EU law to Northern Ireland, specifically in relation to the use of ports by EU fishing vessels. Under the PSMA, the UK will be obliged to impose controls on access by all foreign fishing vessels, including EU vessels. In respect of ports in Northern Ireland, the UK’s obligations in this area will therefore be met both by the retained IUU regulation (in relation to use of those ports by EU vessels), and by the IUU regulation as it applies

by virtue of the Protocol, in respect of all other foreign fishing vessels. In Great Britain the retained IUU regulation will regulate port access by all foreign fishing vessels.

- 2.6 It is also necessary to ensure that Regulations linked to the implementation of the retained IUU regulation (Commission Regulation (EC) No 1010/2009 and Commission Regulation (EU) No 468/2010) are also given appropriate effect in Northern Ireland for the same purpose.
- 2.7 Separate to this, this instrument makes further technical changes to the Fisheries (Amendment) (EU Exit) Regulations 2019 S.I. 2019/746, to update the wording in relation to amendments to section 30 of the Fisheries Act 1981. This is to enable obligations and restrictions under CFP legislation made directly applicable in Northern Ireland under the Protocol to be enforced. Without this change, Northern Irish authorities will not be able to enforce directly applicable EU fisheries law in Northern Ireland, and the UK would not be able to meet its obligations under the Withdrawal Agreement.
- 2.8 Finally, amendments are necessary to reflect the direct application of Regulation 640/2010 and Regulation 1035/2001 in EU law in Northern Ireland under the Protocol and, in the case of Regulation 1035/2001, to correct deficiencies in that Regulation so that it operates effectively in retained EU law at the end of the transition period. These amendments are required to ensure that, from the end of the transition period, the UK is able to fulfil its obligations under the ICCAT and the CCAMLR. The UK is a contracting party to CCAMLR. At the point of submitting this explanatory memorandum, the UK is not yet a contracting party to ICCAT, but the government intends to accede to ICCAT during the transition period in accordance with the terms of the Withdrawal Agreement. These amendments will help the UK play its part in ensuring sustainable and traceable fishing practices and combating IUU fishing as a contracting party to these two regional fisheries management organisations (“RFMOs”).
- 2.9 Annex B to this explanatory memorandum contains further detail on the amendments and other provisions made by this instrument.

What will it now do?

- 2.10 These changes are being made to ensure that the UK is compliant with its obligations under the international agreements to which the UK is or will be an independent contracting party from the end of the transition period; to ensure the UK’s continued ability to tackle IUU fishing and to promote sustainable fishing; and to ensure that appropriate enforcement action can be taken in respect of breaches of those EU fisheries rules made applicable under the Protocol.

3. Matters of special interest to Parliament

- 3.1 None.

4. Extent and Territorial Application

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

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020 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 partly 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 Section 8C 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 implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement as well dealing with matters arising out of, or related to, the Protocol. This instrument is made partly in exercise of these powers.

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 end of the transition period there is immediate continuity in regulation, and the same standards are met. In accordance with the provisions of sections 8 and 8C of the European Union (Withdrawal) Act 2018, all amendments to retained CFP legislation have arisen as a result of the UK's departure from the EU or are made to implement the Protocol or deal with matters arising out of, or related to, the Protocol 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 These technical changes specifically enable the enforcement of the UK's obligations under EU fisheries law directly applicable under the Protocol in Northern Ireland, and separately for the UK to fulfil its obligations under the PSMA, ICCAT, and CCAMLR as an independent contracting party.

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.

- 8.2 This instrument is also made in exercise of the powers conferred by section 8C of the European Union (Withdrawal) Act 2018 in order to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement or deal with matter arising out of, or related to, the Protocol.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

- 10.1 The Devolved Administrations (the Scottish Government, Department of Agriculture, Environment and Rural Affairs in Northern Ireland, and the Welsh Government) were involved in the drafting of this instrument.

11. Guidance

- 11.1 Guidance on the UK's approach to the Protocol was published on 20 May 2020 and 7 August 2020 and is available on the GOV.UK website.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 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 no significant changes to what the public sector, or business, will have to do under the regulations are envisaged. The amendments made by the instrument will ensure UK vessels are subject to largely the same rules they are now.

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 substantially as it did before EU 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 the instrument as part of their standard policy-making procedures.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Jack Mitchell at the Department for Environment, Food and Rural Affairs, telephone: 020 8720 2848 or email: Jack.Mitchell@defra.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Colin Faulkner, Deputy Director for External Fisheries Negotiations & Trade Policy at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 Victoria Prentis MP, Parliamentary Under Secretary of State 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising 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 Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis 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) (No. 2) Regulations 2020 do no more than is appropriate”.

- 1.2 This is the case because: this instrument corrects deficiencies in legislation that arise from the withdrawal of the UK from the EU, to ensure the UK has functional and operable fisheries legislation after EU Exit, and is able to fulfil its obligations under international agreements. Further to that, the changes regarding Northern Ireland will ensure that the Protocol is implemented.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis 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: correcting deficiencies as necessary to ensure we continue to have operable fisheries legislation after EU Exit, provisions to enable the enforcement of directly applicable EU law under the Protocol, and that the UK is able to fulfil its obligations under international agreements. Further to that, the changes regarding Northern Ireland will ensure that the Protocol is implemented.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement:

“The draft 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 Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Victoria Prentis 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.

Annex B to the Explanatory Memorandum

Summary of the provisions of the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

<p>Amendment of the Fisheries (Amendment) (EU Exit) Regulations 2019 (Regulation 3) - Section 30 Fisheries Act 1981</p>	<p>This instrument makes further technical changes to the Fisheries (Amendment) (EU Exit) Regulations 2019 S.I. 2019/746, to update the wording in relation to amendments of section 30 of the Fisheries Act 1981 to enable obligations and restrictions under CFP legislation made directly applicable in respect of Northern Ireland under the Protocol to be enforced.</p>
<p>Amendment of the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 in relation to the amendments to Regulation 640/2010; and</p> <p>Amendment of Regulation 1035/2001</p>	<p>These changes correct deficiencies and reflect the direct application of EU law (Regulation 640/2010 and Regulation 1035/2001) in Northern Ireland. These amendments are necessary to ensure that the UK is able to fulfil its obligations under the International Commission for the Conservation of Atlantic Tunas (“ICCAT”) and the Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”). These amendments will help the UK play its part in ensuring sustainable and traceable fishing practices and combating IUU fishing.</p> <p>Regulation 9 of the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 makes amendments under s.8 of the European Union (Withdrawal) Act 2018 to Regulation 640/2010 in order to correct deficiencies arising from the UK’s withdrawal from the EU. Regulation 640/2010 is included in Annex 2 to the Protocol and so will be directly applicable in EU law in Northern Ireland at the end of the transition period. This instrument amends regulation 9 of the original amending Regulations under the powers in s.8C of the European Union (Withdrawal) Act 2018 so</p>

	<p>that Regulation 640/2010, as it will apply in retained EU law in Great Britain, operates correctly in light of the inclusion of the Regulation in Annex 2 to the Protocol. A small number of minor operability corrections are also made under s.8 of the 2018 Act.</p> <p>Regulation 1035/2001 is also included in Annex 2 to the Protocol. Unlike Regulation 640/2010, regulations have not previously been made amending it to correct deficiencies arising from the UK's withdrawal from the EU under s.8 of the 2018 Act. This instrument makes both amendments under s.8 and s.8C of the 2018 Act so as to make Regulation 1035/2001 operable in retained EU law after the transition period and to ensure that it will operate correctly in retained EU law in Great Britain in light of the inclusion of the Regulation in Annex 2 to the Protocol.</p>
<p>The application of the retained IUU Regulation (; Commission Regulation (EC) No 1010/2009; and Commission Regulation (EU) No 468/2010 to Northern Ireland</p>	<p>This instrument applies provisions of retained EU legislation relating to illegal, unreported and unregulated ("IUU") fishing to Northern Ireland to impose certain controls and procedures on foreign fishing vessels wishing to visit United Kingdom ports. It is necessary to apply retained EU law in this area to Northern Ireland, specifically in relation to the use of ports by EU fishing vessels, to comply with obligations under the PSMA. Under the PSMA, the UK is obliged to impose controls on access by all foreign fishing vessels, including EU vessels, to ports in the United Kingdom. These controls include: a requirement to use designated ports; a requirement to obtain authorisation prior to using ports; requirements to submit certain documents in advance of using ports; and a regime of inspection. This is necessary due to the direct application of the EU's IUU regulation in Northern Ireland under the Protocol, which does not apply corresponding requirements to EU vessels. It is therefore necessary to supplement the EU's IUU regulation by applying the corresponding retained instrument to Northern Ireland in a limited way.</p>