

Explanatory Memorandum to Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018

This Explanatory Memorandum has been prepared by the Environment, Planning and Rural Affairs Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Sea Fisheries (Miscellaneous Amendments) Regulations 2018

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Cabinet Secretary for Energy, Planning and Rural Affairs.

DATE: 22 May 2018

1. Description

The Sea Fisheries (Miscellaneous Amendments) Regulations 2018 (“the Regulations”) amend the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 (S.I. 2009/3391) (“the 2009 Order”) and the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 (“the 2014 Regulations”).

The Regulations amend the 2009 Order to update the extent and application of the 2009 Order and insert the necessary additional definitions to clarify Article 9(4) of that Order. They also extend the offence provisions relating to non-cooperating third countries (implementing Article 38 of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing). The Regulations also omit Article 11 of the 2009 Order (which dealt with the recovery of fines) as it is now redundant (the relevant enforcement powers are now set out in Part 8 of the Marine and Coastal Access Act 2009) and update the relevant references to EU legislation found in Article 21 of the 2009 Order.

In relation to the 2014 Regulations, Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (“the Control Regulation”) requires Member States to establish a ‘penalty points’ system whereby masters of fishing vessels are assigned an appropriate number of points as a result of serious fisheries offences. The Regulations amend the 2014 Regulations to improve clarity regarding when a suspension or disqualification of a vessel master is to commence.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Regulations are made on a composite basis to maintain the clarity, accessibility and transparency of the statute book for those required to comply with its provisions. As this composite instrument is subject to approval by the National Assembly for Wales and by the UK Parliament, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

The Regulations are made subject to the negative procedure.

These Regulations are made under section 2(2) of the European Communities Act 1972 and section 30(2) of the Fisheries Act 1981. Instruments made under section 30(2) of the 1981 Act are subject to negative procedure (by virtue of section 30(4) of the 1981 Act). There is a choice of procedure in relation to instruments made under section 2(2) of the European Communities Act 1972. There were no factors indicating the use of affirmative procedure for these Regulations and bearing in mind both the powers in section 30(2) of the 1981 Act carries negative procedure and the two instruments being amended were made following negative procedure, it is proposed the Regulations are also made subject to the negative procedure. The amendments to the 2014 Regulations are made in response to a technical report issued by the Committee at the time of their making.

3. Legislative background

The Welsh Ministers make the Regulations in relation to Wales pursuant to powers in section 30(2) of the Fisheries Act 1981 and section 2(2) European Communities Act 1972.

For the purposes of section 2(2) of the 1972 Act, the Welsh Ministers are designated in relation to the Common Agricultural Policy and, therefore, the Common Fisheries Policy, by virtue of article 3(1) of the European Communities (Designation) (No 5) Order 2010 (SI 2010/760) in relation to Wales and the Welsh zone.

The Welsh Ministers are able to exercise powers under section 30(2) of the Fisheries Act 1981 in relation to Wales, the Welsh zone and Welsh fishing boats beyond that zone. Functions under section 30 of the 1981 Act were transferred to the National Assembly for Wales and then to the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006. Those functions were further transferred to the Welsh Ministers in relation to the Welsh zone by the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (SI 2010/760) and in relation to Welsh Fishing Boats beyond that zone by section 59A of and paragraph 2(1) of Schedule 3A to the Government of Wales Act 2006.

Council Regulation (EC) No. 1005/2008 (“the IUU Regulation”) establishes a Community system to prevent, deter and eliminate IUU fishing. Provisions in the IUU Regulation allow the European Council to list fishing vessels engaged in IUU fishing (“listed IUU vessels”) and countries which it considers are not cooperating in the fight against IUU fishing (“non-cooperating third countries”). Article 37 of the IUU Regulation sets out the measures that apply in relation to listed IUU vessels. Article 38 sets out the measures that apply in relation to non-cooperating third countries.

The 2009 IUU Order made provision for the enforcement of the IUU Regulation and Article 9 created offence provisions in respect of listed IUU vessels, implementing provisions of Article 37 of the IUU Regulation.

In 2014 Council Implementing Decision 2014/170/EU established the first list of non-cooperating third countries pursuant to the IUU Regulation.

This instrument implements the provisions of Article 38 of the IUU Regulation by extending the offence provisions in Article 9 of the 2009 IUU Order so that they relate to non-cooperating third countries.

This instrument also amends the 2014 Points for Masters Regulations. These 2014 Regulations set up a system for the allocation of points to masters of England, Wales and Northern Ireland fishing boats who have committed serious infringements of EU fisheries law in accordance with Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy. The 2014 Regulations provide for the setting up and maintenance of a register that details the points allocated to convicted masters and/or any disqualification that arises from them.

During the making of the 2014 Regulations the Assembly's Constitutional and Legislative Affairs Committee issued a technical report regarding the clarity of when a suspension or disqualification of a vessel master (pursuant to the other provisions of those 2014 Regulations) is to commence. These Regulations make the amendments necessary to provide that clarity.

4. Purpose & intended effect of the legislation

In 2014, the European Commission published, for the first time, a list of non-cooperating third countries and the 2009 IUU Order needs to be amended to take account of this list and to ensure that we can fully implement and enforce these measures and meet our obligations under the EU IUU Regulation. Failure to do so could leave the United Kingdom open to infraction proceedings as well as reputational damage arising from criticism from other member states and the wider Non-Governmental Organisation community.

The amendments to the 2009 IUU Order include amendments which extend the offence provisions in the 2009 IUU Order relating to non-cooperating third countries to implement the measures set out in Article 38 of the IUU Regulation. The extended offences are as follows:

1. importing fishery products caught by a fishing vessel flying the flag of a listed non-cooperating third country unless the products are from stock or species to which the listing does not apply,
2. purchasing a fishing vessel flying the flag of a listed non-cooperating country,
3. reflagging a fishing vessel flying the flag of a member state so that it flies the flag of a listed non-cooperating third country,
4. entering into a charter agreement in relation to a fishing vessel flying the flag of a listed non-cooperating third country,
5. exporting a community fishing vessel to a listed non-cooperating third country,
6. entering into an agreement for a fishing vessel flying the flag of a member state to use the fishing possibilities of the listed non-cooperating third country,
7. participating in joint fishing operations with a fishing vessel flying the flag of the listed non-cooperating third country.

The offences will be incorporated into those offences already listed in article 9 of the 2009 IUU Order.

The SI makes additional amendments to the 2009 Order, for the purposes of clarification and to update references to applicable EU instruments. It also revokes a provision in the 2009 IUU Order regarding recovery of fines, because there are now

enforcement powers, including provisions for forfeiture, set out in Part 8 of the Marine and Coastal Access Act 2009

This SI also amends the 2014 Points for Masters of Fishing Boats Regulations. These amendments have been made following a technical report of the Constitutional and Legislative Affairs Committee, upon the making of the 2014 Regulations, in relation to concerns about a lack of clarity regarding the start date of any suspension period or the disqualification of a master. This SI makes the necessary changes to the 2014 Regulations to improve clarity on this point.

5. Consultation

The measures in this Statutory Instrument do not require consultation as the intention is to make technical amendments to the 2009 Order and the 2014 Regulations in order to enable those instruments to reflect their original intention.

There are no plans to issue guidance. This is a simple measure the principal purpose of which is to extend offences to third countries identified as non-cooperating under the Illegal, Unreported and Unregulated fishing (IUU) legislation and to provide clarity with regard to the commencement of suspension periods and disqualification under the Points for Masters Regulations.

6. Regulatory Impact Assessment (RIA)

An RIA has not been completed for these Regulations. The Regulations are not expected to impose an additional cost on the public or voluntary sectors in Wales. Similarly, the Regulations are not expected to impose an additional cost on fisheries businesses which comply with the law, however, costs may be incurred by businesses which choose to operate outside of the law

Failure to introduce these Regulations risks infraction proceedings against the UK by the EU and the associated costs.