

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Fisheries (Amendment) (EU Exit) Regulations 2019

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Fisheries (Amendment) (EU Exit) Regulations 2019 (“2019 Regulations”) were laid before the Houses of Parliament on 04 December 2018. The Regulations can be found at:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

Summary of the Statutory Instrument and its objective

3. The objective of the 2019 Regulations is to make minor and technical changes which are necessary to ensure that the domestic laws which give effect to, and provide for the enforcement of certain Common Fisheries Policy (CFP) measures, marine management measures and related measures will continue to operate effectively after the UK leaves the European Union.
4. In accordance with this objective, the 2019 Regulations amend the following primary legislation:
 - The Fisheries Act 1981 (“The 1981 Act”).
 - The Marine and Coastal Access Act 2009 (“The 2009 Act”)

Relevant provision to be made by the SI

5. The amendments made to the 1981 Act by the 2019 Regulations, are to the following provisions:

The Act is amended as follows.

- 1.(1) The Fisheries Act 1981 (b) is amended as follows.
 - (2) In section 2—
 - (a) in subsection (1), omit “Subject to subsection (2A) below”;
 - (b) omit subsection (2A);
 - (c) in subsection (3), for “subsections (1) and (2A)” substitute “subsection (1)”.
 - (3) In section 14(2), in the words before paragraph (a), for “sections 2(2A) and 3(5)” substitute “section 3(5)”.
 - (4) In section 30, insofar as it extends to England and Wales and Scotland—
 - (a) in the heading, for “Community rules” substitute “rules relating to sea fishing”;

- (b) in subsection (1), in the words before paragraph (a), for “enforceable Community restrictions, and enforceable EU obligations,” substitute “retained EU restrictions and retained EU obligations”;
- (c) in subsection (2), for “enforceable Community restriction or other” substitute “retained EU restriction or retained EU”;
- (d) in subsection (3), for the definition of “enforceable Community restriction” and “enforceable EU obligation” substitute—
 - ““retained EU restriction” means a restriction that—
 - (a) was created or arose by or under the EU Treaties before exit day, and
 - (b) forms part of retained EU law,
 as modified from time to time;”.

(5) Omit section 31(3).

6. The 2019 Regulations make amendments concerning the duties of the Sea Fish Industry Authority, a UK body that exercises functions in relation to Wales, in relation to the sea fish industries of member States, Part III concerns the enforcement of EU restrictions or obligations under the CFP, and Part IV concerns financial assistance for fish farming, relating to technical and operability amendments.

7. The amendments made to the 2009 Act by the 2019 Regulations, are to the following provisions:

2.The Marine and Coastal Access Act 2009 (a)is amended as follows.

(1) In section 238—

- (a) in subsection (2)(b), for “enforceable EU restrictions and enforceable EU obligations” substitute “retained EU restriction or retained EU obligation”;
- (b) in subsection (10)—
 - (i) omit the definitions of “enforceable EU obligation” and “enforceable EU restriction”;
 - (ii) after the definition of “relevant British fishing boat” insert—
 - ““retained EU restriction” means a restriction that—
 - (a) was created or arose by or under the EU Treaties before exit day, and
 - (b) forms part of retained EU law,
 as modified from time to time;”.

(2) In section 278(6)—

- (a) in the definition of “the fisheries legislation”, in paragraph (b), for “enforceable EU restrictions and enforceable EU obligations” substitute “retained EU restriction or retained EU obligation”;
- (b) for the definitions of “enforceable EU obligation” and “enforceable EU restriction” substitute—
 - ““retained EU restriction” means a restriction that—
 - (a) was created or arose by or under the EU Treaties before exit day, and
 - (b) forms part of retained EU law,
 as modified from time to time.”.

8. Amendments to sections 238 and 278(6) of the 2009 Act concern the enforcement powers of Marine Enforcement Officers in relation to EU restrictions or obligations under the CFP, and rules regarding forfeiture of fish or fishing gear following a conviction for a sea fishing offence. Welsh Ministers have the function of appointing Marine Enforcement Officers in Wales.

9. . Section 108A of the Government of Wales Act 2006 (GOWA 2006) enables the National Assembly for Wales (NAW) to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to GOWA 2006. In relation to fisheries management, the NAW has legislative competence in relation to Wales.

Why it is appropriate for the SI to make this provision

10. There is no divergence between the Welsh Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

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