

## **Explanatory Memorandum to the Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019.**

This Explanatory Memorandum has been prepared by the Department for Energy, Environment and Rural Affairs 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 Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

Lesley Griffiths

**Minister for Environment, Energy and Rural Affairs.**

27 February 2019

## **1. Description**

- 1.1. The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019 (the “2019 Regulations”) make amendments to the following domestic instruments:
  - a. The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006,
  - b. The Marine Licencing (Exempted Activities) (Wales) Order 2011; and
  - c. The European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016.
- 1.2. The amendments are required to ensure that the statute book remains operable following the UK’s exit from the EU by addressing deficiencies in domestic legislation arising from EU Exit.
- 1.3. The instrument comes into force on “exit day”, which section 20(1) of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) defines as 29 March 2019 at 11.00 pm.

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

- 2.1 The 2019 Regulations are made in exercise of the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act.
- 2.2 As set out in the Ministerial Statement in Part 2 of the Annex to this Explanatory Memorandum, it is proposed that the instrument be subject to the negative procedure.
- 2.3 The CLA Committee considered a draft of these regulations on 18 February 2019, and agreed that the negative procedure is appropriate for these regulations. A copy of the published CLA report can be accessed via the following link: <http://www.assembly.wales/laid%20documents/cr-ld12192/cr-ld12192-e.pdf>

## **3. Legislative Background**

- 3.1 The 2019 Regulations are made in order to address deficiencies in domestic legislation and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

## **4. Purpose and Intended effect of the Legislation**

- 4.1 The 2019 Regulations make amendments to subordinate legislation, which apply in relation to Wales and the Welsh zone, in the fields of fisheries and marine management.

**What did the relevant legislation do before exit day?**

- 4.2 The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006 make provision for the administration and enforcement of Article 22 of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, and Article 9 of Council Regulation (EEC) No 2847/93 which impose requirements relating to the first marketing and purchasing of fish (first sale fish) (now repealed and replaced by Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy). The Regulations also make provision for the registration by the Welsh Ministers of sellers of first sale fish, designation of fish auction sites and registration of buyers of first sale fish. The Regulations require registered fish sellers to maintain records of their sales of first sale fish and require buyers of first sale fish to maintain records of their purchases of first sale fish.
- 4.3 The Marine Licensing (Exempted Activities) (Wales) Order 2011 specifies activities which do not need a marine licence, or do not need a marine licence if conditions specified within the Order are satisfied. It applies in relation to any licensable marine activity carried on in Wales and the Welsh inshore region, in relation to which the Welsh Ministers are the appropriate licensing authority under section 113 of the Marine and Coastal Access Act 2009 (Article 2). The Order also contains provisions, relating to waste (which implement in part Directive 2008/98/EC of the European Parliament and of the Council on waste).
- 4.4 The European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016 apply to the operational programme established under Regulation (EU) No 508/2014 on the European Maritime and Fisheries Fund and Regulation (EU) No 1303/2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund. These Regulations provide that the Welsh Ministers may make payments for approved operations (defined in Title V of Regulation (EU) 508/2014). These Regulations enable operations to be approved by the Welsh Ministers in Wales, thus allowing for the payment of funds, and also provide powers of entry and inspection that may be exercised by the Welsh Ministers, and stipulate record keeping requirements for those who benefit from the financial assistance available.

#### **What are the changes being made**

- 4.5 The changes made by the 2019 Regulations are necessary to ensure that the current legislation continues to operate effectively after we leave the EU.
- 4.6 **The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006**

The 2019 Regulations amend regulation 2(1) of these Regulations to redefine the meaning of “licenced fishing vessel” so that it no longer refers to “another Member State”. This will result in only vessels licenced under section 4 of the

Sea Fish (Conservation) Act 1967 being recognised as ‘licenced fishing vessels’ for the purposes of the 2006 Regulations. .

#### 4.7 **The Marine Licencing (Exempted Activities) (Wales) Order 2011**

The 2011 Order includes a cross reference to the Waste Framework Directive 2008/98/EC (WFD). As European Directives are not being incorporated into domestic law under the European Union (Withdrawal) Act 2018, a non-textual modification to the WFD has been included in the amendments to the 2011 Order to enable the WFD to be read correctly for the purposes of domestic law.

This modification provides for changes such as identifying the “Competent Authority” as the Welsh Ministers, Natural Resources Wales or a Local Authority, which immediately before exit day was responsible for the UK’s compliance with an obligation, or exercised a discretion in relation to that obligation in respect of Wales. Such changes will allow the 2011 Order to operate effectively on exit from the European Union. The 2019 Regulations also amend the definition of a ‘third country vessel,’ by removing the reference to Gibraltar. Any vessel that is not registered in the UK will therefore be considered a third country vessel for the purposes of Article 4 of the 2011 Order.

#### 4.8 **The European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016**

The 2016 Regulations have been amended to recognise that upon exiting the EU, the UK will no longer be a beneficiary of the European and Maritime Fisheries Fund (EMFF) scheme. Future funding will come from HM Treasury. In line with this change, and the amendments that are to be made to the Retained EU Regulation 508/2014, the 2016 Regulations will in future apply to financial assistance provided to the fishing and aquaculture sector in the UK.

Amendments such as that to Regulation 2(1) and the definition of “operation” have therefore been made. This amendment removes reference to ‘EU assistance’ and instead refers to “assistance pursuant to Regulation 508/2014”. Consequently the same amendment is made to Regulation 8(2)(d). This amendment is required as Title V of Regulation 508/2014 will form part of Retained EU law, and will provide guidance on the nature of operations that will qualify for assistance under the new funding structure post EU exit.

In Regulation 2(1) the definition of “authorised person” is amended to remove the wording “and includes any duly appointed official of the Commission who accompanies such an authorised person”.

Further, Regulation 2(3) is inserted to provide clarification that an ‘approved operation’ for the purposes of the 2016 Regulations includes an operation approved by the Welsh Ministers in line with Regulation 4 of the 2016 Regulations before exit day. This provision makes express reference to ‘exit day’ and this will be interpreted in line with the Interpretation Act 1978

definition, as amended by paragraph 22 of Schedule 8 to, and sections 20(1)-(5) of the 2018 Act.

## **5. Consultation**

- 5.1 The amendments required are of a technical nature and do not alter the intended purpose of the specified Regulations. Therefore, no public consultation was undertaken.

## **6. Regulatory Impact Assessment**

- 6.1 The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations. This legislation has no impact on the statutory duties (sections 77-79 Government of Wales Act 2006) or statutory partners (sections 72-75 Government of Wales Act 2006).

## **7. Monitoring & review**

- 7.1 As this instrument is made under the Withdrawal Act, no extra review arrangement is required.

## Annex

### 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 of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7  <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI  Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		Ministers have committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

## Part 2

### Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

#### 1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because the changes being made are technical in nature and make no substantive changes to how the three Instruments included in this Regulation operate”.

#### 2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit”.



### **3. Good reasons**

The Minister for Environment, Energy and Rural Affairs 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. This is because the provisions ensure that protections provided by all the statutory instruments being amended continue to be operable after the UK leaves the European Union.”

### **4. Equalities**

4.1 The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019 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.”

4.2 The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths 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.”

### **5. Explanations**

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

### **6. Criminal offences**

Not applicable/required.

### **7. Legislative sub-delegation**

Not applicable/required.

### **8. Urgency**

Not applicable/required.