

SL(5)220 – The Sea Fishing (Miscellaneous Amendments) Regulations 2018

Background and Purpose

These Regulations amend the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 and the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014. They implement provisions of Article 38 of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Procedure

Negative, composite.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(ix) – the instrument is not made in both English and Welsh

These Regulations have been made as a composite instrument, meaning that these Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament.

The Explanatory Memorandum to the Regulations states that, because of the composite nature of the Regulations, it was not considered reasonably practicable for the Regulations to be made in English and Welsh.

Merits Scrutiny

Three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

EU law requires Member States to enforce certain prohibited sea fishing activities, such as importing fish caught by a fishing vessel of a non-cooperating third country. In March 2014, the Council of the European Union published, for the first time, a list of countries that have not cooperated with the EU in respect of illegal, unreported and unregulated sea fishing. The countries on the list are Belize, the Kingdom of Cambodia and the Republic of Guinea.

Those countries were specified as non-cooperating countries in March 2014. It is unclear why it has taken until May 2018 to make these Regulations to enforce prohibited activities against those non-cooperating countries.



2. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

The application of these Regulations relies on definitions such as “areas within the seaward limits of the territorial sea adjacent to England” and “part of the sea within British fishery limits which is to be treated as adjacent to Wales” etc.

To work out the precise meaning of these areas, it is necessary to look at many pieces of legislation and plot a large number of co-ordinates.

We recommend that, in future, simple maps be included in Explanatory Memoranda, to provide an at-a-glance summary of the relevant sea areas.

3. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

Some of the changes made by these Regulations arose out of technical reporting points raised by this Committee in January 2015. While we welcome those changes being made (in respect of Wales, England, Northern Ireland and, partly, Scotland), we note that it has taken almost three and a half years for the changes to be made.

Implications arising from exiting the European Union

These Regulations implement and enforce EU obligations in respect of sea fishing, and therefore these Regulations will form part of retained EU law after exit day.

The Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks states that “fisheries management and support” is a policy area likely to be subject to clause 15 regulations under the EU (Withdrawal) Bill. Therefore, the law covered by these Regulations is likely to be an area of EU law that is frozen while common frameworks are put in place.



Government Response

Response to Technical Scrutiny Reporting Points

Point 1: Standing Order 21.2 (ix) – The instrument is not made in both English and Welsh

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 (which amends two earlier instruments also made on a composite basis) 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.

Response to Merits Scrutiny Points

1. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

Point 1.

The reporting point is noted.

In practice, the likelihood of Illegal, Unreported and Unregulated fishing by the non-cooperating countries listed in 2014 having a connection with the United Kingdom is relatively small and even less likely in connection with Wales.

In light of the minimal risk involved, it has been appropriate to wait for a composite SI process between Welsh Government and the Department of Environment, Food and Rural Affairs in Westminster. A separate initiative by Welsh Government would have resulted in the legislation in this subject area residing in separate legislative documentation which would potentially be confusing to those to whom it applies.

It is now important that legislation is enacted to allow the transposition of EU regulations in the event of the UK departure from the European Union.

Point 2.

The reporting point is noted.

Explanatory Memoranda will in future contain maps as suggested in similar circumstances.

Point 3.

The reporting point is noted.

In practice, the implementation of the 'Points for Master's' scheme had stalled at EU level following disagreements as to the seriousness, and thereby the level of points being ascribed by, individual Member States for similar offences amid concerns that a 'level playing field' was not being maintained.



In light of these circumstances and the extent to which domestic and other EU regulations apply to deter non-compliance with fisheries regulations generally, it has been appropriate to wait for a composite SI process between Welsh Government and the Department of Environment, Food and Rural Affairs in Westminster. A separate initiative by Welsh Government would have resulted in the legislation in this subject area residing in separate legislative documentation which would potentially be confusing to those to whom it applies.

It is now important that legislation is enacted to allow the transposition of EU regulations in the event of the UK departure from the European Union.

Committee Consideration

The Committee considered the instrument at its meeting on 11 June and reports to the Assembly in line with the technical and merits points above. The Committee agreed to write to the Cabinet Secretary for Energy, Planning and Rural Affairs.

