**EXPLANATORY MEMORANDUM TO**

**THE ANTARCTIC ACT 1994 (CONVENTION ON THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES) REGULATIONS 2020**

**2020 No. 1251**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development Office (FCDO) and is laid before Parliament by Command of Her Majesty.

## 2. Purpose of the instrument

2.1 These Regulations which this memorandum accompanies implement into UK law key provisions of the Convention for the Conservation of Antarctic Marine Living Resources (the 'Convention'), following the UK's departure from the European Union. The Regulations will ensure the UK meets its obligations under the Convention, and complies with legally binding conservation measures as adopted by the Commission for the Conservation of Antarctic Marine Living Resources (the 'Commission') relating to authorising vessels to fish.

2.2 These Regulations will ensure that there is immediate continuity in the control of access for British fishing vessels (which are vessels registered in the UK including in the Devolved Administrations, the Crown Dependencies, and the Overseas Territories under the definition of "British vessel" in section 1 of the Merchant Shipping Act 1995) to the area covered by the Convention (the 'Convention Area') to fish for profit. These Regulations also create new criminal offences, applying to any British vessel that enters the Convention Area, or fishes for profit within the Convention Area, without an authorisation from the Secretary of State, or in breach of any condition of an authorisation.

2.3 These Regulations will ensure the UK can continue to comply with its obligations under the Convention with regard to the System of Inspection and Scheme of International Scientific Observation as adopted by the Commission. The Regulations will partially implement the UK's obligations under the Convention with regard to the Commission's Catch Documentation Scheme for toothfish.

***Explanations***

*What did any relevant EU law do before exit day?*

2.4 The relevant EU law is contained in Council Regulation (EC) No. 600/2004 (laying down certain technical measures applicable to fishing activities in the Convention Area), Council Regulation (EC) No. 601/2004 (laying down certain control measures applicable to fishing activities in the Convention Area), and Council Regulation (EC) No. 1035/2001 (establishing a Catch Documentation Scheme for toothfish).

2.5 Council Regulation (EC) No. 600/2004 includes measures applying to EU fishing vessels, covering permitted fishing gear, use and disposal of plastic packaging bands, incidental mortality of seabirds and marine mammals, bycatch, and special measures

applicable to each fishery. It also covers the requirements for EU vessels under the Commission's Scheme of International Scientific Observation.

2.6 Council Regulation (EC) No. 601/2004 includes measures covering access for EU vessels to the Convention Area to fish for profit, and the data reporting requirements for these vessels; the requirements for inspectors designated by EU Member States; requirements on EU Member States to conduct port inspections of EU fishing vessels which enter their ports; and Illegal, Unregulated and Unreported (IUU) fishing activities and non-contracting party vessels.

2.7 Council Regulation (EC) No. 1035/2001 lays down the general rules and conditions governing the implementation by the EU of the Commission's Catch Documentation Scheme for toothfish. This legislation will be incorporated into UK law through separate legislation. The Department for Environment, Food and Rural Affairs (Defra) leads on this. Council Regulation (EC) No. 1035/2001 will continue to apply in Northern Ireland after the end of the Implementation Period.

*Why is it being changed?*

2.8 With the UK's withdrawal from the EU, there is a need to implement into UK law legislation controlling access for British vessels to fisheries in the Convention Area; provisions relevant to the Commission's Catch Documentation Scheme; provisions relevant to the Commission's System of Inspection; and provisions relevant to the Commission's System of International Scientific Observation. These new Regulations will come into force at the end of the Implementation Period.

*What will it now do?*

2.9 These Regulations ensure there is legislation in place controlling the access of British vessels to the Convention Area to fish for profit. Any British vessel, having obtained a fishing licence to fish in the Convention Area from a UK fisheries administration (including the Devolved Administrations, Crown Dependencies and Overseas Territories), must then obtain an authorisation from the Secretary of State before that vessel can fish in the Convention Area. The Secretary of State must consult the relevant fishing administration that issued the licence before determining whether to grant an authorisation. The Secretary of State may revoke, vary or suspend an authorisation.

2.10 The Regulations create new criminal offences. Anyone who enters the Convention Area, or fishes for profit from a British vessel in the Convention Area, without an authorisation or in contravention of an authorisation, and the master or operator of such vessel, commits an offence. Anyone supporting or profiting from any of these activities also commits an offence. The penalty for these offences is a maximum of two years' imprisonment (or custody in the Isle of Man). The Regulations also create various defences to the offences.

2.11 The Regulations provide the Secretary of State with power to designate UK inspectors under the Convention, to carry out the functions set out in the System of Inspection agreed by the Commission. UK inspectors must submit all documentation pertaining to at-sea inspections of fishing vessels to the Secretary of State, and the Secretary of State must then submit the reports to the Commission, within the timeframes set out in the System of Inspection. The Secretary of State must report to the Commission on

the laying of any charges or initiation of any proceedings resulting from the inspection of any of the Commission's authorised vessels.

2.12 The Regulations provide the Secretary of State with power to designate UK observers under the Convention, to carry out the functions set out in the Scheme of International Scientific Observation as agreed by the Commission. These observers are placed on other Member States' fishing vessels where the UK has a bilateral agreement in place. UK observers must provide a report to the Secretary of State after each trip, which must be submitted by the Secretary of State to the Commission no later than one month after the observer's return to their home country.

2.13 The Regulations partially implement the UK's obligations under the Convention with regard to the Catch Documentation Scheme for toothfish as agreed by the Commission. The Regulations provide the Secretary of State with power to designate UK Catch Documentation Scheme officers, to carry out the functions as agreed by the Commission in the relevant legally binding conservation measures.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 None.

***Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)***

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom, the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man.

4.2 The territorial application of this instrument is the United Kingdom, the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man.

## 5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 6. Legislative Context

6.1 From 1 January 2021, these Regulations will serve the functions previously served by Council Regulations (EC) No. 600/2004 and No. 601/2004, and will ensure that the UK continues to meet its obligations under the Convention, and complies with the legally binding conservation measures as adopted by the Commission relating to authorising vessels to fish in the Convention Area.

The EC Regulations will be revoked in a Statutory Instrument under the EU (Withdrawal) Act 2018 later this year for which Defra is the lead department.

## 7. Policy background

***What is being done and why?***

7.1 The UK has long-term conservation and sustainable resource management interests in the Antarctic. The Commission, which is an intrinsic part of the Antarctic Treaty System, is a conservation organisation. The Commission also manages the fish stocks in the Southern Ocean around Antarctica, which includes agreeing catch limits for the waters around the UK Overseas Territories of South Georgia and the South Sandwich Islands and the British Antarctic Territory, through a set of legally binding conservation measures. The UK plays a leading role in the Commission.

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7.3 The Commission sets the framework to allow fishing vessels to operate in the Southern Ocean. There is strong interest within the fishing industry in the profitable toothfish fisheries in the Convention Area, so it is vital to make sure there is legislation in place regulating access to these fisheries by British vessels. The Regulations ensure that the UK complies with the legally binding conservation measures relating to authorising fishing in the Convention Area.

7.4 The Regulations also ensure a consistent approach with the Antarctic Act 1994 to any unauthorised activities in Antarctica. The Antarctic Act requires anyone entering Antarctica for a purpose other than fishing for profit to obtain a permit, confirming their plans are in full compliance with the Antarctic Treaty and its Protocol on Environmental Protection. These Regulations ensure similar prior authorisation for anyone intending to fish for profit in the Convention Area. The Regulations also provide consistency of offences for anyone entering Antarctica without the appropriate prior authorisation.

7.5 The Regulations also ensure the UK can continue to comply with its obligations under the Commission's System of Inspection, Scheme of International Scientific Observation and the obligation to appoint Catch Documentation Scheme officers.

## 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it replaces EU legislation.

## 9. Consolidation

9.1 This is not a consolidation.

## 10. Consultation outcome

10.1 No formal consultation was undertaken, as there is no real change in the relevant regulatory frameworks.

## 11. Guidance

11.1 The Regulations oblige the Secretary of State to publish guidance relating to access to CCAMLR fisheries by British vessels. The guidance will set out the relevant legally binding conservation measures in place for each fishing season as set by the Commission (currently 1 December to 30 November of following year); the guidance will also contain information on the authorisation process. Before issuing and publishing any guidance, the Secretary of State must consult the fishing administrations.

11.2 The guidance will be available at www.gov.uk and will be able to be obtained by contacting the Polar Regions Department, Foreign, Commonwealth and Development Office, King Charles Street, London, SW1A 2AH; polarregions@fcdo.gov.uk.

## 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 it relates to maintenance of existing regulatory standards.

## 13. Regulating small business

13.1 The legislation applies to activities that could be undertaken by small businesses: specifically access to the Convention Area to fish for profit, by fishing companies operating UK, Crown Dependency and Overseas Territory registered vessels.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

## 14. Monitoring & review

14.1 The effectiveness of this legislation will be monitored closely, and any amendments made if necessary.

14.2 The Regulations do not include a statutory review clause, and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Baroness Sugg, Parliamentary Under Secretary of State at the Foreign, Commonwealth and Development Office, has made the following statement: the Minister considers a review provision would not be appropriate and would be disproportionate. The Regulations require businesses to apply for an authorisation, which they are currently required to do and are required to implement our international obligations, and provide certainty on the future regulatory framework. The Regulations will not lead to any new impacts on small businesses affected by this legislation

## 15. Contact

15.1 Patrick Halling at the Foreign, Commonwealth and Development Office, Telephone: 0207 008 8523, or email: patrick.halling@fcdo.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Jane Rumble, Head of the Polar Regions Department, at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.

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