Draft Regulations laid before Parliament under paragraphs 1(1) and 8F(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No. 0000

EXITING THE EUROPEAN UNION

SEA FISHERIES

The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 8(1) and 8C(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**), makes the following Regulations.

In accordance with paragraphs 1(1) and 8F(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020.

(2) Subject to paragraph (3), these Regulations come into force immediately before IP completion day.

(3) Regulations 4 to 7 come into force on IP completion day.

Amendment of the Fisheries (Amendment) (EU Exit) Regulations 2019 in consequence of the European Union (Withdrawal Agreement) Act 2020

2.—(1) Regulation 3 of the Fisheries (Amendment) (EU Exit) Regulations 2019(**b**) is amended as follows.

(2) In paragraph (4), for sub-paragraphs (b), (c) and (d) substitute—

"(b) in subsection (1), in the words before paragraph (a), for "enforceable Community restrictions, and enforceable EU obligations," substitute "retained EU restrictions relating to sea fishing, retained EU obligations relating to sea fishing, Northern

(**a**) 2018 c. 16; section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) ("the 2020 Act"); section 8C was inserted by section 21 of the 2020 Act; paragraph 8F of Schedule 7 was inserted by paragraph 51 of Schedule 5 to the 2020 Act; paragraph 21 of Schedule 7 was amended by paragraph 53 of Schedule 5 to the 2020 Act.

(**b**) S.I. 2019/746; amended by the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/XXX).

Ireland Protocol restrictions relating to sea fishing and Northern Ireland Protocol obligations,";

(c) in subsection (2), for "enforceable Community restriction or other obligation" substitute "retained EU restriction relating to sea fishing, retained EU obligation relating to sea fishing, Northern Ireland Protocol restriction relating to sea fishing or Northern Ireland Protocol obligation";

(d) in subsection (3), omit the definition of "enforceable Community restriction" and "enforceable EU obligation" and, in the appropriate places, insert the following definitions—

""Northern Ireland Protocol" means the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;";

""Northern Ireland Protocol obligation" means any obligation created or arising by or under the Northern Ireland Protocol, whether or not an obligation to which section 7A(2) of the European Union (Withdrawal) Act 2018 applies;";

""Northern Ireland Protocol restriction" means any restriction created or arising by or under the Northern Ireland Protocol, whether or not a restriction to which section 7A(2) of the European Union (Withdrawal) Act 2018 applies;";

""retained EU restriction" means a restriction that—

(a) was created or arose by or under the EU Treaties before IP completion day, and

(b) forms part of retained EU law,

as modified from time to time;".".

(3) In paragraph (5), for sub-paragraphs (b), (c) and (d) substitute—

"(b) in subsection (1), in the words before paragraph (a), for "enforceable EU restrictions, and enforceable EU obligations," substitute "retained EU restrictions relating to sea fishing, retained EU obligations relating to sea fishing, Northern Ireland Protocol restrictions relating to sea fishing and Northern Ireland Protocol obligations,";

(c) in subsection (2), for "enforceable EU restriction or other obligation" substitute "retained EU restriction relating to sea fishing, retained EU obligation relating to sea fishing, Northern Ireland Protocol restriction relating to sea fishing or Northern Ireland Protocol obligation";

(d) in subsection (3), omit the definition of "enforceable EU restriction" and "enforceable EU obligation" and, in the appropriate places, insert the following definitions—

""Northern Ireland Protocol" means the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;";

""Northern Ireland Protocol obligation" means any obligation created or arising by or under the Northern Ireland Protocol, whether or not an obligation to which section 7A(2) of the European Union (Withdrawal) Act 2018 applies;";

""Northern Ireland Protocol restriction" means any restriction created or arising by or under the Northern Ireland Protocol, whether or not a restriction to which section 7A(2) of the European Union (Withdrawal) Act 2018 applies;";

""retained EU restriction" means a restriction that—

(a) was created or arose by or under the EU Treaties before IP completion day, and

(b) forms part of retained EU law,

as modified from time to time;".".

Amendment of the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 in consequence of the European Union (Withdrawal Agreement) Act 2020

3.—(1) The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019(**a**) are amended as follows.

(2) In regulation 9—

(a) in paragraph (3), for sub-paragraphs (a) to (d) substitute—

"(a) for point (b) substitute—

"(b) 'Domestic trade' means trade in Great Britain in bluefin tuna caught in the ICCAT Convention Area by a United Kingdom catching vessel or trap, which is landed in Great Britain, or which is caged in a farm established in the United Kingdom;";

(b) in point (c)—

(i) after "third country" insert "or Northern Ireland",

(ii) for "Union" in the first place it occurs, substitute "United Kingdom", and

(iii) for "the territory of the Union" substitute "Great Britain";

(c) in point (d), for "the territory of the Union" substitute "Great Britain";

(d) in point (e), for "the territory of the Union" in both places it occurs, substitute "Great Britain";";

(b) in paragraph (4)—

(i) in sub-paragraph (a)—

(aa) in paragraph (ii), omit "and", and

(bb) after paragraph (ii), insert—

"(iia) after "ports," insert "and", and",

(ii) in sub-paragraph (b)—

(aa) for "territory" substitute "the territory", and

(bb) for "United Kingdom" substitute "Great Britain",

(iii) in sub-paragraph (d), for "8; and" substitute "7;", and

(iv) after sub-paragraph (d), insert—

"(da) in paragraph 8—

(i) for "Flag or trap Member States shall" substitute "A fisheries administration must only", and

(ii) for "only to their" substitute "to"; and";

(c) in paragraph (5)(a), in the new paragraph 2 to be substituted by that paragraph, for "the United Kingdom" substitute "Great Britain";

(d) in paragraph (7)(b), for "the United Kingdom" substitute "Great Britain";

(e) in paragraph (8), in the new paragraph 1 to be substituted by that paragraph, for "Where the United Kingdom is the re-exporting country" substitute "Where a re-export from Great Britain takes place"; and

(f) in paragraph (10)(a)(iii), for "the United Kingdom" substitute "Great Britain".

Amendment of Council Regulation (EC) No 1035/2001

4.—(1) Council Regulation (EC) No 1035/2001 establishing a catch documentation scheme for Dissostichus spp. is amended as follows.

(**a**) S.I. 2019/753; amended by S.I. 2019/1312 and the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/XXX).

(2) In Article 1, omit "by the Community".

(3) In Article 2—

(a) in paragraph 1—

(i) in point (a), for "Community" substitute "United Kingdom", and

(ii) in point (b), for "the Community" substitute "Great Britain";

(b) omit paragraph 3.

(4) In Article 3—

(a) in point (d)—

(i) after "State" insert "or from Northern Ireland into Great Britain", and

(ii) after "except" insert "(in either case)";

(b) in point (f)—

(i) in the first indent, after "State", in the second place it occurs, insert "or its removal from Great Britain to Northern Ireland or vice versa", and

(ii) in the second indent, for "faciliate" substitute "facilitate";

(c) for point (g) substitute—

"(g) 'export' means any movement of a catch in its harvested or processed form:

— from the territory under the control of a State or free trade zone of landing, or, where that State or free trade zone forms part of a customs union, any other Member State of this customs union, or

— where Great Britain is the place of landing, from Great Britain;"; and

(d) for point (h) substitute—

"(h) 're-export' means any movement of a catch in its harvested or processed form:

— from territory under the control of the State, free trade zone, or Member State of a customs union of import unless that State, free trade zone, or any Member State of that customs union of import is the first place of import, in which case the movement is an export within the definition in point (g), or

— where Great Britain is the place of import, from Great Britain, unless Great Britain is the first place of import, in which case the movement is an export within the definition in point (g);".

(5) In Article 4—

(a) in paragraphs 1 and 2, for "Member States shall" substitute "A fisheries administration must"; and

(b) in paragraph 3—

(i) for "Member States shall" substitute "A fisheries administration must", and

(ii) for "their flag" substitute "United Kingdom fishing".

(6) In Article 5—

(a) for "Member States shall" substitute "A fisheries administration must"; and

(b) for "their flag" substitute "United Kingdom fishing".

(7) In Article 6—

(a) for "Member States shall" substitute "A fisheries administration must"; and

(b) for "of their flag vessels" substitute "United Kingdom fishing vessel".

(8) In Article 7—

(a) in the first paragraph—

(i) for "Member States shall" substitute "A fisheries administration must", and

(ii) for "they issue" substitute "it issues"; and

(b) in the second paragraph—

(i) for "They shall" substitute "A fisheries administration must",

(ii) for "they have" substitute "it has", and

(iii) for "their flag" substitute "the".

(9) In Article 8—

(a) in paragraph 1—

(i) for "Community" substitute "United Kingdom", and

(ii) for "shall" substitute "must"; and

(b) in paragraph 2—

(i) for "shall" in each place it occurs, substitute "must",

(ii) in the words before point (a), for "Community" substitute "United Kingdom",

(iii) in point (a), for "he" substitute "the master", and

(iv) in point (d)—

(aa) for "the Flag Member State of the vessel" substitute "a fisheries administration",

(bb) for "Flag Member State" in the second place it occurs, substitute "fisheries administration", and

(cc) omit the second subparagraph.

(10) In Article 9—

(a) in the first paragraph, for "the Flag Member State shall" substitute "a fisheries administration must"; and

(b) omit the final subparagraph.

(11) In Article 10—

(a) for "shall" in each place it occurs, substitute "must";

(b) in paragraph 1, in the words before point (a), for "Community" substitute "United Kingdom";

(c) in paragraph 2, omit the second subparagraph; and

(d) in paragraph 3—

(i) in the first subparagraph, for "the Flag Member State of the vessel" substitute "a fisheries administration", and

(ii) omit the second subparagraph.

(12) In Article 11—

(a) in the first paragraph—

(i) for "Community" substitute "United Kingdom",

(ii) for "shall" substitute "must", and

(iii) for "the Flag Member State" substitute "a fisheries administration";

(b) omit the second subparagraph.

(13) In Article 12—

(a) for "shall" in each place it occurs, substitute "must";

(b) in paragraph 1, in the words before the first indent, for "Community" substitute "United Kingdom";

(c) in paragraph 2, omit the second subparagraph; and

(d) in paragraph 3, omit the second subparagraph.

(14) In the heading of Chapter 4, for "Member States" substitute "a fisheries administration".

(15) In Article 13—

(a) in paragraph 1—

(i) for "Member States shall" substitute "A fisheries administration must", and

(ii) for "their territory" substitute "Great Britain";

(b) in paragraph 2, in the first subparagraph, for "Member State", in each place it occurs, substitute "fisheries administration";

(c) in paragraph 3—

(i) for "Member States shall" substitute "A fisheries administration must",

(ii) for "Commission and the other Member States" substitute "other fisheries administrations", and

(iii) for "Member State" substitute "fisheries administration"; and

(d) after paragraph 3, insert—

"4. In paragraph 3, "the other fisheries administrations" does not include the Department for Agriculture, Environment and Rural Affairs in Northern Ireland.".

(16) In Article 14—

(a) for "Member States shall" substitute "A fisheries administration must"; and

(b) for "their" substitute "its".

(17) In Article 15—

(a) in paragraph 1—

(i) for "Member States shall" substitute "A fisheries administration must", and

(ii) for "their territory" substitute "Great Britain";

(b) in paragraph 2—

(i) for "Member States shall" substitute "A fisheries administration must",

(ii) for "their" in the first place it occurs, substitute "its", and

(iii) for "their territory" substitute "Great Britain";

(c) in paragraph 3—

(i) for "Member States shall" substitute "A fisheries administration must", and

(ii) for "Commission" substitute "other fisheries administrations"; and

(d) after paragraph 4, insert—

"5. In paragraph 3, "the other fisheries administrations" does not include the Department for Agriculture, Environment and Rural Affairs in Northern Ireland.".

(18) In Article 16, in the first paragraph—

(a) for "Member States shall" substitute "A fisheries administration must"; and

(b) for "their territory" substitute "Great Britain".

(19) In Article 17—

(a) after "importation" insert "into"; and

(b) after "exportation" insert "from Great Britain".

(20) In Article 18—

(a) in paragraph 1—

(i) in the words before point (a), for "the Member State of landing" substitute "Great Britain, where Great Britain is the place of landing", and

(ii) in the words after point (c), for "the exporting Member State" substitute "a fisheries administration"; and

(b) omit paragraph 2.

(21) In Article 19—

(a) in paragraph 1—

(i) for "shall" in both places it occurs, substitute "must",

(ii) in the words after point (b)—

(aa) for "He" substitute "The re-exporter", and

(bb) for "in the re-exporting Member State" substitute "of a fisheries administration"; and

(b) omit paragraph 2.

(22) In Article 20—

(a) in paragraph 1—

(i) for "The Flag Member State shall" substitute "A fisheries administration must", and

(ii) for "Commission" substitute "other fisheries administrations";

(b) in paragraph 2—

(i) for "Member States shall" substitute "A fisheries administration must", and

(ii) for "Commission" substitute "other fisheries administrations"; and

(c) after paragraph 2, insert—

"3. In paragraph 2, "the other fisheries administrations" does not include the Department for Agriculture, Environment and Rural Affairs in Northern Ireland.".

(23) In Article 21, for "Member States shall notify the Commission, which shall" substitute "The Secretary of State must".

(24) Omit Article 22.

(25) In Article 22a—

(a) for "Member State" substitute "fisheries administration";

(b) for "shall" in each place it occurs, substitute "must"; and

(c) for "Member States" substitute "a fisheries administration".

(26) Omit Articles 23 to 26.

(27) In Annex 1, in point 2(vi), omit the words from "(for Community vessels" to the end.

Application of Regulation (EC) No 1005/2008 to Northern Ireland

5.—(1) Subject to the modifications in paragraph (3), the provisions of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing(**a**) listed in paragraph (2) have effect in Northern Ireland.

(2) The provisions are—

(a) Chapter 1, so far as relevant for the purposes of the other provisions listed in this paragraph;

(b) Chapter 2;

(c) Chapter 5;

(d) Article 37;

(e) Articles 54, 54A and 54D.

(3) The modifications are that—

(a) Article 2 is to be read as if—

(i) in point 20, for "the United Kingdom" there were substituted "Northern Ireland", and

(ii) after point 23, there were inserted—

(**a**) EUR 2008/1005, as amended by S.I. 2019/739 and S.I. 2019/753.

"24. 'EU fishing vessel' means a fishing vessel flying the flag of a member state of the European Union and registered in the European Union.";

(b) the heading to Chapter 2 is to be read as if—

(i) for "THIRD COUNTRY" there were substituted "EU", and

(ii) for "UNITED KINGDOM PORTS" there were substituted "PORTS IN NORTHERN IRELAND";

(c) the heading to Section 1 of Chapter 2 is to be read as if, for "third country" there were substituted "EU";

(d) Article 4 is to be read as if—

(i) in paragraph 1—

(aa) for "third country" there were substituted "EU", and

(bb) for "the ports of the United Kingdom" there were substituted "ports in Northern Ireland",

(ii) in paragraph 2—

(aa) for "of the United Kingdom" there were substituted "in Northern Ireland",

(bb) for "third country" there were substituted "EU", and

(cc) at the end, there were inserted "(For rules corresponding to those in this Chapter and applicable to the conduct of landing or transhipment operations by other third country fishing vessels in ports in Northern Ireland, see Chapter II of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.)", and

(iii) for paragraph 3 there were substituted—

"3. Transhipments between third country vessels or between such vessels and United Kingdom vessels are prohibited in United Kingdom waters.

3A. Despite paragraph 3, transhipments between EU fishing vessels may take place in port, where authorised in accordance with the provisions of this Chapter.";

(e) Article 5 is to be read as if, in paragraph 2, for "third country" there were substituted "EU";

(f) Article 6 is to be read as if—

(i) in paragraph 1—

(aa) for "third country" there were substituted "EU", and

(bb) the words after point (h) were omitted,

(ii) paragraph 2 were omitted,

(iii) in paragraph 3, for "third country" there were substituted "EU";

(g) Article 7 is to be read as if, for paragraph 1, there were substituted—

"1. Without prejudice to point 5 of Article 37, an EU fishing vessel shall be granted authorisation to access a port only if the information set out in Article 6(1) is complete.";

(h) Article 8 is to be read as if—

(i) in paragraph 1—

(aa) for "third country" there were substituted "EU", and

(bb) for "the United Kingdom" there were substituted "Northern Ireland", and

(ii) for paragraph 3B there were substituted—

"3B. Where the exercise of the power to make regulations under paragraph 3 would be within the jurisdiction of the Department of Agriculture, Environment and Rural Affairs, in

Northern Ireland, under Article 1(5) of Regulation (EU) No 1380/2013, before making such regulations under the power in paragraph 3A the Secretary of State must obtain the consent of that Department.";

(i) Article 9 is to be read as if, in paragraph 1, for "third country" there were substituted "EU";

(j) Article 11 is to be read as if, in paragraph 2, for "a third country" there were substituted "an EU";

(k) Article 25 is to be read as if, in paragraph 1(a), for "Chapters II, III, IV, VIII, X and XI" there were substituted "Chapter 2";

(l) Article 37 is to be read as if—

(i) points 2 to 4 were omitted,

(ii) in point 5—

(aa) for "the United Kingdom" substitute "Northern Ireland", and

(bb) for "United Kingdom port", in both places it occurs, substitute "port in Northern Ireland", and

(iii) points 9 and 10 were omitted;

(m) Article 54 is to be read as if—

(i) in paragraph 1, "or the Welsh Ministers" were omitted, and

(ii) paragraph 2 were omitted.

Application of Commission Regulation (EC) No 1010/2009 to Northern Ireland

6.—(1) Subject to the modifications in paragraph (3), the provisions of Commission Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing(**a**) listed in paragraph (2) have effect in Northern Ireland.

(2) The provisions are—

(a) Title 1;

(b) Annexes 1, 2A, 3A and 3B.

(3) The modifications are that—

(a) the heading to Title 1 is to be read as if—

(i) for "THIRD COUNTRY" there were substituted "EU", and

(ii) for "UNITED KINGDOM PORTS" there were substituted "PORTS IN NORTHERN IRELAND";

(b) the heading to Chapter 1 of Title 1 is to be read as if for "third country" there were substituted "EU";

(c) Article 2 is to be read as if paragraph 2 were omitted;

(d) Article 4 is to be read as if—

(i) in point (c), for "the United Kingdom" there were substituted "Northern Ireland", and

(ii) points (e), (m) and (r) were omitted;

(e) Annex 2A is to be read as if, for "third country" where it appears in the heading, there were substituted "EU".

(**a**) EUR 2009/1010, as amended by S.I. 2019/739.

Application of Commission Regulation (EU) No 468/2010 to Northern Ireland

7. Commission Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing(**a**) has effect in Northern Ireland for the purposes of the provisions of retained direct EU legislation given effect in and modified by regulations 5 and 6.

Name
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular, under section 8(2)(b), (c), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations are also made in exercise of the powers conferred by section 8C of the European Union (Withdrawal) Act 2018 in order to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement ("the Northern Ireland Protocol").

These Regulations make amendments to EU Exit Statutory Instruments in order to update provisions in consequence of the European Union (Withdrawal Agreement) Act 2020, in particular, in consequence of the Northern Ireland Protocol. Regulation 2 makes amendments in order to ensure that section 30 of the Fisheries Act 1981 (c. 29) can be used for enforcement of breaches of EU law made applicable in Northern Ireland by the Northern Ireland Protocol. Regulations 3 and 4 make amendments to ensure that the retained EU law version of Regulation (EU) No 640/2010 and Regulation (EU) No 1035/2001, respectively, apply correctly with the Northern Ireland Protocol.

Regulations 5 to 7 apply provisions of retained direct EU legislation relating to illegal, unreported and unregulated ("IUU") fishing to Northern Ireland. These provisions impose certain controls and procedures on third country fishing vessels wishing to visit United Kingdom ports. It is necessary to apply retained EU law in this area to Northern Ireland, specifically in relation to the use of ports by EU fishing vessels, to comply with obligations under the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing ("the Port State Measures Agreement"), to which the UK intends to accede at the end of the implementation period.

Under the Port State Measures Agreement, the UK will be obliged to impose controls on access by all third country fishing vessels to ports in the United Kingdom. This includes EU vessels. In Northern Ireland, these controls will be applied through Regulation (EC) No 1005/2008 (the IUU Regulation, as it applies by virtue of the Northern Ireland Protocol), for third country vessels which are not EU vessels, and through the provisions applied by regulations 5 to 7 for EU vessels. The controls include: a requirement to use designated ports; a requirement to obtain authorisation prior to using ports; requirements to submit certain documents in advance of using ports; and a regime of inspection.

(**a**) EUR 2010/468, as amended by S.I. 2019/739.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

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